

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

M.A.C.M.A No.173 of 2012

JUDGMENT:

This M.A.C.M.A is filed questioning the order, dated 02.05.2011, passed in M.V.O.P.No.397 of 2009, on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Vizianagaram.

The applicant before the court below is the injured. He filed an application claiming compensation for the injuries sustained by him in a motor vehicle accident that occurred on 17.12.2008. Respondent No.1 is the driver of the tractor-trailer, and respondent No.2 is the owner of the tractor-trailer that caused the accident. Respondent No.3 is the insurance company which insured the tractor-trailer. The petitioner filed the application for the injuries claiming compensation of Rs.1,00,000/- in all. The lower court granted compensation of Rs.85,500/-.

In the lower court, two witnesses were examined for the petitioner while two witnesses were examined for the respondents. For the petitioners, Exs.A1 to A7, Exs.X1 and X2 were marked, and for the respondents, Exs.B1 to B5 and Exs.X3 and X4 were marked.

Questioning the award of compensation of Rs.85,500/- and also the reduction of the claim, the present appeal has been filed by the petitioner/claimant.

Respondents Nos.1 and 2 were served, but they did not choose to contest the matter. Respondent No.3, the insurance company, contested the matter through its standing counsel.

This court has heard Sri G.Sai Narayana Rao, learned counsel, appearing for the appellant, and Sri Ramachandra Reddy Gadi, learned standing counsel, appearing for respondent No.3.

There is essentially no dispute about the accident and the manner in which it had occurred. The essential grounds that are urged by the learned counsel for the appellant are that; (a) that the lower court committed an error in dismissing the application against respondent No.3, the insurance company; (b) that as per the settled law on the subject, when there is violation of driving licence conditions, the insurance company should pay the compensation to the third party and recover the amount from the owner of the vehicle; and (c) that though the doctor certified that the petitioner sustained disability @20%, the lower court, without giving any reasons, simply stated that the disability assessed by the Medical Board at 20% is on the higher side and erroneously passed the award by reducing the disability @10%. The learned counsel also relied upon a judgment of the Hon'ble Supreme Court of India in *Santlal v. Rajesh*¹ to state that in view of the change in the law, liability of the insurance company is now joint and several even in the cases where driver did not have a valid licence. He therefore argued that the order of the lower court is incorrect insofar as exonerating the insurance company, the 3rd respondent herein, from the liability.

In reply thereto, the learned standing counsel for the 3rd respondent-insurance company argued that the order of the lower court is correct. He supports the judgment and decree passed by the lower court. He argued that as the driver did not have valid driving licence to drive the crime vehicle, the lower court rightly exonerated the insurance company

¹ (2017) 8 SCC 590

from liability and held respondents Nos.1 & 2 are liable. Learned counsel also points out that the claim is inflated, that the petitioner underwent treatment only for 4 days in Government Hospital, Vizianagaram, that the medical expenses claimed by the petitioner are high and the lower court rightly considered all the facts and figures and came to the conclusion that the amount claimed by the petitioner is exorbitant.

This court after hearing both the counsel notices that the lower court exonerated the insurance company essentially on the ground that the driver did not possess valid licence to drive the tractor-trailer at the time of accident. The case cited by the learned counsel appellant in *Santlal v. Rajesh* (1 supra) is clearly applicable to the facts and circumstances of the case. The said judgment follows the Three-Judge Bench of the Hon'ble Supreme Court in *Mukund Dewangan v. Oriental Insurance Co.Ltd.*² wherein it is held that the driver having a valid licence to drive a light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement.

In *Santlal v. Rajesh* (1 supra), which is cited, the driver was having licence to drive motorcycle, scooter, car, jeep and light motor vehicle. There was no endorsement to drive a transport vehicle. The Hon'ble Supreme Court of India, after considering the facts, framed the following question in paragraph No.2 of the judgment.

“Whether the holder of licence for light motor vehicle can drive tractor attached to the trolley carrying goods and also whether separate endorsement is required authorizing him to drive such a transport vehicle?”

² (2017) 14 SCC 663

After framing the above question, the Hon'ble Supreme Court of India clearly held that a person holding a light motor vehicle licence can also drive a transport vehicle and there is no necessity to obtain a separate endorsement. In the said judgment, the Hon'ble Supreme Court of India following the Three-Judge Bench judgment in *Mukund Dewangan v. Oriental Insurance Co.Ltd.* (2 supre) held that the liability of the insurance company is to be joint and several with the owner and driver.

In the light of the authoritative pronouncement of the Hon'ble Supreme Court, this court is of the opinion that the lower court committed an error in holding that respondent No.3-insurance company is not liable. This court holds that all the three respondents are jointly and severally liable to pay the decretal amount.

Coming to the question of the reduction in the quantum of compensation, this court notices that the lower court while deciding the issue No.2, has gone into the facts in detail. As rightly pointed out by the learned counsel for the respondents, the petitioner underwent treatment only for 4 days, that too in a Government Hospital. He also pointed out that the lower court rightly followed the judgment in *Sarla Varma v. Delhi Transport Corporation and another*³ in assessing the compensation and passed a reasoned order.

This court is of the opinion that the submissions of the learned counsel for the respondent are correct and the order of the lower court in this aspect is passed after considering the facts and circumstances. The lower court after considering the likelihood of the disability being reduced in treatment, physiotherapy etc., reduced the percentage of the disability from 20% to 10%. Therefore, this court is of the opinion that there is no

³ (2009) 6 SCC 121

error committed by the lower court in awarding the compensation of Rs.85,500/- instead of Rs.1,00,000/-

Therefore, with the observation that the liability of all respondents is joint and several, the MACMA is allowed in part and as far as the quantum of compensation is concerned, there is no error in the impugned judgment. This court agrees with the quantum of compensation awarded. In the circumstances, there will be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 05.11.2018
Dsr

D.V.S.S.SOMAYAJULU,J

