HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.12630 of 2013

Date: 16.08.2018

Between :

The United India Insurance Company Ltd.

… Petitioner

And

Vajrapu Siva Prasad and others.

… Respondents

COUNSEL FOR PETITIONERS : Mr. N.S. Bhaskara Rao

COUNSEL FOR RESPONDENTS : None appeared for R1 & R2
Mr. Bokka Satyanarayana filed vakalat for R3, but none appeared
Mr. J. Anil Kumar, SC for R4

THE COURT MADE THE FOLLOWING:

ORDER : (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

The petitioner – United India Insurance Company Limited has filed the writ petition for a Writ of Certiorari, to declare order dated 06.07.2012 in PLAC.No.543 of 2007 passed by the Chairman, Permanent Lok Adalat, Visakhapatnam (for brevity "the Tribunal"), as illegal and arbitrary and consequently to quash the same.

The brief facts of the case are on 14.04.2005, while respondent No.1 was going along with his co-brother Mr. Melupati Sudhakar on his Bajaj Chetak Scooter bearing No.AP 31H 641 from their house and when they reached near RRV Puram Junction, at about 2.30 p.m., they stopped their scooter and were standing there, that at that time, the rider of the Bajaj Chetak bearing No.AP 31B 0648 has driven it in a rash and negligent manner without blowing horn and dashed respondent No.1 and his co-brother, as a result of which, respondent No.1 fell on the road along with the scooter and sustained fracture of his left hand and his co-brother also sustained fracture, that respondent No.1 was shifted to Nizam Hospital, Vepagunta for treatment, where he underwent surgery and nails were fixed by incurring medical expenditure of Rs.45,000/- and he incurred Rs.2,000/- towards transportation. Respondent No.1 has filed PLAC.No.543 of 2007 against the writ petitioner and respondent Nos.2 and 3 claiming compensation of Rs.1,50,000/- for the injuries sustained by him in the said accident.

The writ petitioner - Insurance Company, has taken a plea that the driving licence held by the driver of the crime vehicle was a fake licence and the same stands in the name of one Mr. Zaffar Hussain. It is also contended that the driver of the crime vehicle had no valid driving licence by the date of accident and, therefore, the Insurance Company was not liable to pay any compensation due to the violation of the terms and conditions of the Insurance Policy.

Before the Tribunal, respondent No.1-claim petitioner examined himself as PW.1 and got examined the Medical Officer, who treated him, as PW.2. He relied on the documents under Exs.A.1 to A.8 to prove his claim. On behalf of the writ petitioner/Insurance Company, RWs.1 to 4 were examined and Exs.B.1 and B.2, so also Exs.X.1 to X.3 were marked. The Tribunal has decided the matter on merits awarding a compensation of Rs.90,000/- with proportionate cots and subsequent interest @ 7.5% per annum from the date of petition till the date of realization.

Heard the arguments of the learned Standing Counsel for the writ petitioner – Insurance Company and Sri J. Anil Kumar, learned Standing Counsel for A.P. State Legal Services Authority, appearing for respondent No.4 – Permanent Lok Adalat. None appeared for respondent Nos.1 and 2, and Sri Bokka Satyanarayana, counsel for respondent No.3.

Section 149 of the Motor Vehicles Act, 1988 deals with the "duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks". Section 149(2) reads thus:

> **Section 149(2) : No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—**
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> **(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—**
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> **(i) a condition excluding the use of the vehicle—**
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> **(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or**
> **(b) for organised racing and speed testing, or**
> **(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or**
> **(d) without side-car being attached where the vehicle is a motor cycle; or**
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> **(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or**
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> **(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or**
>
> **(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.**

The Tribunal relied on **National Insurance Company Vs. Parital Venkateswarlu & anr.**[1] and held that the insurer has failed to prove that the driver of the crime vehicle has no licence to drive. In **National Insurance Company's** case (supra), it is observed thus :

[1] 2008 (4) ALT 521

“…..insurer must not only prove its defence which it is entitled to take under the provisions of Section 149(2) of the M.V. Act, but must also establish breach on the part of the owner of the vehicle and also the conditions of the policy; and it must also show that the breach is so fundamental that found to have contributed to cause the accident. …..”.

In **National Insurance Company’s** case (supra), it is held that that the insurer must prove its defence by establishing breach on the part of the owner of the vehicle and the conditions of the policy.

Coming to the facts of the present case, the insurer has taken a defence that the driver of the crime vehicle is not possessing valid driving licence. It is the specific contention of the insurer that Ex.X-2 - driving licence stands in the name of one Zaffar Hussain and not the same is not that of the driver of the crime vehicle. The burden is on the insurer to prove that the owner of the crime vehicle has entrusted his vehicle to the driver with the knowledge that such driver was possessing a fake licence. In fact, the evidence of RW.2, Junior Assistant at the office of the RTA, Visakhapatnam, reveals that he has not verified the driving particulars of the driver licence of the driver of the crime vehicle in Gajuwaka RTO Office, Visakhapatnam. He has not verified the record pertaining to the year 1993. Therefore, the Tribunal has rightly come to the conclusion that the insurer has not discharged its burden in proving that the owner of the crime vehicle has entrusted the vehicle to the driver having knowledge that he does not hold a valid driving licence. Mr. Zaffar Hussain is not the driver of the crime vehicle. One Mr. Akula Apparao was driving the crime vehicle at the time of the accident. Ex.X-3 is filed to show that the said Akula Appa Rao was having driving licence by the date of accident. The Insurance

Company has not verified the genuineness of the said document Ex.X-3. On the other hand, RW.3 – owner of the crime vehicle has stated that he sold away the vehicle in the year 1994 to RW.4. RW.4 has stated that he gave the vehicle to Mr. Akula Apparao having verified his licence and as he was riding the vehicle for the past 10 years.

In the cross-examination, RW.2 has stated that basing on Ex.X-2 he cannot say whether Ex.X-3 was a fake licence. He could not even say, whether Ex.X-2 driving licence of Mr. Zaffar Hussain was a fake one. It is to be further noted that RW.2 has stated that Akkireddipalem comes within the jurisdiction of RTA Office, Gajuwaka, but he has verified the records at RTA Office, Visakhapatnam, with regard to the genuineness of Ex.X-2 driving licence pertaining to Mr. Zaffar Hussain. In any event, there is no evidence on record to show that neither Ex.X-2 driving licence or Ex.X-3 were fake licences.

It is also pertinent to note that RW-2 has not verified the record at Gajuwaka RTA Office pertaining to the year 1993 regarding the particulars of the driving licence of Sri Akula Apparao. As per the testimony of RW.4, he has handed over the vehicle to Mr. Akula Apparao only upon verification of the latter's driving licence. The evidence of the witnesses clearly shows that the insurer failed to prove that the owner of the crime vehicle handed over the vehicle to its driver having knowledge that he had no valid driving licence. The Tribunal has considered all these aspects in a detailed manner.

In view of the clear and categorical findings as above, there are no valid grounds to interfere with the said findings of the Tribunal.

In the result, this writ petition is dismissed. No order as to costs.

As a sequel to the dismissal of the writ petition, interim order dated 24.04.2013 is vacated and WPMP.No.15566 of 2013 shall stand closed.

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C.V. NAGARJUNA REDDY, J

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GUDISEVA SHYAM PRASAD, J

Date : 16.08.2018.
Msr

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(P.D. Judgment delivered by GSP, J)