HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 3250 of 2017

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

This appeal arises out of the Award dated 01.05.2017 passed in M.V.O.P. No. 70 of 2015 on the file of the Motor Accident Claims Tribunal-cum-VIII Additional District Judge, Chittoor.

2. The appellant is Bajaj Alliance Insurance Company Limited. The respondent Nos.1 to 4 are the legal heirs of the B. Thulasiram ("the deceased), who died in a road accident. In the claim petition, the claimants pleaded that on the fateful day, while the deceased was going on a motorcycle bearing No.AP-3/S-1347 as a pillion rider, and when the motorcycle reached near Periyambadi Bus Stop, an auto bearing No.AP-03/TA-0339, driven by its driver in a rash and negligent manner, dashed the motorcycle on which the deceased was travelling. As a result, the deceased fell down and sustained injuries. He was taken to Government Hospital, Chittoor, but the doctors declared that the deceased died. The Station House Officer, Yadamari Police, registered a case in Crime No.43 of 2014 for

the offence punishable under Section 304-A IPC against the driver of the crime auto for his rash and negligent driving of the auto. The claimants averred in the claim petition that the deceased was aged about 34 years, working as a conductor in APSRTC on a monthly salary of Rs.26,111/- and that due to the sudden death of the deceased, they lost the sole bread winner for their family, apart from loss of love and affection. Hence, hence claimed compensation of Rs.30,00,000/- against the owner, driver and the appellant/insurer of the crime auto.

3. The owner and driver of the crime auto remained exparte. The appellant/Insurance Company filed counter denying its liability alleging violation of the terms and conditions of the insurance policy by the owner of the vehicle. It is also contended in the counter that the driver of the crime vehicle was not holding a valid and effective driving licence as on the date of accident.

4. The Tribunal on considering the evidence of PWs.1 to 3, and the documents Exs.A1 to A9, and Exs.X1 to X5 on behalf of the claimants; and the evidence of RWs.1 and 2, the documents Exs.B1-copy of insurance policy, and Ex.B2-office copy of notice, along with acknowledgement, awarded compensation of Rs.25,08,304 with interest at 7.5% per annum. Aggrieved by

the said award, the appellant/Insurance Company has preferred this appeal.

5. Heard the arguments of learned counsel for the appellant-Insurance company and learned counsel for the respondent Nos.1 to 4/claimants.

6. It is contended by the learned counsel for the appellant that, in the present case, there is a breach of policy as the driver of the crime auto was not having a valid driving licence to drive the vehicle, that the vehicle involved in the accident is a transport auto and that the driver of the said vehicle is possessing licence to drive a non-transport vehicle. Placing reliance on the decision in the case of **National Insurance Company Limited v. Swaran Singh**[1], the learned counsel submitted that the insurer is not liable to pay the compensation, that there is no statutory liability under Section 149 of the Motor Vehicles Act, in view of breach of conditions of policy, that the driver involved in the accident is disqualified as he was not having valid driving licence to drive the vehicle, as such the insurer is not liable to pay compensation in this case.

7. Learned counsel for appellant has placed reliance on the decision of the Hon'ble Supreme Court in **National Insurance**

[1] 2004 ACJ 1

Company Limited v. Pranay Sethi[2] and submitted that though the respondents are entitled for just compensation, the compensation awarded by the Tribunal is on higher side and, therefore, sought for reducing the same.

8. On the other hand, the learned counsel for respondents-claimants submitted that there is no breach of conditions of insurance policy. The driver of the crime auto is possessing licence to drive a non-transport vehicle and that he is not disqualified to drive a vehicle. The learned counsel further contended that in the light of the decision rendered by the Hon'ble Supreme Court in **Iyyapan v. United India Insurance Co. Ltd.**[3] and **Mukund Dewangan v. Oriental Insurance Company Limited**[4], the insurer cannot be exonerated of its liability on the ground of breach of conditions of insurance policy.

9. In **Iyyapan (3 supra)**, the Supreme court held at paragraphs 17 and 18 as under:

> "18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to

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[2] AIR 2017 Supreme Court 5157
[3] (2013) 7 SCC 62
[4] (2016) 4 SCC 298

> hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.
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> 19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

10. In **Mukund Dewangan (4 supra)**, the Supreme Court, referred to paragraph 107 (iii), (iv), (v) and (vi) of **National Insurance Co. Ltd., v. Swaran Singh**[5], wherein it was observed as under:

> (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly driver or one who was not disqualified to drive at the relevant time.
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> (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish ‘breach’ on the part of the owner of the vehicle; the burden of proof wherefor would be on them.
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> (v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.
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> (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of

[5] (2004) 3 SCC 297 : 2004 SCC (Cri) 733

> a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act".

11. Learned counsel for the respondents further submitted that as per sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Motor Vehicles Act, 1988, breach of policy condition has to be proved to have been committed by the insured for avoiding liability by the insurer. The said provision reads as under:

> 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 an 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,
> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:
> (i) ….
> (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.

12. Placing reliance on the above decisions, the learned counsel for respondents-claimants submitted that the owner of

the crime vehicle has insured the vehicle with the appellant/Insurance company, and that there is valid insurance policy during the relevant period. It is further submitted that the accident occurred out of the use of motor vehicle in a public place and the driver of the crime auto was possessing licence to drive non-transport vehicle. It is contended that non-obtaining of endorsement on the licence to drive a transport vehicle does not exonerate the liability of insurer.

13. On consideration of the rival contentions, we are of the considered view that possessing of licence to drive non-transport vehicle and driving a transport vehicle, by itself, would not exonerate the liability of the insurer in the light of the decisions in **Iyyapan (3 supra) and Mukund Dewangan (4 supra)**.

14. In the instant case, the accident occurred in the year 2014. The deceased was aged about 35 years by the date of accident. The Tribunal has taken the income of the deceased as Rs.12,117/- per month as per the evidence of PW.3- in APSRTC, Kuppam Depot, though PW.1 has stated that the deceased was getting a salary of Rs.16,000/- per month. Having considered the evidence available on record, we are of the view that the Tribunal has reasonably taken the income of the deceased as

Rs.12,117/- per month and awarded the compensation, which does not require interference. However, the Tribunal has awarded Rs.1,00,000/- towards consortium to the wife, Rs.1,00,000/- towards love and affection to the children, Rs.25,000/- towards funeral expenses; Rs.10,000/- towards transport expenses. Learned counsel for the appellant submitted that the compensation awarded under the above Heads is not in consonance with the ratio laid down in Paragraph 61 Clause (viii) of the judgment in **Pranay Sethi (2 supra)** wherein it was held that the compensation towards consortium, love and affection, funeral expenses and transport expenses would be Rs.70,000/-, but whereas in the instant case, the Tribunal awarded Rs.2,25,000/- which is on higher side. Paragraph 61 Clause (viii) reads as under:

> "Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

15. The judgment rendered in **Pranay Sethi (2-supra)** was in October 2017, whereas the Tribunal rendered the impugned judgment in May 2017. Therefore, the Tribunal had, obviously, no occasion to refer to the judgment in **Pranay Sethi (2 supra).** In **Pranay Sethi (2 supra),** it was held by the Hon' ble Supreme Court, in paragraph 61 Clause (iii) as under:

> "While determining the income, an addition of 50% of actual salary of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax."

16. In the instant case, the gross salary of the deceased was taken as Rs.12,117/- per month. The deceased was 34 years old by the date of accident. In the light of judgment in **Pranay Sethi (2 supra)**, the deceased was entitled to 50% of actual salary towards future prospects, as he was having permanent job and was below 40 years of age. The Tribunal has added only 30% of salary towards future prospects placing reliance on the judgment in **M. Nageswaramma v. Siva Cheederla**[6] of this Court. In the light of the judgment in **Pranay Sethi (2 supra)**, 50% of salary has to be added towards future prospects of the deceased considering his age as 34 years which is below the norm of 40 years. As a matter of fact, if **Pranay Sethi (2 supra)** judgment is applied to the instant case, the claimants would get more compensation than that was awarded by the Tribunal. However, since there is no cross-appeal filed by respondent Nos.1 to 4/claimants, we are not inclined to enhance compensation in an appeal filed by the insurance company. The appellant, having referred to the judgment in **Pranay Sethi (2 supra)**, has sought for reduction of compensation basing on

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[6] 2015 (3) ALT 702

para 61 clause (viii), ignoring para 61 clause (iii) thereof. In view of the fact that the respondent Nos.1 to 4/claimants would be in a better position if the decision in **Pranay Sethi (2 supra)** is made applicable to this case, we are of the opinion that the contention of the appellant that the compensation awarded by the Tribunal under the Heads of loss of consortium, loss of love and affection and funeral charges are on higher side, cannot be accepted. We strongly condemn the attitude of appellant/Insurance Company in preferring appeals like this where the claimants are entitled even for enhancement of compensation. Having regard to the facts and circumstances of this case, the appeal is liable to be dismissed.

17. In the result, the appeal is dismissed. The appellant is directed to deposit the compensation within four weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the entire amount. Miscellaneous petitions, if any pending, shall also stand dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

13th April, 2018
KSM

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