

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHARA PRADESH**

M.A.C.M.A. No. 448 of 2014

Between:

HDFC ERGO General Insurance Company Ltd.

... Appellant

AND

1. Rachakonda Yadagiri and another

.... Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes / No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes / No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes / No

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 448 of 2014**

% 29.01.2018

HDFC ERGO General Insurance Company Ltd.

.....Appellant

Versus

\$ 1. Rachakonda Yadagiri and another

..... Respondents.

< GIST:

> HEAD NOTE:

! Counsel for the Appellant : T. Mahender Rao

^ Counsel for the Respondents : C. Venkat Yadav

? Cases referred



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 448 of 2014

JUDGMENT:

This appeal is arising out of the Order and Decree dated 13.03.2013 passed in O.P.No.1090 of 2010 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge (I F.T.C.) at Nalgonda.

2. Brief facts of the case are that on 30.04.2010 at about 12.30 P.M., while the petitioner-claimant was proceeding on his motorcycle No.AP-24-4566 towards Nalgonda reached outskirts of Thatikal village, an auto bearing No.AP-24Y-2977 driven by its driver in a rash and negligent manner, and at a high speed, dashed the motorcycle of the petitioner, thereby he fell down from the motorcycle and sustained grievous injuries. He was immediately taken to Government Community Health Centre, Nakrekal for first aid. On that information, the police registered a case in Crime No.50 of 2010 for the offence under Section 338 of IPC, against the driver of the auto. The petitioner was 40 years old by the date of accident, and he was earning Rs.6,000/- per month as agriculturist. In the accident, he had suffered fracture of right ulna, fracture of right neck of radius, fracture of right elbow joint and multiple injuries all over the body, he had been treated in various hospitals. He had incurred huge expenditure towards medical treatment and purchase of medicines. He had suffered permanent disability due to the injuries. He filed a claim petition for compensation of Rs.1,50,000/-. On consideration of evidence, the Tribunal has awarded compensation of Rs.64,000/- against the respondents 1 and 2. Aggrieved by the judgment, the appellant-HDFC ERGO General Insurance Company Limited, has filed the present appeal challenging the quantum of compensation and also denying the liability of the insurance

company. Insurer had contended that the driver of the crime vehicle had no valid driving licence by the date of accident, and also disputed its liability contending that it is a case of own negligence, as such the insurer is not liable to pay compensation.

3. Heard arguments of learned counsel Sri T. Mahender Rao for the appellant-insurance company, and the learned counsel Sri C. Venkat Yadav, for the respondents.

4. The point for consideration in this matter is whether the insurer is liable to pay any compensation?

5. Sri T. Mahender Rao, learned counsel for the insurance company submitted that the driver and owner of the crime auto are one and the same. There is no coverage for owner cum driver. It is further submitted that the driver has no licence to drive the auto, at the time of accident. Therefore, the insurance company has got issued a legal notice dated 07.05.2012 (Ex.B1), to the owner of vehicle. Ex.B2 is the postal receipt of service of notice. Ex.B3 is the acknowledgement. The owner-cum-driver of the crime auto had received Ex.B1 but had not submitted his driving licence to the insurance company. As the owner has violated the terms and conditions of the insurance policy, the insurance company is not liable to pay compensation. Learned counsel has drawn attention to paragraph 14 of the order of the Tribunal, which reads as under:

“14. As already held under issue No.1, it is proved that the petitioner sustained injuries in the accident occurred on 30.03.2010 due to the rash and negligent driving of Auto bearing No. AP.24.Y.2977 belongs to the Respondent No.1. While admitting issuance of policy to the crime vehicle under Ex.B2, RW1 (K. Naveen Chandra), working as claims manager in the Respondent No.2/Insurance company deposed that as per their investigation report, M. Muthaiah, S/o Mysaiah, who is driver cum owner of the Auto bearing No.AP.24.Y.2977 had not possessed driving license to drive auto rickshaw. In that regard, their company issued a legal notice/Ex.B1 to the driver cum owner of the crime

vehicle to furnish driving license and other necessary documents. But the owner cum driver did not furnish the said documents inspite of service of notice/Ex.B3 (acknowledgment), therefore their company is not liable to pay any compensation to the Petitioner. In his cross examination, RW.1 admitted that as per the averments of Ex.A2/charge sheet, no charge has been framed against the driver of the crime vehicle U/Sec. 3/181 of MV. Act. As seen from Ex.A2 charge sheet, the accused M. Muthaiah S/o. Mysaiah, driver of Auto bearing No.AP.24.Y.2977 was charged for the offence U/Sec.338 of IPC only. But the said persons was not charged U/Sec. 3/181 of MV. Act, 1988 for non possession of driving license.”

6. Learned counsel for the insurance company further submitted that the insurance company has examined RW1 and has taken their defence that the driver did not possess driving licence, inspite of that the Tribunal came to the conclusion that the respondents cannot avoid their liability to pay compensation to third parties.

7. Basing on the evidence on record, the Tribunal came to a conclusion that the charge sheet does not disclose any offence against the driver of the auto for not possessing driving license. If really the driver had no licence, the police would have registered a case against him for the offence under Section 188 of the Motor Vehicles Act. However, the insurance company got issued legal notice dated 07.05.2012 to the driver of the crime auto for production of driving licence. It is submitted that the driver did not produce the same before the insurer. It clearly shows that there was no satisfactory evidence before the Tribunal. The burden is on the insurer to prove that the driver of the crime vehicle has no driving licence. Moreover, no offence is registered against the driver of the crime vehicle after accident for not possessing driving licence under Section 188 of the Motor Vehicles Act. In view of the foregoing reasons, and since the party involved in the accident is a third party, the insurance company cannot disown its liability on this ground. Learned counsel for the insurance company further contended that

there is no proof for medical expenditure of Rs.10,000/- produced before the Tribunal. The Tribunal placing reliance on Ex.A3 medical certificate, dated 30.03.2010, issued by the Community Health Centre, Nakrekal, and Ex.A4 discharge summary, issued by Sri Rama Orthopedic Hospital, Nalgonda, Ex.A5-discharge summary, issued by KIMS Hospital, LB Nagar, Hyderabad, and Ex.A7-X-ray films, arrived at a conclusion that the petitioner received fracture of radial neck of right radius bone fracture of right ulna, fracture of right neck radius, are grievous injuries, and immediately the petitioner was given first aid at Community Health Centre, Nakrekal, and thereafter he was treated by Dr. L. Raji Reddy, M.S. Ortho, at Nalgonda, as inpatient from 30.03.2010 to 19.04.2010. No doubt, the petitioner did not examine the medical officer to prove the nature of treatment undergone by him in Sri Rama Orthopedic Hospital and Trauma Care Centre, Nalgonda. However, Ex.A5 discharge summary issued by KIMS, Narketpally discloses that on 07.04.2010 the petitioner was admitted in the said hospital with diagnosis of montaggia variant fracture dislocation of right forearm, and he had undergone a surgery for tension band wiring left olecranon. Thereafter, he was discharged on 12.04.2010. In fact, Ex.A6 medical bills shows that the petitioner had spent an amount of Rs.704/- towards medical expenses. The learned counsel for the insurance company contended that the petitioner filed medical bills to an extent of Rs.704/- to prove his medical expenditure, but the Tribunal has awarded Rs.10,000/- without any material. It is also argued that the petitioner has not produced any proof of incurring medical expenditure of Rs.10,000/-. In the absence of any evidence, awarding of medical expenditure of Rs.10,000/- is illegal. In fact, the Tribunal awarded Rs.10,000/- towards investigations, treatment and medical expenditure. It is pertinent to note that the Tribunal, consideration of the medical record and nature of treatment undergone by petitioner had awarded Rs.10,000/-. The Tribunal has

awarded Rs.30,000/- towards injuries, Rs.10,000/- towards shock, pain and suffering, Rs.10,000/- towards investigations, treatment and medical expenditure, Rs.5,000/- towards extra nourishment, Rs.1,000/- towards transportation and, Rs.2,000/- towards attendant charges, Rs.6,000/- towards loss of earnings for two months.

8. It is argued that the petitioner had availed the scheme under Aarogyasree at KIMS Hospital, Narketpally. The treatment under Aarogyasree is for free of cost, as such the petitioner is not entitled to medical expenditure. This argument of the learned counsel for the insurance company cannot be accepted for the reason that the petitioner availed the scheme under Aarogyasree may be free of cost does not absolve the liability of the insurance company in awarding compensation as there is possibility of petitioner incurring other expenditure. The Motor Vehicles Act is a social welfare legislation and the victim should be granted just and reasonable compensation. Therefore, the findings of the Tribunal do not require interference.

9. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 13.03.2013 passed by the Tribunal in O.P.No.1090 of 2010. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

29th January, 2018

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 448 of 2014

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