HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.321 of 2012

JUDGMENT:

This appeal is filed by the appellant-insurer aggrieved by the Order and Decree dated 14.08.2011 passed in M.A.T.O.P.No.830 of 2005 by the Motor Vehicle Accidents Claims Tribunal (V Additional District Judge) (FTC), Kothagudem (for short, the Tribunal).

2. The brief facts of the case are that on 26-10-2004, while the 1st respondent/claimant along with another person traveling in a trolley auto bearing No.AP20 V 8847 and when it reached near Korlapadu village culvert at about 7.00 AM, the 2nd respondent drove the tractor and trailor bearing No.AP 20TRT 3757 in a rash and negligent manner and dashed against the said auto and as a result, the 1st respondent/claimant sustained the multiple injuries. The 1st respondent filed aforesaid MATOP against the appellant and respondent Nos.2 to 5 claiming compensation of Rs.3,30,000/- for the injuries sustained by him.

3. In the claim petition, the appellant/insurer filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the 2nd respondent-driver of the crime vehicle

and awarded compensation of Rs.68,500/- i.e., Rs.5000/- towards compensation, Rs.25,000/- each towards injuries 1 and 2 and also a sum of Rs.7,500/- towards head of pain and suffering, and also a sum of Rs.6,000/- towards loss of earnings for two months, with interest @ 7.5% per annum fixing the liability jointly and severally against 2nd respondent-driver, 3rd respondent-owner of the crime vehicle and the appellant-insurer.

5. Dissatisfied with the quantum of compensation, the appellant/insurer company filed the present appeal, seeking for dismissal of the claim petition.

6. Heard the learned Standing Counsel for the appellant-insurer and the learned counsel for the 1st respondent-claimant.

7. Learned Standing Counsel for the appellant-insurer contends that the short point involved in this appeal is that driver of the insured vehicle though had a licence, but his transport licence was expired in the year 2002 and it was renewed on 13-05-2005. Even the Tribunal also observed that as on the date of accident, the transport licence expired and it was renewed subsequently. The Tribunal also observed the evidence of R.Ws.1, 3 and 4 who were examined by the appellant-insurer. Still, the Tribunal holds that when once the driver is having experience to drive the vehicle, even if it is expired, since it is subsequently renewed, the Tribunal holds that he is capable of driving. However, the question whether the capability of knowledge of driving is to be determined basing on the validity or otherwise of the driving licence. In support of his contention, he relied

upon the decisions of the Supreme Court in **Bhuwan Singh Vs. Oriental Insurance Co. Ltd. and another**[1]**,** wherein the Apex Court, while referring to **National Insurance Company Ltd. Vs Swaran Singh**[2]**,** categorically stated that licence which is not renewed cannot be said that it is valid licence and the insurance company cannot be burdened to the payment of compensation for the said accident. The Apex Court in **Francisca Luiza Rocha and others Vs. K.Valarmathi and others**[3]**,** has held that the insurance company is liable to pay compensation and recover the same from the owner. Therefore, he prays to allow the appeal by setting aside the impugned judgment of the Tribunal.

8. Learned counsel for the 1st respondent-claimant does not dispute the above said principle of law and he has no objection for disposal of the appeal with a direction to the appellant-insurer to pay the compensation to the 1st respondent-claimant and recover the same from the owner of the crime vehicle.

9. The main issue involved for consideration is that whether the insurance company is liable to pay compensation when the driving licence was expired on the date of accident and the same is subsequently renewed. In the present case, the licence obtained on 15-11-1991 which was renewed from time to time and expired on 11-08-2002 and again it was renewed on 13-05-2005. But the accident took place on 26-10-2004, between the period of August 2002 and May 2015, i.e. after expiry of the licence and before it

---

[1] 2009 ACJ 1426
[2] 2004 ACJ I (SC)
[3] 2018 ACJ 1430

was renewed again. Though the Tribunal has treated that not having valid licence on the day of accident does not mean that the driver is not competent of driving the vehicle, this observation cannot be appreciated as admittedly when there is no valid licence at the time of accident, the issue of competency to drive does not arise since the policy is not issued on the competency of driving but it is issued on the weightage of the driving licence.

10. Therefore considering the facts and circumstances of the case and the submissions made by the counsel for both sides, and also following the judgment of the Supreme Court in **Francisca Luiza Rocha and others** (3 supra), this Court feels that this appeal be disposed of with certain direction without going into the issue of quantum of compensation since the 1st respondent-claimant has not filed any enhancement application nor the appellant is challenging the award of compensation. Accordingly, the appellant-insurer is directed to pay the entire compensation awarded by the Tribunal to the 1st respondent-claimant with liberty to recover the same from the owner of the vehicle.

11. With the above observations, the appeal is disposed of. No costs.

JUSTICE T.AMARNATH GOUD

Date: 21.06.2019
kvr