THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No. 313 of 2013

JUDGMENT:

This appeal has been filed by the 2nd respondent/insurer assailing the liability fastened to indemnify the 1st respondent in the decree and award dated 31.05.2012 in O.P.No.119 of 2010 on the file of M.A.C.T.-cum-IX Additional District Judge, at Kamareddy.

2. The claim petitioner's case in brief is that on 14.02.2010 when Akaram Buchaiah/deceased was proceeding on his cycle, in the outskrits of Jangaom village, a tractor and trailer bearing No.AP25AB0780 and AP25W3341 (for short, 'the tractor') driven in rash and negligent manner dashed the cycle from behind. As a result, Buchaiah/deceased slumped and the tractor ran over him and caused his instantaneous death. Thereupon the wife, children and parents of Buchaiah/deceased filed claim petition for Rs.8,00,000/- for the loss of dependency.

3. The Tribunal after analyzing the material placed on record held that the accident occurred due to rash and negligent driving of the tractor and awarded Rs.3,85,000/- with 7.5% interest per annum against the owner and insurer/ 1st and 2nd respondent.

4. Aggrieved thereby the 2nd respondent/insurer (for short, ‘the respondent’) in this appeal contended that the Tribunal has failed to consider that the charge sheet/Ex.A2 has been filed against the driver for not holding valid driving license and charged under Section 181 of the Motor Vehicle Act,1988 (for short, ‘the M.V.Act’). Further, the trolley of the tractor was not insured as such, there cannot be statutory and contractual liability with the 1st respondent/owner to pay the compensation. Thus, prayed for considering these aspects and to exonerate the respondent from the liability.

5. On the aspect of liability, the respondent relied on the authorities reported in **Pappu And Others vs Vinod Kumar Lamba And Another**[1]**, Sardari & Ors vs Sushil Kumar &**

[1] 2018 ACJ 690

Ors[2]**, Bhuwan Singh vs M/S Oriental Insurance Co.Ltd.& others**[3] and **Oriental Insurance Co. Ltd vs Premlata Shukla & Ors**[4]**.**

6. Learned counsel for the petitioners/ 1st respondent to 4th respondent (for short, 'the petitioners') pleaded that the deceased was third party to the vehicles and the Tribunal had considered the aspect of the driving license of the driver and rightly fastened the liability against the owner and insurer/1st and 2nd respondents. Further, as the tractor caused the accident, the insurance contract with the trolly would not be a relevant fact in any way to determine the liabilities. Thus, the contention raised in the appeal is untenable as such, liable to be dismissed.

7. In this position, the point that arises for determination is:

> "Whether the respondent is able to establish the fact that the driver of the offending vehicle was not holding effective driving license at relevant time? if so, whether the respondent/insurer can be let off from the liability?"

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[2] 2008 ACJ 1307
[3] AIR 2009 SC 2177
[4] 2007 (13) SCC 476

8. The facts that the rash and negligent driving of the tractor in the accident and consequential death of A. Buchaiah/deceased, and the quantum of compensation awarded by the Tribunal are not in dispute. The core contest is that the driver of the tractor has not been holding valid driving license at relevant point of time. It is clear by the record that the respondent except contesting on the driving license and marking copy of insurance policy/Ex.B1, placed no other document. However, relied on the final report/Ex.A2, filed by the petitioner, wherein the driver had been charged under Section 181 of the M.V. Act for not holding the valid driving license, and that, the owner/ 1st respondent remained silent, even after service of due notice.

9. The final report/Ex.A2 is filed by the petitioner to establish the accident and rash and negligent driving of the driver and the same had been considered by the Tribunal. It is pertinent to mention that as one part of the charge sheet has been taken into account, the other portion that the driver had driven the vehicle in contravention of Sections 3 and 4 of the M.V. Act which requires the valid driving license to drive the

vehicle cannot be brushed aside on the ground that it is only an accusation.

10. This view is supported by the authority relied on by the respondent, in **Oriental Insurance Co. Ltd vs Premlata Shukla & Ors,** *(supra) wherein the* Hon'ble Supreme Court while considering the aspect of First Information Report which was brought on to record to prove the accident and the Tribunal had relied on it for fixing the liability on the part of the driver of the vehicle. In appeal, the Hon'ble High Court held that 'the First Information Report against the driver had not been legally proved', thus set aside the finding. On further appeal, Hon'ble Supreme Court adjudged that 'when the First Information Report is relied for proving accident, the Tribunal has rightly considered the other contents as both the parties placed reliance on it. Thus, the proof of contents of the document have been proved or not cannot be sustained'.

11. In the present case, the petitioner filed Ex.A2 charge sheet to prove the accident and negligent driving of the vehicle. However, as the selfsame document is also referring

to the aspect that the driver has not been holding valid driving licence at relevant time, this fact shall be taken as prima facie established.

12. Further, the burden of proof to demonstrate the breach of policy condition is on the respondent/insurer. The burden also lies on the owner of the vehicle to explain that adequate care has been taken in verifying the driving licence of the driver, as it would be within his specific knowledge. In this position, as the driver had been charge sheeted and for willful abstinence from the proceedings, negative presumption can be drawn against the owner/1st respondent. In affect it shall be held that the respondent had prima facie proved that the driver of the tractor was not holding valid and effective driving license.

13. Howsoever, having regard to the fact that the deceased is third party to the vehicle and as the insurance policy/Ex.B1 is covering the risk of the third party and the dictum in **National Insurance Co. Ltd. Vs. Swarn Singh and Ors**[5]

[5] (2004) 3 SCC 297

wherein the Hon'ble Supreme Court examined the liability of the Insurance Company in cases of breach of policy condition due to disqualification of the driver and held that in cases of third party risks, the insurer has to indemnify the compensation amount to the third party and insurance company may recover the same from the insured. This dictum holds the field since the reference in **National Insurance Company Limited Vs. Parvathneni and others**[6] has been disposed of by keeping the question of law open.

14. Therefore, directing the insurer/respondent to indemnify the compensation amount payable to the petitioners, with a liberty to recover the same from the 1st respondent/insured, would be appropriate to sub-serve the ends of justice.

15. For the aforesaid, the appeal is partly allowed by holding that the 1st respondent/owner is liable to pay the awarded compensation, however, the 2nd respondent/insurer is directed to pay the compensation first with a liberty to recover the same from the 1st respondent/owner without resorting to

[6] 2009(8) SCC 785

separate suit and by executing the decree. Accordingly, the impugned decree and award stands modified.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

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N. TUKARAMJI, J

Date:22.09.2022
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