HIGH COURT FOR THE STATE OF TELANGANA

MONDAY ,THE FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

M.A.C.M.A.No.1050 of 2018

Appeal Under Section 173 of Motor Vehicles Act against the Order and Decree made in O.P.No.305 of 2013 dated 25-09-2017 on the file of the Court of the Chairman, Motor Accident Claims Tribunal –cum- VIII Additional District Judge, Nizamabad.

Between:

M/s. Relance General Insurance Company Limited, Rep. by its Legal Manager, Sagar Plaza, Abids, Hyderabad.

...APPELLANT/RESPONDENT

AND

1. Dathila Chinna Sekhar, S/o. Ganga Reddy, aged 22 years, Occ student, R/o. Gadkole (V),Sirikonda (M), Nizamabad District.
...RESPONDENT/PEITIONERS
2. Abdul Anees, S/o. Abdul Sattar, aged 22, Muslim,Owner of auto AP 25V 7051, R/o. 1-78, Dharpally (V and M), Nizamabad-District
...RESPONDENT/RESPONDENT No.1

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to stay of all further proceedings including the execution proceedings if any in O.P.NO.305 /2013 on the file of the M.A.C.T. Cum VIII Additional District Judge, Nizamabad order dt. 25-09-2017 pending disposal of the main appeal.

Counsel for the Appellant: SRI K. S. N. MURTHY

Counsel for the Respondent No.1: SRI AKKAM ESHWAR

Counsel for the Respondent No.2: SRI R. NARAYAN REDDY

The Court delivered the following: JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

M.A.C.M.A.NO.1050 of 2018

JUDGMENT:

This appeal has been preferred by M/s.Reliance General Insurance Company represented by its Legal Manager, who was second respondent in O.P.No.305 of 2013 on the file of Motor Accidents Claim Tribunal cum VIII Addl. District Judge, Nizamabad and this appeal is preferred against the award passed by the Court below in favour of the respondents No.1 and 2 by which the Court below directed the appellant herein and first respondent/owner of the vehicle to pay an amount of Rs.2,23,029/- as compensation on account of the injuries caused to the first respondent.

2. This appeal is preferred mainly on the ground that the driver of the vehicle which involved in the accident was not having valid license. The police to whom a complaint was presented soon after the accident filed charge sheet against the driver for the offence under Section 338 I.P.C. and also under Section 181 of Motor Vehicles Act. The appellant further pleaded that owner and driver of the vehicle violated the conditions of the policy by using the vehicle though there is no valid permit. These two violations disqualify the first respondent to claim compensation from the

insurance company. The appellant further pleaded that even though there was inordinate delay in filing the complaint with the police soon after the accident, the Court below did not consider this aspect, there is every possibility of falsely implicating the vehicle in the accident. Therefore, the Court below ought not to have granted compensation to the first respondent.

3. The appellant further pleaded that since the vehicle was used in violation of the policy conditions, the insurance company is not liable to pay compensation. There is no necessity for the insurance company to indemnify the owner of the vehicle even if there is any compensation to be awarded to the first respondent/injured. Therefore, the appellant sought for setting aside the award and for dismissal of the petition filed by the first respondent.

4. In order to decide the merits of the appeal, it would be necessary to see what was the case of the first respondent before the Court below and as to how the same was allowed. As could be seen from the material documents, the first respondent herein has filed O.P.No.305 of 2013 under Section 166(1)(a) of Motor Vehicles Act and sought for an amount of Rs.2,00,000/- towards compensation for the injuries caused to him on account of a road

accident. According to his case before the Court below, it is alleged that on 16-01-2013, while he was going on a motor-bike from Gadkole Village to Secundrapoor and when he reached the limits of Gonugoppula Village at about 6.30 p.m., the driver of an auto bearing No.AP 25 V 7051 drove it in a high speed, in a rash and negligent manner and dashed the motor-bike of first respondent, thereby, he fell down and auto ran over him. The first respondent suffered multiple fractures and grievous injuries. A complaint was presented to police and a case in Crime No.12 of 2013 was registered against the said driver. The first respondent claimed that he received comminuted fracture of right Tibia shaft, fracture of proximal phalanx right 5th toe and multiple grievous injuries all over the body. He was immediately shifted to Maithri Hospital, Nizamabad, where he was given first aid and was referred to Hyderabad, where he was treated at KIMS hospital. The first respondent has claimed that he spend Rs.1,00,000/- towards treatment. He has also pleaded that prior to the accident he was hale and healthy. He was earning Rs.15,000/- per month. In view of the accident, he lost income, suffered injuries, thereby, he has claimed an amount of Rs.2,00,000/- from the owner of the vehicle and also from the insurance company which filed the present appeal.

5. Both the respondents appeared before the Court below and filed their respective counter and written statement. The owner of the vehicle disputed the material averments and alleged that the compensation claimed by the first respondent is excessive. Whereas, the second respondent filed written statement putting the first respondent herein to strict proof of all the averments made in the application. As per the said statement, it was the case of appellant herein that there was delay in lodging the complaint and compensation claimed by the first respondent was excessive and sought for dismissal of the petition.

6. The Court below framed three issues as follows :

1. Whether the pleaded accident occurred resulting in injuries sustained by the petitioner Dathila Chinna Shekar due to rash and negligent driving of the Auto bearing No. AP-25-V-7051 by its driver ?
2. Whether the petitioner is entitled for compensation ? If so, to what amount and against which of the respondents ?
3. To what relief ?

7. During the enquiry, the petitioner/first respondent herein was examined as PW.1 and he examined one Dr. Srikanth Gollamudi as PW.2 and got marked Exs.A1 to A10. The second

respondent i.e., the appellant herein examined its Legal Claims Manager as RW.1 and got marked Exs.B1 to B3.

8. The learned trial Judge having heard both parties, and perusing oral and documentary evidence of both parties, came to a conclusion that the first respondent/petitioner is entitled to an amount of Rs.2,23,029/- and awarded the same by directing the appellant and second respondent to pay the said amount together with costs and interest.

9. The learned counsel for the appellant has submitted that though there was an inordinate delay, the Court below did not consider the same. In view of the delay, there is every possibility for the injured to implicate the unconcerned vehicle in the accident. There was no valid license for the driver of the auto, there was no valid permit to fly the vehicle but inspite of the violations brought to the notice of the Court below, compensation was awarded fastening the liability to the appellant herein, thereby, he sought for setting aside the award.

10. In view of the above, the following points arose for consideration is :

> Whether the award passed by the Court below is liable to be set aside as prayed for ?

11. The main objection taken by the appellant in the present appeal is with regard to the delay in lodging the complaint and the driver of the vehicle had no license, it amounts to violation of the policy conditions, thereby, insurance company need not pay the compensation. The learned trial Judge has considered both the aspects and awarded compensation to the appellant herein. According to the evidence of PWs.1 and 2, the first respondent/petitioner suffered multiple fractures. PW.2 the Medical Officer categorically deposed before the Court that the first respondent suffered fracture to the right Tibea, fracture of right 5th toe and the first respondent undergone surgery, nailing was done to the right Tibea, he received two units of blood transfusion, subsequently, he has treated first respondent on 28-01-2013, 21-10-2013 and 08-01-2014. Subsequently, the first respondent was admitted to the hospital on 24-06-2014 for removal of the tibial spine screw and PW.2 issued Exs.A3 to A7 and A10. Therefore, it is quite clear that in view of the accident, the first respondent/petitioner suffered multiple fractures and immediately he was taken to local hospital and then to Hyderabad. It is quite natural for the injured or for his relatives to concentrate on the treatment of the injured rather to lodge a complaint with the

police. The evidence of PW.3 coupled with the material documents clearly indicates there was an accident in which PW.1 suffered grievous injuries, thereby, they could not have rushed to the police station for presenting the complaint. Thereby, the delay in lodging the complaint may not be fatal.

12. The next aspect relied on by the appellant herein is about the license of the driver of the auto. It may be true that police have filed charge sheet against the auto driver not only for the offence under Section 338 I.P.C. but also under Section 181 of Motor Vehicles Act. The appellant herein though examined its employee as RW.1, did not choose to examine the investigating officer, who said to have filed charge sheet for the offence under Section 181 of Motor Vehicles Act. Therefore, simply because a charge sheet is filed under the above referred Section it does not imply that the driver of the auto had no license. The content of the charge sheet is not proved in this case. The insurance company did not try to produce any document to prove that he had no license. It is true, owner of the vehicle did not try to examine any witnesses on his behalf but when the insurance company took a plea, it is for the company to prove that aspect. According to the evidence of RW.1, it shows that the driver of the

auto has got license but he was not qualified to drive a non-transport vehicle. When once he had a valid license to drive the vehicle, the insurance company cannot escape its liability on the ground that the driver has no license to drive non-transport vehicle. Therefore, the Court below rightly considered these aspects and awarded compensation by taking into the evidence of PWs.1 and 2 and other documents. Therefore, there are no merits in the appeal. It is liable to be dismissed.

13. In the result, this appeal is dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

SD/-G.SIREESHA
ASSISTANT REGISTRAR

//TRUE COPY//

22/12/22

SECTION OFFICER

To,

1. The VIII Additional District Judge, Nizamabad.
2. One CC to Sri K. S. N. Murthy, Advocate [OPUC]
3. One CC to Sri Akkam Eshwar, Advocate [OPUC]
4. One CC to Sri R. Narayan Reddy, Advocate [OPUC]
5. Two CD Copies

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HIGH COURT

DATED: 01/08/2022

JUDGMENT

MACMA.No.1050 of 2018

DISMISSING THE MACMA