THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 1993 of 2015

JUDGMENT:

The New India Assurance Company Limited, respondent No.3 before the Tribunal, preferred this appeal challenging the order and decree, dated 19.06.2014, passed in O.P.No. 120 of 2009 on the file of Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial (for short, 'the tribunal').

For the sake of convenience, hereinafter, the parties will be referred to as per their array before the tribunal.

The claimant, respondent No.1 herein, filed the O.P. claiming compensation of Rs.3,50,000/- on account of injuries sustained by him in the motor accident that occurred on 30.12.2007. According to the claimant, on 30.12.2007, at about 10:15 a.m., while he was riding a bike on the Korutla Main Road, the offending vehicle i.e., car bearing No.AP 09 X 0087, owned by the respondent No.2, insured with respondent No.3, being driven by respondent No.1 in rash and negligent driving at high speed, came in opposite direction, dashed the bike, as a result of which, he fell down and received grievous injuries. He had undergone treatment for a period of six months by spending huge amounts towards medicines and treatment and therefore, he laid the claim against the respondents seeking compensation of Rs.3,50,000/- under various heads. Considering the claim and the counter filed by the Insurance Company and on evaluation of the evidence, both oral and documentary, the learned Tribunal has allowed the O.P. in part awarding total compensation of Rs.2,60,000/- with 7.5% interest per annum, holding the owner of the offending vehicle and the insurance company jointly and severally liable to pay the compensation.

Heard the learned Standing Counsel for the appellant and the learned counsel for the claimant-respondent No.1 herein. Perused the material available on record.

Now, the main contention of the learned Standing Counsel for the appellant is that the appellant-Insurance Company is not liable to pay any compensation in as much as the driver of the offending vehicle was not at all possessing any driving license at the time of the accident. Thus, as there was breach of terms and conditions of the insurance policy by the owner of the crime vehicle, the learned Tribunal ought not to have fastened liability on the Insurance Company. It is alternatively contended that in the circumstances of the case, the learned Tribunal ought to have directed the Insurance Company to pay the compensation in the first instance and granted liberty to recover the same from the owner of the offending vehicle, for the breach of terms and conditions of the policy.

On the other hand, learned counsel appearing for respondent claimant has contended that the compensation awarded by the learned Tribunal and the liability fixed on the respondents jointly and severally is based on appreciation of evidence in proper perspective and therefore, the said findings need no interference by this Court.

The finding of the Tribunal with regard to the manner in which the accident took place has become final as the same is not challenged by either of the respondents. Even there is no serious challenge by the learned Standing Counsel for the appellant on the aspect of quantum of compensation. Thus, the only challenge in this appeal is the finding of the tribunal in not exonerating the insurance company from the liability of payment of compensation for the violation of terms and conditions of the policy. The learned Tribunal, while answering issue No.2, evaluating the evidence adduced by the parties, has observed, at para No.10, as under:-

"10. …Upon perusal of the contents of the Ex.A.2, charge sheet, it is noticed that the failure of the driver i.e., first respondent who was the accused of the crime in submitting the driving license to the police. Similarly, the contents of Ex.A.4 disclosing about the failure of the driver not producing the driving license. The failure of the driver in producing the driving license cannot be equated with the term not possessing driving license. It is not known for what reason the first respondent failed to produce the driving license to the police when asking for its production. Precisely, in the charge sheet, as well as in the accident information report, it is not mentioned about the driver not having driving license and without holding any driving license he is driving it. What all mentioned in this two documents is about the failure in producing the driving license. Just because, the driver failed to produce his driving license does not mean to say he was not possessed driving license at all. No doubt, at the end in the charge sheet it is found the first respondent committing the offence of Section 338 IPC and also the offence of Section 3 r/w 181 of M.V. Act. It is not known whether the court before which the police laid the charge sheet took cognizance of the charge sheet for the offence of Section 3 r/w 181 of M.V. Act or not. Mere filing of the4charge sheet by the police for the offence of Section 3 r/w 181 of M.V. Act along with offence of Section 338 IPC is not sufficient and it has to be proved about taking cognizance of the charge sheet by the Magistrate of both the offences. …The third respondent insurance company failed to being on record about the Magistrate taking cognizance of the charge sheet for the offence of Section 3 r/w 181 of M.V. Act. In the evidence, the R.W.1 deposed about sending of notices to the insured and to the driver calling them to produce certain documents including driving license of the driver i.e., the first respondent.

Whether the first respondent received or not that notice, there is o material except the postal receipt and the postal acknowledgement not filed and exhibited. The cover containing the notice which sent to the second respondent insured is filed into the *court and the same is got exhibited as Ex.B.6 and the postal endorsement on this Ex.B.6 is to the effect that no such person is residing or available at the given address."*

It is to be noted that as per Section 149(2) of the Motor Vehicles Act, 1988, heavy burden lies upon the insurer to prove that the driver of the vehicle had no valid driving license at the time of the accident. The evidence of RW-1 does not establish that the driver of the offending vehicle was having a valid and effective driving license as on the date of the accident or not. But the evidence discloses the fact that the driver has been prosecuted for not producing the driving license. In such circumstance, the evidence of RW-1 is not of much assistance to the insurer in order to establish the fact that the driver of the offending vehicle did not possess a valid and effective driving license at the time of the alleged accident. This evidence of RW.1 does not come to the aid of the insurer to discharge its primary duty to establish that there was breach of terms of the policy. As per the principles laid down by the Apex Court in **Rukmani and Others V. New India Assurance Co. and others**[1], when the insurer had failed to prove the defence raised in the statement of objections, such a plea cannot be accepted.

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[1] (1998) 9 SCC 160

When the police officer or the records are not summoned from the transport authority to establish the fact that the driver of the offending vehicle was not having a valid and effective driving license, then, under such circumstances, it has to be held that the insurer has failed to discharge its burden. Under these circumstances, the contention of the learned counsel for the appellant/Insurance Company cannot be sustained and it is hereby rejected. Further, the Motor Vehicles Act is a beneficial piece of legislation. Time and again, it has been held by the Apex Court that trappings of civil and criminal proceedings cannot be applied in a very strict manner. Therefore, in view of the above discussion, this Court is of the opinion that the tribunal has rightly rejected the contention raised by the insurance company and has rightly fastened liability of payment of compensation jointly and severally along with the owner of the crime vehicle. Hence, this Court does not find any perversity with the findings of the tribunal in holding that both the respondents are jointly and severally liable to pay the compensation.

For the forgoing reasons, the appeal fails and it is accordingly dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G.PRIYADARSINI

25.11.2022
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