THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.960 of 2013

JUDGMENT:

Heard Mr. V. Durga, learned counsel for the appellant and Mr. K. Venkatesh Gupta, learned counsel for the respondents.

2. This appeal has been filed by the insured/2nd respondent disputing the liability fastened by the Tribunal to indemnify the insurer/2nd respondent in the decree and order dated 27.11.2012 in O.P.No.490 of 2009 on the file of VII Addl. District Judge, Mahabubnagar.

3. The brief facts of the case are that on 28.04.2009, the petitioner/injured along with others were travelling in a Toofan Jeep bearing No.AP-22V-1127 (for short 'the Jeep') from Kalwakurthy to Thadra and on reaching the limits of Kalwakurthy, at about 7pm, the driver of the jeep drove the vehicle in a rash and negligent manner, dashed a water tank, as a result, the vehicle turned turtle and the petitioner and others suffered injuries. Immediately, the petitioner was shifted to the hospital for treatment. Thereafter, the petitioner filed claim seeking compensation Rs.1,00,000/-.

4. The Tribunal on analyzing the evidence held that the accident occurred due to rash and negligent driving of the driver of the jeep and awarded Rs.25,000/- against the owner and insurer of the jeep/1st and 2nd respondents with proportionate costs and interest at 6% per annum.

5. In appeal, the appellant/insurer/2nd respondent (for short 'the respondent') contended that the Tribunal had failed to consider the fact that the driver of the jeep was not holding valid and effective driving license at relevant time and it is violation of policy condition. Though the final report of the police explicitly establishing this fact, the Tribunal erroneously fixed the liability against the insurer, thus prayed for reconsidering the material and to exculpate the respondent.

6. Learned counsel for the petitioners pleaded that the Tribunal had considered the contention of driver's driving license and as there is no evidence put up by the respondent/insurer, rightly rejected the claim and fixed liability against both the respondents. Thus, no tenable reason is made out by the 2nd respondent/insurer for interference in this appeal.

7. In this context, the point that arises for determination is whether the appellant/2nd respondent/insurer could able to establish the policy violation to exonerate its liability.

8. The contest of the appellant/2nd respondent/insurer is that the driver of the jeep was not holding valid and effective driving license at relevant time and this aspect is proved by the entries in charge sheet Ex.A2. Thereby, the violation of policy condition has been established. On this aspect, it is settled proposition that the onus lies on the respondent/ insurer to prove the violation of policy condition, more so,

the driver was not holding valid and effective driving license at material time and the owner had not taken care in fulfilling the conditions of policy regarding use of vehicle by a duly licensed driver.

9. The fact that the driver was not holding valid driving licence is being prima facie established by the investigating agency's final report, which is the document, relied by the petitioners to prove the rash and negligent driving of the offending vehicle at relevant hour. Further, the fact of driving licence of the driver and the care in verifying the licence would be within the specific knowledge of the owner, but the insured/owner/1st respondent chose to remain silent, as such, by drawing adverse inference, it can be held that the 2nd respondent/insurer could make out that the driver of the tractor was not holding effective driving licence at material time.

10. However as the petitioner is third party and admittedly the insurance policy of the jeep/Ex.B1 is covering the risk of third parties and the dicta of the Hon'ble Apex Court in ***National Insurance Co. Ltd vs. Swaran Singh and others***[1], this Court is of the considered opinion that, though there is policy violation, directing the respondent/insurer to satisfy the award with a liberty to recover the amount from the owner/1st respondent/insured would be proper to meet the ends of justice. Accordingly, the liability of the respondents is modified.

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[1] (2004) 3 SCC 297

11. Resultantly, this appeal is allowed in part as here under:

(i) The 1st respondent/owner of the jeep is alone held liable to pay the compensation awarded to the claim petitioner. However, the 2nd respondent/insurer is directed to pay the awarded compensation within 30 days after receipt of copy of this judgment, with a liberty to recover the amount paid from the 1st respondent/owner, without filing fresh suit and by executing this decree.

(ii) On deposit of enhanced amount with interest, the claim petitioner is permitted to withdraw entire amount.

(iii) In the above terms, the impugned award stands modified.

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

N.TUKARAMJI, J

Date: 25.08.2022
gvl