

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

M.A.C.M.A.No.321 OF 2016

JUDGMENT:

This appeal is directed against the award dated 27.08.2015 in O.P.No.365 of 2010, on the file of the Motor Accidents Claims Tribunal-cum-XI Additional District Judge (FTC), at L.B.Nagar, Ranga Reddy District (for short 'the Tribunal'), wherein the said claim application filed by the respondent No.1 herein seeking compensation, was allowed-in-part, awarding compensation of Rs.1,63,500/- with interest at 9% per annum from the date of petition.

2. Heard learned counsel for the appellant-insurer and learned counsel for respondent No.1-claimant. No representation on behalf of respondent Nos.2 and 3. Perused the record.

3. Respondent No.1 herein filed claim application seeking compensation of Rs.4 lakhs for the injuries sustained by him in a motor vehicle accident that occurred on 02.10.2008 at 04:15 p.m., on Injapur-Gurramguda road, near Injapur. According to the claimant, when the claimant along with his friend was traveling on

a motorcycle bearing No.AP 29 BD 614 from Injapur, a santro car bearing No.AP 10 AN 0069, driven by its driver in a rash and negligent manner and in high speed came in the opposite direction and dashed the motorcycle of the deceased, as a result of which, the claimant sustained grievous injuries and immediately he was admitted in Kamineni Hospital and was treated as inpatient for some time. The claimant spent Rs.1 lakh for treatment and suffered loss of income for some time besides pain and agony on account of injuries. Police, Vanasthalipuram registered a case in Cr.No.588 of 2008 against the driver of the santro car for the offences under Sections 304-A and 337 IPC. It is further pleaded that the deceased, aged 38 years, was hale and healthy at the time of accident. He used to do business in automobile spare parts and earn Rs.10,000/- per month.

4. Respondent No.2-driver and respondent No.3-owner of the santro car remained *ex parte* before the Tribunal. The appellant-insurer filed counter opposing the claim and denying its liability to pay the compensation.

5. On a consideration of the evidence available on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the santro car by its driver. The Tribunal further held that the claimants was entitled for a total compensation of Rs.1,63,500/-. Accordingly, an award was passed for the said amount with interest 9% per annum from the date of petition till realization. Aggrieved by the said award of compensation, the appellant-insurer filed the present appeal.

6. Learned counsel for the appellant-insurer would contend that the Tribunal erred in fixing the liability only against the insurer and failed to see that the driver of the crime vehicle was not possessing any licence at the time of accident. Learned counsel further submits that there is no liability on the insurer and liberty may be given to the insurer to recover the compensation amount from the owner, as there was breach of terms and conditions of policy, as the owner had permitted the driver who did not possess driving licence to drive the vehicle at the time of accident. Learned counsel relied

on the decision of the Hon'ble Apex Court in **SARDARI & OTHERS v. SUSHIL KUMAR & OTHERS**¹.

7. *Per contra*, learned counsel for respondent Nos.1 to 3 contends that there is no error apparent on the face of the award and the Tribunal had awarded such compensation only after considering the oral and documentary evidence available in right perspective.

8. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the santro car by its driver is not seriously disputed by the insurer. It is also not in dispute that the deceased was aged 38 years at the time of accident. While computing the compensation, the Tribunal had awarded Rs.50,000/- towards pain and agony as he suffered two fractures to his right leg, Rs.73,345/- towards treatment between 02.10.2008 and 07.10.2008 at Kamineni Hospital and Rs.20,000/- towards transportation and attendant expenses and Rs.20,000/- towards disability. Thus, in all, the Tribunal had awarded a total compensation of Rs.1,63,345/- (Rs.50,000/- + Rs.73,345/- +

¹ 2008 ACJ 1307

Rs.20,000/- + Rs.20,000/-). Learned counsel for the appellant-insurer had also not disputed about the award of such compensation.

9. The question that arises for determination in the present appeal is – whether the driver of the santro car was possessing any driving licence to drive the vehicle and whether the owner of the santro car is liable to pay compensation absolving the liability of insurer?

10. The appellant-insurer examined the Senior Manager of their company as R.W.1 before the Tribunal. In his evidence, he deposed that the driver of the car i.e., R.W.3 was not holding a driving licence and in the charge sheet, the police concerned mentioned about violation of provisions of Section 181 of the Motor Vehicles Act, besides the IPC offences. R.W.1 further deposed that the owner of the vehicle is under obligation to furnish all the documents pertaining to the vehicle involved in the accident and notice was also issued to the owner of the car R.W.2 to furnish the vehicle record and the driving licence of the driver and in spite of the same, they failed to furnish any particulars.

11. R.W.2 in his evidence stated that he is the owner of the santro car which was involved in the accident on 02.10.2008. He further stated that R.W.3 was his friend and he was possessing a valid driving licence to drive four wheeler. He also admitted that he received a notice from the counsel of R.W.1 wherein he was asked to produce the driving licence of the driver of the car. R.W.2 stated that he ascertained the same from the driver i.e., R.W.3, who informed him that he lost the driving licence in the accident.

12. The driver of the car was examined as P.W.3. He admitted that he was driving the crime vehicle at the time of accident. He stated that he sustained head injury in the accident and he lost the driving licence in the accident and he neither could trace the same nor secure its copy.

13. From the evidence of R.Ws.1 to 3, the appellant-insurer had rightly proved before the Tribunal that the driver (respondent No.2 herein) of the crime vehicle i.e., santro car was not at all possessing driving licence. Since the insurer had proved with the oral evidence of R.W.1 that the driver of the crime vehicle was not possessing driving licence at the relevant point of time, R.Ws.2 and

3 in their evidence cleverly stated that R.W.3 was possessing driving licence, but the same was lost in the accident. As the insurer had issued a notice, it is the bounden duty of the owner of the car to produce all the relevant record and the burden of proof shifts on him when he consciously allowed R.W.3 to drive the vehicle who did not possess driving licence. In the said circumstances, the insurer succeeded in its defence that the driver of the car R.W.3 who was allegedly driving the same, at the relevant point of time, did not possess any driving licence and therefore, it is clear breach of conditions of contract of insurance and also violation of the terms of policy.

14. In **SARDARI**'s case (supra) relied on by learned counsel for the appellant-insurer, the Hon'ble Apex Court held as under:

"This Court in Swaran Singh clearly laid down that the liability of the Insurance Company vis-à-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle.

The question as regards the liability of the owner vis-à-vis the driver being not in possession of valid license has also been considered in para 89 in Swaran Singh (supra).

8. Yet again in New India Assurance Co. Ltd. Vs. Prabhu Lal [JT 2007 (13) SC 246], the Court stated the law in the following terms:- "33. In the present case, all the facts were before the District Forum. It considered the assertion of the complainant and defence of the Insurance Company in the light of the relevant documentary evidence and held that it was established that the vehicle which met with an accident was a 'transport vehicle'. Ram Narain was having a licence to drive Light Motor Vehicle only and there was no endorsement as required by Section 3 of the Act read with Rule 16 of the Rules and Form No. 6. In view of necessary documents on record, the Insurance Company was right in submitting that Ashok Gangadhar does not apply to the case on hand and the Insurance Company was not liable."

However, Swaran Singh (supra) has been distinguished by this Court in some cases holding that where the owner of the vehicle himself is involved, insurance company will not be liable.

In Premkumari & Ors. Vs. Prahlad Dev & Ors. [(2008) 1 SCALE 531], a Bench of this Court following Kusum Rai (supra), opined; "10. In the case of National Insurance Co. Ltd. v. Kusum Rai and Ors., (2006) 4 SCC 250, the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle was required to hold an appropriate licence

therefor. Ram Lal, who allegedly was driving the said vehicle at the relevant time, was holder of a licence to drive light motor vehicle only. He did not possess any licence to drive a commercial vehicle. Therefore, there was a breach of condition of the contract of insurance. In such circumstances, the Court observed that the appellant-National Insurance Co. Ltd., therefore, could raise the said defence while considering the stand of the Insurance Company. This Court, pointing out the law laid down in Swaran Singh (supra) concluded that the owner of the vehicle cannot contend that he has no liability to verify the fact as to whether the driver of the vehicle possessed a valid licence or not. However, taking note of the fact that the owner has not appeared, the victim was aged only 12 years, the claimants are from a poor background and to avoid another round of litigation applying the decision in Oriental Insurance Co. Ltd. v. Nanjappan (2004) 13 SCC 224 and finding that though the appellant-Insurance Company was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court committed an error in holding otherwise, in the peculiar facts and circumstances of the case and in exercise of jurisdiction under Article 136 of the Constitution declined to interfere with the impugned judgment therein and permitted the appellant- Insurance Company to recover the amount from the owner of the vehicle."

In Oriental Insurance Co. Limited Vs. Prithvi Raj [2008 (1) SCALE 727], however, noticing Swaran Singh (supra), it was opined; "10. In the instant case, the State Commission has categorically found that the evidence on record clearly established that the

licensing authority had not issued any license, as was claimed by the Driver and the respondent. The evidence of Shri A.V.V. Rajan, Junior Assistant of the Office of the Jt. Commissioner & Secretary, RTA, Hyderabad who produced the official records clearly established that no driving license was issued to Shri Ravinder Kumar or Ravinder Singh in order to enable and legally permit him to drive a motor vehicle. There was no cross examination of the said witness. The National Commission also found that there was no defect in the finding recorded by the State Commission in this regard."

In *Ishwar Chandra & Ors. Vs. The Oriental Insurance Co. Ltd. & Ors.* [2007 (4) SCALE 292], this Court held;

"9. From a bare perusal of the said provision, it would appear that the licence is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original licence granted despite expiry remains valid for a period of 30 days from the date of expiry, if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place 28.04.1995. As on the said date, the renewal application had not been filed, the driver, did not have a valid licence on the date when the vehicle met with the accident."

15. For the foregoing reasons, I am of the view that the appellant-insurance company has proved with the oral evidence placed before the Tribunal that since the owner of the car handed over the car for being driven by an unlicensed driver, the insurer

would rightly get exonerated from its liability to meet the claims of third party who have suffered on account of the accident caused by such unlicensed driver i.e., R.W.3. However, in the facts and circumstances of the present case, I find that though the appellant insurance company was not liable to pay the claim amount, as the driver was not possessing a driving licence, in the interest of justice, the appellant-insurer has to pay the compensation amount determined by the Tribunal and confirmed by this court, to respondent No.1-claimant in the first place with liberty to recover the same from the owner of the car i.e., respondent No.3 herein.

16. In the result, the appeal is disposed of on the aforementioned terms. There shall be no order as to costs.

17. Pending miscellaneous applications, if any, shall stand closed.

01.11.2022
Lrkm

A.SANTHOSH REDDY, J