**THE HONOURABLE DR.JUSTICE G. RADHA RANI**

**M.A.C.M.A.NOS. 2121 OF 2013 & 2739 OF 2013**

**COMMON JUDGMENT:**

As both these appeals are filed by the respective parties aggrieved by the judgment in O.P.No.95 of 2009 delivered by the Chairman, Motor Accidents Claims Tribunal cum District Judge, Karimnagar, dated 03.03.2011, they are disposed of by this common judgment.

2. M.A.C.M.A.No.2739 of 2013 is filed by the claimants, seeking enhancement of compensation from Rs.15,01,582/- to Rs.25,00,000/-

3. M.A.C.M.A.No.2121 of 2013 is filed by the respondent No.3 - New India Assurance Company Limited contending that the driver of the insured vehicle was not holding valid and requisite driving license, as such the Insurance Company was not liable under Section 149 of Motor Vehicles Act and prayed to exonerate it from liability.

4. Heard the learned counsel for the claimants and the learned counsel for the respondent no.3 - Insurance Company.

5. The learned counsel for the claimants submitted that there was no grievance for the claimants and they were seeking only for release of balance 50% of the amount awarded by the trial court.

6. The learned counsel for the Insurance Company on the other hand contended that the driver of the crime vehicle was only having a license to drive non-transport tractor and trailer but as per the judgments of the Hon'ble Apex Court in **National Insurance Company Limited v. Swaran Singh & Others**[1] and in **S.Ayyappan v. United India Insurance Company Limited and Another**[2], prayed to order 'pay and recovery'.

7. As seen from the facts of the case, the claimant No.1 was the wife and claimants 2 and 3 were the sons of the deceased, Mekala Sadanandam, who died in a road traffic accident. They filed claim petition under Section 166 of Motor Vehicles Act, claiming compensation of Rs.25,00,000/- from the owners / insurer of Tractor and Trailer bearing No. AP-15-W-8625/26.

8. As per the claimants, on 16.09.2008 at 9:00 AM, while Mekala Sadanandam was proceeding on a Hero Honda Motor Cycle bearing No.AP-15-P-7579 to go to his work place 10th Incline Mine of Singareni Colleries, Godavarikhani and when

[1] (2004) 3 SCC 297
[2] (2013) 7 SCC 62

reached 9th Incline Mine turning point, a tractor - trailer bearing No. AP-15-W-8625/26 driven by its driver in a rash and negligent manner, hit the motor cycle of the deceased in opposite direction, due to which, he sustained grievous injuries. Immediately he was shifted by his co-workers to Area Hospital, Godavarikhani, but he succumbed to injuries. Godavarikhani, II-Town Police registered a case vide Crime No.116 of 2008 under Section 304-A of IPC against the driver of the tractor and trailer.

9. The respondents 1 and 2 remained ex-parte.

10. The respondent No.3 - Insurance Company filed counter. It contended that the driver of the tractor and trailer was not holding a valid and effective driving license to drive the said vehicle at the time of the accident.

11. During the course of enquiry, the claimants got examined PWs.1 to 3 and got marked Exs.A1 to A6 on their behalf. The Insurance Company got examined RWs.1 to 4 and got marked Exs.B1 and B2 on its behalf.

12. The contention of the learned counsel for the Insurance Company in M.A.C.M.A. No.2121 of 2013 was that the driver of the tractor and trailer was not holding a valid and effective driving license. It got examined RW.2, an employee from RTA Office, Peddapally and filed Ex.B.2, extract of driving license to show

that the driver was holding a non-transport tractor and trailer driving license. It also got examined the registered owner of the tractor-trailer as RW.3 and the driver as RW.4 to prove that the driver was holding only a non-transport tractor-trailer driving license.

13. The Tribunal considering that the trailer was empty at the time of accident and it was not being used for transportation of any commercial goods at that time, opined that there was no violation of the policy condition.

14. This Court does not agree with the observation of the Tribunal as it was not a matter of consideration whether the trailer was empty or carrying goods at the relevant time of the accident. But however considering the judgment of the Hon'ble Apex Court in **S.Ayyappan v. United India Insurance Company Limited and Another** (2 supra), wherein it was held that:

> *" Section 149 of the Motor Vehicles Act, 1988 makes it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk."*
>
> *"17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,*

> *(i) the vehicle was not driven by a named person,*
> *(ii) it was being driven by a person who was not having a duly granted licence, and*
> *(iii) person driving the vehicle was disqualified to hold and obtain a driving licence.*
>
> *Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."*

15. Admittedly in this case, the driver was holding a non-transport tractor-trailer driving license and he was not holding a valid and effective driving license to drive the transport tractor and trailer. But, however, the insurer cannot escape his liability to pay compensation to the claimants in view of the judgment of the Hon'ble Apex Court in the above case.

16. Hence, it is considered fit to direct the Insurance Company to pay the compensation to the claimants and then recover the same from the owner of the tractor and trailer.

17. In the result, both the M.A.C.M.A. No.2739 of 2013 filed by the claimants and the appeal filed by the Insurance Company vide M.A.C.M.A.No.2121 of 2013 are dismissed and the Insurance Company is directed to pay the balance amount out of Rs.15,01,582/- with interest @ 7.5 % per annum to the claimants within one month from the date of receipt of a copy of this judgment and to recover the entire

amount of Rs.15,01,582/- with interest @ 7.5 % per annum from the owner of the tractor and trailer.

Miscellaneous petitions pending, if any, shall stand closed.

**Dr. G. RADHA RANI, J**

**1st February, 2023**
**nsk.**