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

M.A.C.M.A.No.1096 of 2018

JUDGMENT:

Dissatisfied with the quantum of compensation and exonerating the respondent No. 2-The National Insurance Company Limited from payment of compensation by the Motor Accidents Claims Tribunal-cum-III Additional District Judge at Karimnagar vide order dated 22.08.2017 in M.V.O.P. No.626 of 2014, the present appeal is filed by the appellant.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Appellant is the petitioner in the main O.P. According to the petitioner, on 03.07.2013, she along with her relatives went to kodimyal to have darshan of Laxminarsimha Swamy. After darshan while she was returning in Auto bearing No.AP 15 TA 9856. When the said Auto crossed Vivekananda High School at Gangadhara and reached BC Colony at 04.30 p.m., the respondent No.1 came in Alto Car bearing No.AP 15 BG 3047 in rash and negligent manner with high speed and dashed the said Auto on the left side. Due to which Auto turned turtle and she sustained severe injuries over head, right hand, shoulder and other parts of the body.

Immediately, she was shifted to Vasudeva Hospital for treatment as inpatient from 03.07.2013 to 10.07.2013. While undergoing treatment, X- ray was taken and the same shows that she received displacement of right great tuberoses, dislocation of right shoulder and head injury and the said injuries are grievous in nature. She spent Rs.1,25,000/- towards medical expenses. According to the petitioner, she was doing coolie work and earning Rs.4,000/- per month. Due to the injuries sustained by her, she was bed ridden and her movements were restricted and lost her income. Thus, the petitioner is claiming compensation of Rs.2,50,000/- for the injuries sustained by her against the respondents 1 and 2 jointly and severally.

4. Before the Tribunal, while the owner of the vehicle, respondent No.1 remained ex parte and the insurance company, respondent No.2, filed counter denying the manner in which the accident took place, including the age, avocation and income of the petitioner. It is also stated that the quantum of compensation claimed is excessive, baseless and prayed to dismiss the petition.

5. Considering the claim of the appellant, counter filed by the Insurance Company and on evaluation of oral and documentary evidence, the Tribunal allowed the O.P. in part, awarding a total

compensation of Rs.1,50,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization, to be deposited by the respondent No.1 being the owner of the crime vehicle within 30 days from the date of said order. As the driver of the offending vehicle was held to be not possessing valid driving license, the learned Tribunal exonerated the respondent No.2-Insurance Company from payment of compensation. Challenging the dismissal of O.P. in exonerating the Insurance Company from the liability of payment of total compensation, the appellant has filed this appeal.

6. Heard the learned counsel for the appellant and the learned Standing Counsel for the respondent No. 2. Perused the material available on record.

7. With regard to the findings of the learned Tribunal in fastening liability of payment of compensation on respondent No. 1 alone and in exonerating the Insurance Company from liability, the learned Counsel for the appellant-Claimant has contended that the Tribunal has failed to consider the evidence adduced on behalf of the claimant in proper perspective and in the absence of any evidence adduced by the respondent No. 2-Insurance Company to prove that the driver of the crime vehicle was not possessing valid

driving license and the absence of examining any RTA officials in this regard by the Insurance Company, such findings arrived by the Tribunal on presumption are erroneous in law. Therefore, it is contended that as both the parties failed to produce the documentary proof in relation to driving license of driver of the crime vehicle, the Tribunal has erroneously passed the impugned order in mechanical manner dismissing the claim against the Insurance Company.

8. Learned counsel for the appellant contended that the Tribunal erred in relieving the respondent No.2 from liability to pay compensation to the appellant ignoring the settled law and fixing the liability to pay compensation on respondent No.1 ignoring the fact that the claim is made under the peace of social welfare legislation against both the respondent Nos.1 and 2.

9. On the other hand, the learned Standing Counsel for the Insurance Company, respondent No. 2 herein has contended that in as much as the owner of the crime vehicle has entrusted the vehicle to the driver who was not holding driving license, the learned Tribunal rightly held that the Insurance Company is not liable to pay the compensation and the owner alone is liable to pay the compensation. With regard to the quantum of compensation, it

is contended that the learned Tribunal has adequately granted the compensation and the same needs no interference by this Court.

10. There is no dispute with regard to the manner of the accident and the rash and negligent driving of the offending vehicle by its driver in causing the accident on 03.07.2013. As regards the issue of liability for payment of compensation, the driver of the crime vehicle was not made as party to the proceedings and the owner of the crime vehicle, respondent No. 1 stood ex parte. Admittedly, neither the claimant nor the insurance company produced any documentary proof to show that the driver of the offending vehicle was having valid driving license as on the date of accident, which necessitated the learned Tribunal to hold that the driver of the crime vehicle was not having valid driving license. But the fact remains that by the time of accident, the offending vehicle was insured with the respondent No. 2 and Ex.B.1 policy was very much in force by the said date. In the case of third party risks, as per the decision in **National Insurance Company Ltd. v. Swaran Singh and others**[1], the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. In

[1] (2004) 3 SCC 297

the said decision, the Apex Court considered the doctrine of "*pay and recover*" and examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving license of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Recently, the Apex Court in case of **Shamanna v. The Divisional Manager, the Oriental Insurance Company Limited and Others**[2], following its earlier decision in **Swaran Singh** (supra), reiterated that *even if the driver does not possess any driving license, still the insurer is liable to pay the compensation and that he can recover the award amount from the owner of the offending vehicle after paying the amount.* Therefore, merely drawing the adverse inference, the Court cannot exonerate the Insurance Company from its liability to pay compensation to the claimant. The Insurance company is required to pay the compensation amount, that will be determined by this Court, at the first instance and then recover the same from the owner of the vehicle i.e., the respondent No. 1. Since there is no serious challenge as to the quantum of compensation, this Court is not inclined to interfere into that aspect.

[2] 2018 ACJ 2163

11. In view of the above, the order of the Tribunal to the extent of directing the respondent No.1 to pay the compensation amount and dismissing the petition against respondent No.2 is liable to be modified considering the principle "*pay and recover*". Hence, to that extent, the order of the learned Tribunal is set aside. The Insurance Company shall deposit the compensation amount, as awarded by the learned Tribunal, at the first instance and recover the said amount from respondent No. 1 thereafter.

12. Accordingly, the Motor Accident Civil Miscellaneous Appeal is partly allowed. No costs.

Miscellaneous pending applications, if any, shall stand closed.

SMT. M.G.PRIYADARSINI, J

25.01.2023
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THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

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DATE:25.01.2023

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