HON'BLE SRI JUSTICE M. GANGA RAO

MACMA.No.1736 of 2007

JUDGMENT:

The appellant, who is Insurance Company, filed this appeal against the order and decree dated 31-01-2005 passed in M.O.P.No.1195 of 2001 by the Motor Accident Claims Tribunal-cum-IV Additional District Judge, Guntur, granting a compensation of Rs.1,73,500/- as against the claim of Rs.2,00,000/- for the death of the deceased Banavath Premkumar, who died in a motor accident that occurred on 14-08-2001.

For the sake of convenience, the parties will be referred as arrayed before the Tribunal.

The claimants 1 and 2, who are parents of the deceased Premkumar, filed a claim petition under Section 166 of Motor Vehicles Act, 1988, alleging that on 14-08-2001 Banavath Premkumar, aged 14 years, studying 7th class and his mother and other relatives boarded the jeep bearing No.AP7 T 8969 at Haliya, Nalgonda District to go to Atchamkunta village and when the above jeep driven by its driver, reached near NRI school, Nagarjunasagar, the tipper bearing No.AP-09-V-8802, driven by its driver in a rash and negligent manner coming in opposite direction, dashed against the jeep as a result of which, Prem Kumar and others received injuries and were taken to Government Hospital, Hill Colony, Nagarjunasagar, where the doctors declared Prem Kumar dead.

While the 1st respondent was set *ex parte*, the 2nd respondent filed its written statement denying the averments made in the claim petition and stated that the driver of the tipper had no valid and

effective driving licence at the time of accident and that the accident occurred due to the collision of tipper and jeep and as such the owner and insurer of the jeep are also necessary parties and that there was no negligence on the part of the driver of the tipper and that the claim made by the claimants was excessive.

Based on the above pleadings, the Tribunal framed the following issues for trial:

1) Whether the accident occurred due to rash and negligent driving of either jeep bearing No.AP-7T-8968 or the tipper bearing No.AP-9V-8802 by its respective driver or by both?
2) Whether the petitioners are entitled to compensation? If so, to what amount, from whom?
3) To what relief?

During the course of trial, on behalf of the claimants, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On the other hand, RWs.1 and 2 were examined and Exs.B.1 to B.7 and X.1 were marked on behalf of the respondents.

The Tribunal, considering the evidence of PW.1 and 2 coupled with documentary evidence of Exs.A.1 to A.5, held that the accident occurred due to the rash and negligent driving of the tipper of the 1st respondent, which resulted in the death of the deceased. The Tribunal further held that the 2nd respondent-Insurance Company along with 1st respondent was liable to pay compensation to the claimants, though the insurance company claimed that the driver of the crime vehicle had no valid and effective driving licence as on the date of accident. The Tribunal, having considered the age

of the deceased as 14 years, had taken the notional income of the deceased as Rs.15,000/- as per Item-6 of the Second Schedule given under the Motor Vehicles Act. The Tribunal, after deducting 1/3rd towards personal expenses from the income of the deceased and by applying multiplier '15' arrived at compensation of Rs.1,50,000/- (15,000 X 15 X 2/3). The Tribunal also awarded an amount of Rs.20,000/- towards loss of estate, Rs.3,500/- towards funeral expenses and transportation charges. Therefore, the Tribunal awarded an amount of Rs.1,73,500/- towards compensation to the claimants and the compensation was apportioned among the claimants. Challenging the said award, the Insurance Company filed the appeal.

The learned standing counsel for the appellant-Insurance Company would contend that the driver of the offending vehicle had no valid and effective driving licence as on the date of the accident and that the driver had only Light Motor Vehicle licence and thereby the insured violated the conditions of the driving licence and hence, the insurer is not liable to pay compensation.

As seen from the material on record, this court found that the Tribunal, placing reliance on the decision in **National Insurance Company Ltd., v. Swarn Singh and others (2004 ACJ 1 (SC)),** held that the words "mere absence, fake or invalid driving licence, at the relevant time, are not in themselves defences available to the insurer. In the said decision, the Hon'ble Supreme Court held that mere absence, fake or invalid driving licence or disqualification of the

driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties and to avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time. But the evidence of RWs.1 and 2 shows that the driver of the offending tipper bearing No.AP-9V-8802 had driven the vehicle in a rash and negligent manner and caused the accident on 14-08-2001. On behalf of the insurer, the Senior Assistant in RTA office, Vijayawada, stated that the driver of the tipper had Light Motor Vehicle driving licence and it was only renewed till 31.03.1998 and thereafter the licence was not renewed as per the records and the renewal endorsement made on Ex.B.2 was false. The Tribunal held that on that ground alone, the 2nd respondent cannot escape its liability. Based on the evidence on record, this court found that the insured-owner of the offending tipper had allowed the driver of the offending vehicle to drive the vehicle without possessing valid driving licence. Therefore, it can be easily concluded that the insured had not taken any proper care in verifying the driving licence of the driver before allowing him to drive the vehicle and that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. However, the insured also failed to exercise its reasonable care and caution in verifying the driving licence of the driver and thereby violated the conditions of

the insurance policy. However, in **Manuara Khatun and others v. Rajesh Kumar Singh and others**[1]**,** the Hon'ble Supreme Court held that the insurance company first has to pay the awarded sum to the appellants and then to recover the paid awarded sum from the owner of the offending vehicle by way of execution proceedings. Therefore, in view of the ratio laid down by the Supreme Court in **Manuara Khatun and others v. Rajesh Kumar Singh and others** (stated supra), the insurer has to pay first to the claimants and then to recover the same from the owner of the vehicle under the 'principle of pay and recover'. Hence, the award of the Tribunal is modified to the extent that the appellant shall pay the compensation first to the claimants within a period of two months from the date of receipt of copy of the order and then recover the same from the insured-owner of the offending vehicle by filing Execution proceedings before the Tribunal in the award proceedings.

Accordingly, the appeal is partly allowed giving liberty to the insurer to recover the compensation paid to the respondents 1 and 2-claimants from the insured-owner of the crime vehicle. No costs.

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

M. GANGA RAO, J

Date: 07-03-2019

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[1] (2017) 4 SCC 796