(2017) 02 AP CK 0021

In the Andhra Pradesh High Court

Case No : MACMA No. 980 of 2010

National Insurance Co. Ltd. APPELLANT

Vs

Gandu Bixmaiah RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Citation : (2017) 3 AndhLD 527

Hon'ble Judges : Sri Gudiseva Shyam Prasad, J.

Bench : Single Bench

Advocate : Nisaruddin Abmed Jeddy, Advocate, for the Appellant; Prakash Chakravarthy, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Sri Gudiseva Shyam Prasad, J.—This Motor Accidents Civil Miscellaneous Appeal is arising out of the order dated 17.09.2009 in O.P.No.1015 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal (IV Additional District Judge) (Fast Track Court) at Khammam (for short, Tribunal).

2. This is an appeal filed by National Insurance Company Limited, the second respondent in OP.No.1015 of 2005. The said OP was filed by the injured, claiming compensation of Rs. 4,00,000/- on account of injuries sustained by him in a motor accident occurred on 03.12.2004.

3. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

4. The brief facts of the case are that on 03.12.2004, the petitioner, along with his family members, went to Arempula Darga in an auto bearing No.AP20W 0100. After completion of function, at about 5.30 pm., while they were returning in the same auto, the driver of the auto driven the auto in a rash and negligent manner and dashed the tractor bearing registration No.AP20V 8411/8412, as a result of which, the petitioner sustained fracture of left hand both bones, fracture ?rd at lower, ?rd of left femur, fracture of ?rd left radius and other

injuries. His left leg was also amputated.

5. The Tribunal, on consideration of oral and documentary evidence, awarded total compensation of Rs.3,18,000/- i.e., Rs.2,88,000/- towards permanent disability, Rs.5,000/- towards transportation, extra nourishment and medical expenses and Rs.25,000/- towards pain and suffering, holding that respondents 1 and 2 are jointly and severally liable to pay the same. The second respondent - National Insurance Company Limited, filed the present appeal challenging the said award on the ground that it has no liability to pay the compensation amount as the driver of the offending vehicle had no valid driving licence.

6. The short point that arises in this appeal is whether the insurance company is liable to pay the compensation to the claimants in the absence of possessing a valid driving licence?

7. Learned counsel for the appellant submitted that the driver of the crime vehicle is possessing a licence to drive one type of vehicle, but he has driven another type of vehicle for which he was not having driving licence. Therefore, it is submitted that in the light of the decision of the Supreme Court in S. Iyyapan v. United India Insurance Co. Ltd., (2013) 7 SCC 62, pay and recovery may be ordered.

8. Learned counsel for the respondents submitted that in the light of the above said case, pay and recovery can be ordered.

9. At this juncture, it is appropriate to refer to a decision of the Apex Court in case of S. Iyyapan''s case (supra). In the said case, it was held in paras 17 to 19 as under:

"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.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs."

10. In the instant case, the vehicle involved in the accident is an auto. The driver of the auto has licence, but it was not renewed by the date of accident. The driver has got option to renew his licence. Non-renewal of licence is not a violation of terms of policy. R.W.3, who was working as Assistant in the insurance company, reveals that the auto-rickshaw involved in the accident, is a passenger carrying vehicle. The driver of auto-rickshaw was not holding driving licence for driving passenger auto-rickshaw. This evidence of R.W.3 clearly shows that the driver was having licence to drive one type of vehicle, but driven another type of vehicle. To make it more clear the driver had licence to drive transport vehicle, but had driven transport vehicle.

11. In view of the above said decision, the insurance company is liable to pay the compensation to the first respondent/claimant at the first instance and recover the same from the second respondent/owner of the vehicle.

12. In the result, the appeal is partly allowed. There shall be no order as to costs.

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