

(2015) 03 AP CK 0042
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1301 of 2006

The New India Assurance Company Limited

APPELLANT

Vs

Boggula Krishna Reddy and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2(21)

Citation : (2015) 2 AnWR 432

Hon'ble Judges : A. Shankar Narayana, J

Bench : Single Bench

Advocate : T. Ramulu, for the Appellant; Y. Koteswara Rao, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A. Shankar Narayana, J.—Respondent No. 3-New India Assurance Company Limited in M.A.T.O.P. No. 496 of 2002 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court-III), Khammam (for short "the Tribunal"), preferred the instant appeal, aggrieved by the order dated 10.11.2005 in the said O.P. granting a sum of Rs. 53,000/- as compensation with interest at 7.5% per annum, on the ground that the driver of the offending vehicle did not possess valid and effective driving license to drive the said vehicle, but, still, the Tribunal has mulcted liability to pay compensation.

2. The appellant herein is respondent No. 3, while the respondent Nos. 1 to 3 herein, who are the claimant, driver and owner of the van bearing registration No. AP 23 T 71 respectively, were the petitioner and respondents 1 and 2 respectively, in the original petition before the Tribunal.

3. For the sake of convenience, parties are hereinafter referred to as they were arrayed in the O.P before the Tribunal.

4. The facts, in brief, are that on 08.10.2000 at about 10.00 hours one

Jamalamma, having attended prayer at B.C. Colony at the house of one Narayanamma, while returning to her house since respondent No. 1 being driver of the van bearing registration No. AP 23 T 71, drove it in rash and negligent manner and at high speed dashed Jamalamma, due to which she died instantly and her dead body was shifted to Government Hospital, Madhira where she was declared dead. The deceased was 60 years old on the date of accident. The petitioner claims that the deceased was an agricultural coolie and was earning Rs. 75/- per day, and, therefore, sought Rs. 1,00,000/- by laying claim under Section 166 of the Motor Vehicles Act, 1988. The son of the deceased is the petitioner before the Tribunal.

5. Respondent Nos. 1 and 2, who are the driver and owner of the vehicle remained ex-parte. Respondent No. 3 contested the claim petition. A specific plea was taken by the respondent No. 3 that respondent No. 1 violated the terms and conditions of the R.C. permit of the crime vehicle and the policy conditions as he did not possess valid and effective driving license to drive the van, and, therefore, sought to dismiss the claim against it.

6. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 and got marked exhibits A.1 to A.3 besides examining one P. Srinivasa Rao as P.W.2. On behalf of the contesting respondent No. 3- insurance company, R.Ws 1 and 2 were examined and exhibits B.1 and C.1 were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner and respondent No. 3, held issue No. 1 in favour of the petitioner. On issue No. 2, the Tribunal determined the compensation at Rs. 53,000/-. Concerning the violation pointed out by respondent No. 3 as to respondent No. 1 not possessing valid driving license, the Tribunal, having discussed the same in para "12" somehow, observing that respondent No. 1 was having transport license from 06.10.1998 to 04.12.2004, despite the fact that the endorsement was taken to drive the non-transport vehicle on 05.10.2001 as per the evidence of R.W.2, fastening liability on the insurance company.

8. The aforesaid order is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, somehow, did not properly appreciate the evidence of R.Ws 1 and 2, despite the fact that the driver did not hold valid and effective driving license to drive the van, but was possessing only LMV non-transport license, still, fastening liability on it is improper and, therefore, sought to set aside the order and decree under challenge.

9. Heard Sri T. Ramulu, learned counsel for respondent No. 3 (appellant). On behalf of petitioner (respondent No. 1), there is no representation. Despite service of notice on respondents 2 and 3, none appears for them.

10. The learned counsel for appellant submits that in view of the decisions of Hon'ble Supreme Court in S. Iyyapan Vs. United India Insurance Company Ltd.

and Another, (2013) 5 ABR 385 : (2013) 3 ACC 19 : (2013) ACJ 1944 : (2013) 7 AD 202 : AIR 2013 SC 2262 : (2013) 10 JT 85 : (2013) 172 PLR 409 : (2013) 3 RCR(Civil) 654 : (2013) 7 SCALE 637 : (2013) 7 SCC 62 and in Kulwant Singh Vs. Oriental Insurance Company Ltd., (2014) 4 ACC 640 : (2014) ACJ 2873 : (2014) 4 RCR(Civil) 977 there is no merit in the instant appeal. In S. Iyyapan Vs. United India Insurance Company Ltd. and Another, (2013) 5 ABR 385 : (2013) 3 ACC 19 : (2013) ACJ 1944 : (2013) 7 AD 202 : AIR 2013 SC 2262 : (2013) 10 JT 85 : (2013) 172 PLR 409 : (2013) 3 RCR(Civil) 654 : (2013) 7 SCALE 637 : (2013) 7 SCC 62 the Hon"ble Supreme Court while observing that mere holding license to drive light motor vehicle, and, though, the driver did not get endorsement in the driving license to drive Maxi Cab, which is a light motor vehicle, which is a commercial vehicle, the insurer cannot absolve its statutory liability to pay compensation, observed in paragraphs "18" and "19", thus:

"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."

In Kulwant Singh Vs. Oriental Insurance Company Ltd., (2014) 4 ACC 640 : (2014) ACJ 2873 : (2014) 4 RCR(Civil) 977 the Hon"ble Supreme Court referring to the decision in National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, (2008) ACJ 721 : AIR 2008 SC 1418 : (2008) 1 JT 617 : (2008) 149 PLR 251 : (2008) 1 SCALE 642 : (2008) 3 SCC 464 : (2008) AIRSCW 906 : (2008) 1 Supreme 378 and following the principle laid down in S. Iyyapan Vs. United India Insurance Company Ltd. and Another, (2013) 5 ABR 385 : (2013) 3 ACC 19 : (2013) ACJ 1944 : (2013) 7 AD 202 : AIR 2013 SC 2262 : (2013) 10 JT 85 : (2013) 172 PLR 409 : (2013) 3 RCR(Civil) 654 : (2013) 7 SCALE 637 : (2013) 7 SCC 62 that the driver, who had valid driving license to drive light motor vehicle, was authorized to drive goods vehicle as well, observed in paragraphs "9" and "10", thus:

"9. We find the judgments relied upon cover the issue in favour of the Appellants. In Annappa Irappa Nesaria (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of "light motor vehicle" and "medium goods vehicle" respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No. 4. It was concluded:

20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

10. In *S. Iyyapan (supra)*, the question was whether the driver who had a licence to drive "light motor vehicle" could drive "light motor vehicle" used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

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 (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."

11. Since the learned counsel for appellant has fairly conceded that in view of the decisions referred supra there is no merit in the appeal, this appeal stands dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.