
(2022) 09 TEL CK 0046

High Court For The State Of Telangana:: At Hyderabad

Case No: Motor Accident Civil Miscellaneous Appeal No. 228 Of 2022

United India Insurance
Co.Ltd.

APPELLANT

Vs

Ameena Begum And 5
Others

RESPONDENT

Date of Decision: Sept. 14, 2022

Acts Referred:

- Motor Vehicles Act, 1988 - Section 3, 180, 181

Hon'ble Judges: P. Sree Sudha, J

Bench: Single Bench

Advocate: V Sambasiva Rao, Nageswara Rao Repakula

Final Decision: Allowed

Judgement

This appeal has been filed by the Insurance Company aggrieved by the judgment and decree dated 28.12.2021 in M.V.O.P.No.1010 of 2016 passed

by the MACT-cum- IV Additional District Judge, Ranga Reddy District.

Learned counsel for the appellant had contended that the Tribunal has erroneously fixed the liability on the Insurance Company along with the driver

and owner instead of fixing the liability only on the driver and owner, as the driver was driving the bus without valid driving licence and the owner of

the bus running the bus without permit in the Telangana State. RW.2 categorically deposed that the bus bearing No.AP007/4816/PC/2014 is

authorized to ply on the roads of Andhra Pradesh State as on the date of accident i.e., 23.08.2016. The driver of the bus filed counter before the

Tribunal and he did not file driving licence before the Tribunal and nowhere in the counter stated that he was holding driving licence, which clearly

show that the driver drove the bus at the time of accident without driving licence. The Motor Vehicle Inspector in his report, dated 24.08.2016, advised

the Investigating Officer to take action against the driver of the bus under Sections 3 and 181 of MV Act for driving the bus without holding driving

licence and also against the owner of the bus under Section 180 of MV Act for allowing the unauthorized person to drive the bus, but the trial Court,

without considering the said aspects, fixed the liability on the Insurance Company. He further stated that the Tribunal erroneously awarded

Rs.40,000/- towards loss of consortium under conventional heads and also awarded Rs.1,60,000/-under the loss of filial consortium and thus requested

the Court to set aside the judgment of the trial Court.

Heard the arguments of both the counsel. Perused the record.

In the instant case, the driver of the vehicle filed counter before the trial Court on 19.09.2017, in which he has not stated that he was having valid

driving licence at the time of the accident. But, he filed xerox copy of the driving licence before this Court and the learned counsel for the respondents

argued that the driver is having valid driving licence and it was not properly verified by the Insurance Company. Even, in the MVI report, it was

clearly mentioned that the details of the driving of licence are not furnished by the Investigating Officer.

Learned counsel for the respondents argued that it was specifically stated that the details are not furnished and it was not stated that the driver has no

driving licence, but it is for the claimants to prove that the driver of the crime vehicle is having valid driving licence and the policy was in existence as

on the date of the accident, but they failed to do so. RW.1 stated that as per Ex.A-5-MVI report, the MVI advised the concerned Investigating

Officer to take action against the driver under Section 3 read with Sections 180 and 181 of MV Act as he is not having valid driving licence to drive

the vehicle and also against the owner of the bus under Section 180 of MV Act for allowing the unauthorized person to drive the vehicle.

If at all, the driver is having valid driving licence, he ought to have filed the same before the trial Court and he ought to have mentioned in the counter,

but he failed to do so. Moreover, he only filed xerox copy of driving licence, but not the original before this Court. Therefore, the argument of the

learned counsel for the respondents that the driver of the vehicle is having valid driving licence cannot be accepted, as the driver of the vehicle is not

having valid driving licence and it amounts to breach of the terms and conditions of the policy. Another ground taken by the Insurance Company is that

the bus was plied without valid permit. The permit was issued on 19.05.2014 before bifurcation of the State and the Telangana State was formed on

02.06.2014 As per the evidence of RW.2, on the date of accident, i.e., 23.08.2016, the vehicle is authorized to ply at the State of Andhra Pradesh only,

but in the evidence of RW.1 it was stated that the vehicle is permitted to ply all routes except prohibited in the State of Andhra Pradesh. It was

suggested to RW.2 that there is no endorsement on the permit after the date of bifurcation permitting the crime vehicle to ply on the roads of

Telangana State.

No doubt, the permit was issued in the year 2014 when there was common State for Andhra Pradesh and Telangana, but the accident occurred in the

year 2016 and the owner ought to have obtained valid permit to ply the bus on the roads of Telangana and he should have obtained an endorsement to

that effect, but he failed to do so and it clearly shows that there is no valid permit as on the date of accident and it is in clear violation of the terms and

conditions of the policy.

Learned counsel for the Insurance Company also relied upon a decision of the High Court of Himachal Pradesh in YASH CONSTRUCTION

COMPANY Vs. NATIONAL INSURANCE COMPANY LIMITED AND OTHERS 2019 ACJ 833, wherein it was held that the Insurance

Company cannot be held liable to pay compensation amount as there was no route permit to ply the vehicle in the State of Himachala Pradesh and it is

in clear violation of the terms and conditions of the insurance policy. The trial Court, without appreciating the facts properly fixed the liability on the

Insurance Company instead of fixing the liability only on the owner of the bus. Therefore, the order of the trial Court is modified to the effect that the

2nd respondent-Insurance Company is not liable to pay compensation and only the 1st respondent-owner of the vehicle is vicariously liable for the acts

of its driver-R3 and the 1st respondent is liable to pay compensation to the claimants within eight weeks from the date of receipt of a copy of this

order.

The appellant challenged the filial consortium granted for four claimants. The claimants are the parents and the brothers of the deceased. The parents

are only entitled for filial consortium, as such Rs.80,000/- is awarded to claimants 1 and 2 instead of Rs.1,60,000/- and to that extent the compensation

amount is modified.

Therefore, the claimants are entitled for a compensation of Rs.15,78,000/- instead of Rs.16,58,000/- awarded by the trial Court.

Regarding apportionment, this Court finds that petitioners 3 and 4 are minor brothers of the deceased and as their father was alive, they are depending

on their father, but not on the brother. Therefore, petitioners 3 and 4 are not entitled for compensation and parents of the deceased are equally entitled

for compensation amount and permitted to withdraw the same along with interest accrued on it.

As the Insurance Company had already deposited 50% of the compensation amount, the Insurance Company is permitted to withdraw the same.

Accordingly, the appeal is allowed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.