(2011) 11 KAR CK 0277

In the Karnataka High Court

Case No : Miscellaneous First Appeal 97 of 2010 (MV)

Bajaj Allainz, General Insurance Co. Ltd. APPELLANT

Vs

Prakash and V. Manjunath RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 14, 14 (2), 149, 2 (10)

Citation : (2011) 11 KAR CK 0277

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : H.R. Renuka, for the Appellant; C. Puttaswamy, for R1 and Sri R.T. Krishnamurthy, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Mr Justice Huluvadi G. Ramesh

1. Appeal is by the insurer - Bajaj Allainz General Insurance Co Ltd., challenging the fastening of liability by the MACT, Bangalore in MVC 819/2009 on 16.1.0.2009.

2. The claimant one Prakash, sustained accident injuries.- on 14.12.2008 while he was crossing the B B Road in front of Venkatala Bus Stop, Yelahanka Bangalore due to the rash and negligent driver of the Maxi Cab. Due to the accident, claimant suffered grievous injuries and claming that he has been permanently disabled and it is affecting his avocation, he filed a claim petition before the Tribunal. The Tribunal holding that the accident occurred due to the negligence of the drives of the maxi cab, held the owner of the vehicle as also the insurer as liable to pay the entire compensation and since there was insurance coverage, directed the insurance company to deposit the entire compensation of Rs.2,05,300/- with interest at 6% p.a. Challenging the fastening of liability, the insurance company is before this Court.

3. Heard the counsel representing the parties.

4. It is the contention of the appellant''s counsel, the driver of the vehicle had no valid/effective license to drive the maxi cab and he had license only to drive a motor cab and that too had expired as on the date of the accident. In support of her contention, counsel has relied upon the decision in Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, wherein in para 10 of the said judgment, it is observed, a transport vehicle may be a ''light motor vehicle'' but for the purpose of driving the same, a distinct license is required to be obtained. Also a distinction between transport vehicle and passenger vehicle can be noticed in Section 14(2) of the Act which provides for duration of a period of three years in case of an effective license to drive a ''transport vehicle'' whereas in case of any other license, it may remain effective for a period of twenty years. On this ground, counsel contended in the case on hand the driver had no effective driving license to drive a maxi cab and the license issued to him to drive the motor cab had expired as on the date of the accident.

5. Per contra, counsel representing the respondent claimant has relied upon the decision of the Apex Court in the case of National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, wherein referring to Rule 14 of the Central Motor Vehicles Rules 1989 regarding driving license and the liability of the insurance company, it has been observed, the driver had a license to drive a light motor vehicle but, he was driving a van which had a goods carriage permit. The insurance company had sought to avoid its liability on the ground that the driver had no effective license to drive a transport vehicle and the Tribunal had taken a view the driver had the license to drive a vehicle of unladen weight less than 7500 kgs. However, in appeal, the High Court has taken a view that there is no violation of policy condition. Rather, it has not accepted the contention of the Insurance Company that there is no liability on the Company and there is violation of the policy condition and has also referred to the words ''light motor vehicle'' and whether it could be treated as a ''transport vehicle''. The Apex Court has opined that ''light motor vehicle'' continues to cover both light passenger carriage vehicle and light goods carriage vehicle and has held, a driver who had valid license to drive a light motor vehicle was authorised to drive a light goods vehicle as well.

6. The Division Bench of this court also in the case of United India Insurance Co Ltd Vs Shivanna & Ors. ILR 2000 IAR 1608, in a similar context with reference to Section 2(21) r/w Section 149 of the Motor Vehicles Act, 1988 held, light motor vehicle is defined as a transport vehicle or omni bus motor car, the unladen weight of which does not exceed 7500 kgs and it is to be treated as light motor vehicle which includes a transport vehicle also.

7. In the present case, appellant''s counsel tried to make a distinction that the driver was only authorised to drive a motor cab and the license had also expired as on the date of the accident as such, he was not having an effective driving license. Also according to the counsel, the driving license of the driver meant only a light motor vehicle - non transport. As such, there is violation of policy

condition and there is a distinction between motor cab and a maxi cab.

8. What is noticed is, as per the facts and evidence on record, the vehicle which was driven by the driver i.e., maxi cab is treated as a light motor vehicle. It covers both transport as well as non transport. Though the badge was issued to drive a motor cab, in view of the definition of light motor vehicle which covers both transport and non transport, it does not necessarily mean motor cab and maxi cab are two different categories but, they are two species of the same genus. The driver in the case on hand was holding a light motor vehicle license and also was authorised to drive motor cab whose unladen weight is below 7500 kgs and which is a transport vehicle. A person holding light motor vehicle is authorised to drive a non-transport vehicle as well and just because the license which allowed to drive for three years had expired, it does not necessarily mean that the license holder was disqualified to drive a motor cab or max; cab except the renewal which was sought to be made.

9. The decision in Annappa Irappa Nesaria''s case cited supra covers the facts of this case wherein in the said decision it is specifically held that a driver having a valid driving license to drive a light motor vehicle is also authorised to driver a light goods vehicle. In the case on hand the driver who had the license to drive a motor cab also could drive a maxi cab which is a different species but, of the same genus. Although the badge issued to drive a motor cab had expired as on the date of the accident, but the driver had not been disqualified to drive a maxi cab. Apart from that, in his evidence, RW 3 - ARTO. Yeshwanthpur has deposed to the effect maxi cab comes under the category of light motor vehicle - transport except that there is a distinction between the seating capacity i.e., 12 + 1 and 5+ 1 between maxi cab and motor cab. As per the admission on the part of ARTO to drive a maxi cab. LMV transport driving license is required. As is held in Annappa Irappa Nesaria''s case a person who holds a valid license to drive a light motor vehicle is also authorised to drive a light goods vehicle which is a transport vehicle. In the case on hand, there is a badge issued to drive a motor cab which is a transport vehicle. As such, when once he had been authorised by the Transport Authority to drive a transport vehicle, though it is stated, he was permitted to drive only a light motor vehicle - non-transport, but subsequently by an endorsement he had been issued with a badge to drive light motor vehicle - transport category. Except the distinction between maxi cab and motor cab as regards the seating capacity, what is not in dispute is, both fall in the definition of light motor vehicle. Another aspect is though the licence which had been grained to drive the motor cab had expired as on the date of the accident, it is not as if the driver had been disqualified to drive the motor cab or maxi cab. Further, it is also seen when the driver had been granted LMV - non-transport license (granted for 20 years) which still had not expired and license to drive specific category of motor cab had been granted for three years, that shows the driver had the knowledge of having driven a vehicle of the category of maxi cab and motor cab, as such, it cannot be gain said that he had no knowledge to drive the type of vehicle which is prescribed and as such, the accident has occurred.

Further, what is to be noted is, in Angad Kol''s case, the owner or the driver of the vehicle was not examined nor the driving license was produced. But in the present case, the driving license produced permitted the driver to drive a transport vehicle as well since there is an endorsement i.e., to drive motor cab which in my opinion, includes maxi cab which comes within the category i.e., different species of the same genus of light motor vehicle of unladen weight below 7500 kgs except that it was not renewed as on the date of the accident.

10. Further, in Angad Kol''s case, the Apex Court referring to Section 2(10), 2(14), 2(21), 10 and 14 of the Motor Vehicles Act (Act 59 of 1988), held that there is distinction between license granted for a transport vehicle and passenger motor vehicle. Although the definition of the motor vehicle brings within its umbrage both transport vehicle or a omnibus, for the purpose of driving, a distinct license is required to be obtained. Such license is obtained in the case on hand for transport vehicle as well except that it is not renewed as on the date of the accident. However, driving license obtained to drive light motor vehicle for twenty years is in vogue and also driver was not disqualified to drive the transport vehicle i.e., maxi cab/motor cab.

11. In that view of the matter, the Insurance Company cannot escape liability on the ground that the badge issued to drive motor cab had expired. Appeal is dismissed. Amount in deposit be transferred and disbursed to the claimant.