

(2011) 03 OHC CK 0057
In the Orissa High Court
Case No : MAC.A. No. 289 of 2010

Bajaj Allianz General Insurance Co.Ltd.

APPELLANT

Vs

Parbati Jena and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 10(2), 10(20), 2, 2(21)

Citation : (2011) 03 OHC CK 0057

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. This appeal by the Insurance Company is directed against the award dated 24.02.2010, passed by the Motor Accident Claims Tribunal-I, Balasore, in MAC. No.95 of 2007, awarding an amount of Rs.2,79,848/-as compensation along with interest "7.5% per annum from the date of filing of the claim application, i.e.,25.6.2007, to be paid within two months.
3. Learned counsel for the appellant-Insurance Company submits that as the driver of the offending vehicle (tractor-trailer) bearing No.OR-01-K/3239 and 3240 did not possess a valid and effective driving license at the time of the accident, learned Tribunal erred in saddling the liability on the present appellant, as the insurer of the offending tractor-trailer. In this regard, it is submitted that as the driving license issued to the driver of the offending tractor-trailer authorized him to drive light motor vehicle and tractor (non-transport) and the vehicle in the question was registered as a transport vehicle, the said driving license was not valid and effective, which is a breach of conditions of the insurance policy and therefore no liability could have been saddled on the present appellant. It is further submitted that the assessment of the compensation amount by the learned Tribunal is not proper and justified

inasmuch as, there is no evidence on record to show that the deceased was working as a Raj Mistry and was earning Rs.2,600/-per month. Accordingly, it is submitted that the impugned award is not supported by materials on record and there being gross violation of the policy condition, the appellant, as the insurer of the offending vehicle, is not liable to pay the compensation amount.

4. Learned counsel for the appellant-Insurance Company has relied upon a decision of the apex Court in the case of Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , in support of his contention that as the driver of the offending tractor-trailer did not possess a driving license authorizing him to drive a transport vehicle and as the said tractor-trailer had been registered as a transport vehicle, there is no valid and effective driving license, which is a breach of policy condition and therefore the appellant, as the insurer of the offending tractor-trailer, can not be saddled with the liability to pay the compensation amount.

5. On a perusal of the impugned award it is seen that the learned Tribunal has come to find that the driving license (Ext.A) authorized the

INDIAN LAW REPORTS, CUTTACK SERIES [2011]

driver Harish Chandra Singh to drive a light motor vehicle and tractor (non-transport) with effect from 10.6.1998. Learned Tribunal further found that the R.C. Book (Ext.B) revealed that the tractor had been registered as a transport vehicle. Learned Tribunal also found that the insurance policy (Ext.C) clearly disclosed that the warrantee was exclusively for use of the tractor and trailer for agricultural purpose. Learned Tribunal observed that a tractor can be used both for the agricultural purpose as well as commercial purpose and the burden is on the insurer to show that at the time of the accident, the tractor was not used for agricultural purpose but for commercial purpose. Accordingly, learned Tribunal proceeded to hold that the driver of the tractor was holding a valid and effective driving license authorizing him to drive a tractor and trailer for agricultural purpose and there being no evidence to show that the offending tractor was not used for agricultural purpose, the Insurance Company is liable to pay the compensation amount.

6. In the case of Nagashetty Vs. United India Insurance Co. Ltd. and Others, , the Supreme Court had observed as follows:

xx xx xx Undoubtedly u/s 10 a license is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the license to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a license to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no license to drive that vehicle. It would lead to absurd either to a tractor or to a motor vehicle by itself does not make that

tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving license to drive a tractor or a motor vehicle he continues to have a valid license to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving license to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

7. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, the Supreme Court observed as under:

Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to

BAJAJ ALLIANZ GENERAL INSURANCE -V- PARBATI JENA

drive. Section 10 of the Act enables Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a license for one or more of them are (a) Motor cycle without gear, (b) motor cycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in subsection (2) of Section 10. They are "goods carriage", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motor cycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer", and "transport vehicle",. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licenses arise for consideration before the Tribunal. A person possessing a driving license for "motor cycle without gear", for which he has no license. Cases may also arise where a holder of driving license for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no license. In each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing license for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of license, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving license.

In the present case it is seen that the insurance policy issued in respect of the tractor-trailer was a Farmers Package Policy, specifying that the vehicle is to be used exclusively for the agricultural purpose. The driving license issued to the driver Harish Chandra Singh authorized him to drive light motor vehicle and tractor (non-transport), which was valid and effective at the time of the accident.

The Registration Certificate of the offending tractor shows that it was registered as a transport vehicle. As the tractor-trailer was used exclusively for agricultural purpose and the insurance policy issued to the said tractor-trailer was only for the said use, the vehicle can not be said to be a "transport vehicle", as has been defined u/s 2(47) of the M.V. Act, 1988. Moreover, a tractor is a "light motor vehicle", as defined in Section 2(21) of the said act. Further, there is no evidence on record to

INDIAN LAW REPORTS, CUTTACK SERIES [2011]

show that the offending vehicle was being used for commercial purpose, i.e., for carriage of goods. Even otherwise, the insurer has not been able to show that the driver of the tractor-trailer not possessing a license to drive a "transport vehicle", was the main or contributory cause of the accident. Moreover, the driving license not containing an endorsement, authorizing the driver to drive a "transport vehicle" is not a fundamental breach of policy condition but a mere technical breach, especially when the driving license authorized the driver to drive a tractor and therefore the Insurance Company cannot be permitted to avoid its liability on that score.

8. Coming to the decision cited by the learned counsel for the appellant in the case of Angad Kol (supra), the same has no application to the facts of the present case, inasmuch as, in the said case the driver was found to be driving a goods vehicle, while holding a driving license authorizing him to drive M/cycle+LMV.

9. Coming to the assessment of the compensation amount, it is seen that though P.Ws.1,2 and 3 had stated in their evidence that the deceased Akshya Jena was working as a Raj Mistry and was earning Rs.120/- per day at the time of his accidental death. Learned Tribunal has taken the minimum wages approved by the Govt. of Orissa, applicable to skilled labor, which was prevalent at that point of time and excluding four holidays of the month, has taken the monthly income of the deceased to be Rs.2,600/-. After deducting 1/3rd towards personal expenses of the deceased, learned Tribunal has assessed the monthly contribution of the deceased to his family at Rs.1,733/-. As the deceased was aged about 50 years, as per the postmortem report, learned Tribunal has applied the multiplier of "13" to calculate the loss of dependency. Learned Tribunal has further awarded Rs.9,500/-towards general damages.

10. Considering the findings of the learned Tribunal as given in the impugned award and the reasons assigned in support of the same, no impropriety or illegality can be said to have been committed by the learned Tribunal, so as to warrant any interference.

11. The appeal being devoid of merits, the same is accordingly dismissed.

12. The appellant-Insurance Company is directed to deposit the awarded compensation amount and interest with the learned Tribunal within six weeks

hence.

M.A.C.A. is accordingly dismissed.