

(2002) 09 GUJ CK 0039
In the Gujarat High Court
Case No : First Appeal No. 1784 of 1985

Bhailalbhai Garbabhai Vasava and Another	APPELLANT
Vs	
Munikhan Ismailkhan Sayed and Others	RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96

Citation : (2003) 2 ACC 352 : (2003) ACJ 1117 : (2003) 1 GLR 605

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : M.T.M. Hakim, Nos. 1 and 2, for the Appellant; S.B. Vakil and S.V. Raju, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—The present First Appeal is filed being aggrieved of the judgment and award dated 11th February, 1985 passed by the Motor Accident Claims Tribunal (Main), Panchmahals at Godhra in Motor Accident Claim Petition No. 479 of 1982, whereby the petitioners, appellants herein, are held entitled to recover from opponent Nos. 1 and 3 (driver and owner respectively of the vehicle) a sum of Rs. 48,240-00 (Rupees Forty Eight Thousand Two Hundred Forty Only) by way of compensation with interest at the rate of 6% per annum from the date of the application till realisation. The Tribunal was pleased to exonerate the Insurance Company accepting the plea of the Insurance Company, opponent No. 4 before the Tribunal, that the driver of the vehicle had no valid licence to drive the vehicle in question, and thus, there was breach of the terms and conditions of the policy.

2. Mr. M.T.M. Hakim, learned Advocate appearing for the appellants, invited the attention of the Court to the discussion on this point in Paragraph 17 onwards of the judgment. The Tribunal has placed reliance on a decision of the Hon'ble Madras High Court in the matter between Anjanadevi Vs. Arumugham and Another, . The Tribunal, while appreciating the said decision of the Hon'ble

Madras High Court, has discussed the same in Paragraph 18, which reads as under :

"18. In the above case, the Madras High Court has held that there being no proof that the driver who drove the vehicle had a necessary endorsement in his licence, as contemplated by Section 3 for the purpose of driving Tourist taxi, he cannot be taken to have a valid licence to drive a Tourist taxi. That was a case in which the driver of the vehicle had a driving licence, but the said driving licence did not contain an endorsement that the owner of the licence was entitled to drive a tourist car. In that case also, the licence of the opponent No. 1 has been proved, but it is amply clear from it that the licence is not for driving a transport vehicle."

3. The learned Advocate for the appellants-claimants submitted that the learned Presiding Officer has committed an error in not accepting the contentions raised by the claimants that the driver had a licence for driving a light motor vehicle and matador is a light motor vehicle. He further submitted that the learned Presiding Officer ought to have appreciated that merely because from the licence of the driver, "authorisation to drive a transport vehicle" is scored of, he does not lose the capacity to drive a light motor vehicle even if it happened to be "transport vehicle".

4. Relying upon the judgment of the Hon"ble Apex Court reported in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , the learned Advocate for the appellants submitted that once the driver is having a licence to drive a light motor vehicle, then the nature of that vehicle, whether transport vehicle or otherwise, is immaterial. He pointed out the observations made by the Hon"ble Apex Court in Paragraphs 6 and 9, which read as under :

"6. Naga Saheb Jadhav, the driver was having the driving licence to drive a light motor vehicle. On the day of the accident, the vehicle was not carrying any goods. Contention of the insurer has been that the vehicle was a, goods carriage and thus, a transport vehicle. Rule 16 of the Central Motor Vehicles Rules, 1989 prescribes the form under which a driving licence is to be issued. It is Form No. 6. Jadhav was having a driving licence in Form 6 which was for driving a light motor vehicle. There was no endorsement on his driving licence authorising him to drive a transport vehicle. For a vehicle to be a transport vehicle, it must be a goods carriage which in turn means any motor vehicle constructed or adapted for use. solely for the carriage of goods or When not so constructed or adapted used for the carriage of goods. We have the definitions of "heavy goods vehicle" and "medium goods vehicle". There is no definition of "light goods vehicle". Instead, the definition is of "light motor vehicle". If we apply the definition of a "light motor vehicle" as given in Clause (21) of Section 2 of the Act to mean a "transport vehicle" which in turn means a "goods carriage" then we have nowhere the definition of a "light motor vehicle" without it being a "goods carriage". Section 2 of the Act begins with the words "unless in this Act the context otherwise requires". We, have therefore, to give a meaningful

interpretation to "light motor vehicle" as given in Clause (21). Clause (e) of Rule 2 of the Central Motor Vehicles Rules, 1989 defines "non-transport vehicle" to mean a motor vehicle which is not a transport vehicle [clause (e)] renumbered as Clause (h) by 1993 Amendment to Rules. This definition would, therefore, take out of the definition of "transport vehicle" as given in Clause (21) light motor vehicles which are not goods carriages.

9. There is no evidence on record and no claim has either been made by the insurer that the vehicle in question was having a permit for goods carriage. If we accept the contention of the insurer, there can never be any light motor vehicle and there can never be any driving licence for driving a light motor vehicle. We cannot put such a construction on Clause (21) of Section 2 of the Act so as to exclude a light motor vehicle from the Act altogether. Light motor vehicle is a motor vehicle to drive for which Jadhav possessed effective driving licence. His driving licence was valid on the date of accident. In allowing the claim of the appellant the State Commission held that "the driver who drove the vehicle at the time of accident, had as a matter of fact, a valid driving licence for driving a light motor vehicle and there is no material on record to show that he was disqualified from holding or obtaining such a licence at the time of accident. In view of these facts and in the circumstances of the case, we are satisfied that the policy does not insist on the driver having a licence to drive, to obtain a specific endorsement to drive a transport vehicle." We, however, do not subscribe to such a view."

5. The learned Advocate for the appellants also relied upon a judgment of the Hon"ble Apex Court in the matter between Nagashetty Vs. United India Insurance Co. Ltd. and Others, . He drawn the attention of the Court to the observations made by the Hon"ble Apex Court in Paragraphs 9 and 10, which read as under :

"9. Relying on these definitions, Mr. S. C..Sharda submitted that admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor, the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted, that therefore, it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Company could not be made liable. He submitted that the High Court was right in so holding.

10. We are unable to accept the submissions of Mr. S. C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly, u/s 10 a licence 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 licence 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 licence 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 licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to 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 licence to drive a tractor or motor vehicle he continues to have a valid licence 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 licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle."

6. The learned Advocate for the appellants, then, relied upon an unreported judgment delivered on 20th April, 1998 by the Division Bench of this Court in the matter between New India Assurance Co. Limited v. Shrikantbhai Ochchavhlal Shah and Ors., in First Appeal Nos. 1749 and 1750 of 1998. He pointed out the observations made by the Division Bench in Paragraph 11, which reads as under :

"11. Assuming that the aforesaid bracketed expression (N.T.) means "Non Transport" vehicle then, in that case, the question which comes up for consideration would be as to whether it would tantamount to breach of the conditions of the insurance policy and whether it was so fundamental that it would defeat the rightful claims of the third party and could it be said in the factual situation, and legally, from the facts of the present case that licence to drive auto rickshaw simpliciter would be a fundamental breach of the terms of the insurance policy as the vehicle insured and covered under the insurance policy was an auto rickshaw meant for transport vehicle ? But, it may be stated that, mere breach or refraction of the policy of insurance would "ipso facto" in each case, is not sufficient to absolve the Insurance Company from the liability of payment of compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The question which requires consideration, alternatively, is whether in a given case, alleged breach would tantamount to fundamental breach of the terms or conditions ? So, when the insurer, who, in terms of the insurance policy, is obliged to pay compensation to third party, seeks to challenge liability and claims to be absolved, has to pass through this hurdle and legal impediment before the rightful, claim of the third party arising out of unfortunate road accident could be thwarted or questioned and it is obligatory on the part of the Court to determine whether the alleged breach of the terms and conditions of the insurance policy entitles the Insurance Company to be absolved and whether the breach of the terms of the insurance policy is so fundamental, that the Insurance Company can be absolved from its liability. As stated above, it must be shown that the breach was so fundamental and it can

disentitle the insured to be indemnified and the third parties to lose their claim against the insurance company and permits the insurer to plead the case of breach of the terms of the insurance policy."

7. The learned Advocate for the appellants submitted that as the Hon''ble Apex Court has accepted similar contention, as was raised by the learned Advocate for the claimant before the Tribunal and has held that once the driver is having a valid licence to drive a particular category of vehicle, namely, light motor vehicle or heavy motor vehicle, merely because there is no endorsement or authorisation to drive a transport vehicle is scored off, it does not take away his ability to drive the vehicle for which he is holding a valid licence. He submitted that further classification of the vehicles in the same category of light motor vehicle, on the basis of use for carrying passengers or goods or on the basis of it being a public vehicle or private vehicle, does not affect the capacity/ ability/competence of a driver to drive that category of vehicle. Relying upon the aforesaid decisions of the Hon''ble Apex Court, he submitted that an endorsement/authorisation in a licence of a person to drive a vehicle belonging to a particular sub-classification, is of no consequence. If it is found that the driver is holding a valid licence to drive a particular category of vehicle, namely, light motor vehicle or heavy motor vehicle, then, irrespective of the fact that he is authorised to drive commercial or transport vehicle, the Insurance Company cannot be exonerated of its liability to reimburse the damage caused to the insured,

8. In view of the aforesaid discussion, this appeal is allowed. Consequently, the Motor Accident Claim Petition No. 479 of 1982, which is allowed qua the driver and the owner, stands allowed against the Insurance Company also. The United India Insurance Company Ltd., opponent No. 4 before the Tribunal, is directed to comply with the award of the Motor Accident Claims Tribunal subject to its rights, available under the law against the driver and the owner. Taking into consideration that the accident is that of 1982 and the claimants are the parents, the Insurance Company is directed to comply with the judgment and award of the Tribunal within 8 weeks from the date of receipt of copy of this order.