
(2009) 09 BOM CK 0149
In the Bombay High Court
Case No : F.A. No. 1795 of 2008

Bibha Nakul Singh and Others	Vs	APPELLANT
Kaushik J. Shah and Another		RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3
Motor Vehicles (Amendment) Act, 1994 — Section 10, 2, 3, 54
Motor Vehicles Act, 1988 — Section 146(1)

Citation : (2011) ACJ 1335

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : T.J. Mendon, for the Appellant; S.G. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—The original claimants have preferred this appeal challenging the award passed by the Commissioner for Workmen's Compensation whereby compensation was awarded to the appellants but the respondent No. 2 insurance company was absolved from the liability to pay compensation.

2. Undisputed facts are that deceased Nakul Singh was the husband of appellant No. 1 and father of appellant Nos. 2 and 3. He was working as a driver on the truck-tanker bearing No. MH 11-F 5099 belonging to the respondent No. 1. On 30.4.2000 deceased was on duty as a driver of that truck-tanker. As per the directions given by the respondent No. 1/employer, truck-tanker was loaded with Beesol chemical for transportation from Rasayani in Raigad District to Belgaon. When the tanker was passing through the Mahabaleshwar area, it fell in the valley on 1.5.2000 and as a result, driver Nakul Singh died on the spot. He died in the course of his employment. Claimants contended that the deceased Nakul Singh was getting wages at the rate of Rs. 5,000 per month and at the time of his death, he was aged about 35 years. Notice was issued to both the respondents for settlement of compensation under the Workmen's Compensation

Act. Respondent No. 1 also informed the respondent No. 2 insurance company but the compensation was not settled. The appellants claimed an amount of Rs. 1,97,060 as compensation. Respondent No. 1 admitted the claim in all respects. According to him, after the accident, he had requested insurance company to settle the claim of the claimants but the insurance company did not co-operate and, therefore, the claim could not be settled. He also pleaded that the tanker was duly insured with the respondent No. 2 and, therefore, insurance company is liable to pay compensation.

3. Respondent No. 2 insurance company contested the claim denying all the allegations made by the appellants. Their main contention was that the deceased was not holding a valid driving licence to drive a particular category of vehicle, including vehicles carrying inflammable goods, and there was breach of condition of insurance policy and, therefore, insurance company is not liable to pay compensation.

4. Several issues were framed by the trial court at Exh. 9A. After hearing the evidence, the trial court held that deceased was in service of the respondent No. 1 as driver. He had died in an accident of the vehicle while driving the same as a part of the employment of the respondent No. 1. He was aged about 32 years. His salary was Rs. 5,000 per month at the time of his death and as per provisions of Workmen's Compensation Act, claimants were entitled to get compensation of Rs. 4,07,700. Respondent No. 1 was also found liable to pay penalty for not settling the claim within specified period. The Commissioner for Workmen's Compensation did not frame any issue about holding of valid licence for the specified type of vehicles as pleaded by the insurance company but he dealt with that question and dismissed the claim against the insurance company on that ground.

5. Heard the learned counsel for parties. Following point arises for consideration:

Whether the insurance company could be absolved from the liability to pay the compensation on the ground that the deceased was not holding a driving licence to drive a particular category of vehicle including vehicles carrying inflammable goods?

6. It is material to note that insurance company had nowhere specifically denied that the deceased was holding valid driving licence for driving heavy vehicle, which was pleaded by the claimants and admitted by the respondent No. 1. According to the insurance company, tanker/truck, which the deceased was driving at the relevant time, was carrying Beesol chemical, which is highly inflammable and it was necessary to hold a special driving licence to drive such a vehicle. It was also contended that if a person is driving such a vehicle without holding special driving licence, it will be in contravention of the insurance policy. In support of this contention, following clause from the insurance policy was relied upon:

In respect of person entitled to drive: Any person including insured provided that

a person driving holds an effective driving licence at the time of accident and is not disqualified in driving and obtaining such a licence provided also that a person holding an effective learner's licence may also drive the vehicle when not used for the transport of passengers at the time of accident and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.

Thus, clause of the insurance policy only requires that at the relevant time driver of the vehicle must be holding an effective driving licence and should not have been disqualified for driving or for obtaining such a licence and such a person should satisfy the requirement of rule 3 of the Central Motor Vehicles Rules.

7. Chapter 2 of the Motor Vehicles Act, 1988, deals with licensing of drivers of motor vehicles. Section 3 provides that no person shall drive motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle and he shall not drive a transport vehicle unless his driving licence specifically entitles him so to do. Section 4 provides that no person under the age of 18 shall drive a motor vehicle in any public place and under sub-section (2), no person under the age of 21 years shall drive a transport vehicle in any public place. Section 9 provides for the conditions in which driving licence can be issued. Section 10 provides for the form and contents of the driving licence to drive. Sub-section (2) of section 10 provides that the driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of following vehicles, namely: (a) motor cycle without gear; (b) motor cycle with gear; (c) invalid carriage; (d) light motor vehicle; (e) transport vehicle; (i) road-roller; and (j) motor vehicle of a specified description. Prior to amending Act 54 of 1994 which came into force on 14.11.1994 categories of vehicles, which required a driving licence, were medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle. There is no dispute that the deceased Nakul Singh was holding a licence authorising him to drive heavy goods vehicle or transport vehicle. Section 19 provides for disqualifying a person from holding a driving licence or for revocation of such licence by the licensing authorities in certain circumstances. Section 20 vests the court with power to declare a person to be disqualified to hold a driving licence and to drive in public place if a person is convicted of an offence under the Motor Vehicles Act or of an offence in the commission of which motor vehicle is used. Section 23 provides the effect of disqualification order. If a person is disqualified from holding a driving licence or his licence has been revoked or suspended, he is not authorised to drive a vehicle in a public place. There was never any pleading nor there is any evidence that the deceased Nakul Singh was at any time disqualified from holding a driving licence either by the licensing authorities or by any court. Also there is no material to show that his driving licence was revoked either by the licensing authorities or by any court and such revocation was in force at the time of accident. Thus, it is clear that the deceased was holding a valid driving licence which authorised him to drive heavy vehicle or a transport vehicle at the time of

accident.

8. The contention of insurance company was that he was not holding a driving licence specified for a particular type of vehicle carrying hazardous chemical. However, the learned counsel for the insurance company could not point out any provision from the Motor Vehicles Act or rules framed thereunder by the Central Government to show that special licence is required for driving a vehicle carrying hazardous chemicals. Chapter II of the Central Motor Vehicles Rules, 1989 deals with the licensing of drivers of the motor vehicles. It does not show that any special driving licence is provided for driving a truck or tanker transporting hazardous chemicals.

9. Undisputedly the deceased was holding a valid driving licence, which authorised him to drive heavy vehicle at the time of accident, the vehicle fell in a valley in the mountainous area of Mahabaleshwar and in that accident driver Nakul Singh died on the spot. There is nothing to show that the chemical, which was being transported by the said tanker, had contributed to the accident in any manner. Vehicle fell in the valley for the reasons not connected with the chemical and not contributed by the chemical loaded in the same. So it must be held that there was no nexus between the chemical being transported and the accident. Even if such special driving licence is required to drive the vehicle, that itself would not absolve the insurance company from its liability under Workmen's Compensation Act under the insurance policy merely because the driver was not holding such a licence unless it could be established that there was nexus between the accident and hazardous chemical, which was being transported. The clause of the insurance policy on which the defence of insurance company was based is quoted earlier. That clause nowhere shows that any specified licence is required for driving truck/tanker to transport hazardous chemicals. It only requires that driver should have effective driving licence at the time of accident and he should not have been disqualified from holding such a licence. I have already pointed out that undisputedly he was holding a driving licence, which authorised him to drive transport vehicle and there is no material to show that either he was disqualified from holding a licence or it was revoked under the law. Therefore, above referred clause of the insurance policy would not provide any defence to the insurance company in the given circumstances.

10. The learned counsel for the appellants also contended that unless there is nexus between the accident and breach of conditions of the insurance policy merely on the ground of some defect in the driving licence, insurance company cannot be absolved from the liability and for this, he relied upon National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein Supreme Court observed as follows:

(82) Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe the forms of driving licences 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 licence 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 sub-section (2) of section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motor cab", "motor cycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "trailer", "tractor" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motor cycle without gear", for which he has no licence. Cases may also arise where holder of driving licence for "light motor vehicle" is found to be driving a "maxicab", "motor cab" or "omnibus" for which he has no licence. In each case no evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the driver possessing licence 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 licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

11. Learned counsel for the insurance company contended that under the proviso to section 146 (1) of the Motor Vehicles Act in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be an insurance policy under the Public Liability Insurance Act, 1991. He contended that no such special insurance policy was obtained by respondent No. 1 under the Public Liability Insurance Act, 1991. First of all, no such plea was taken in the written statement nor any such question was before the trial court. The learned counsel contended that it is question of law and, therefore, it could be raised even in the appeal. In fact, it is not mere question of law. It is a mixed question of law and fact. Even if the learned counsel is allowed to raise this question, it would appear that proviso to section 146 (1) of the Motor Vehicles Act or provisions of Public Liability Insurance Act, 1991 would not be applicable to the facts and circumstances of the present case. Public Liability Insurance Act was enacted with the object of providing immediate relief to the victims of the accident that may occur while handling the hazardous substance. The owner or the person, who has control over handling hazardous substance, is required under the Act to pay specified amount to victims as interim relief and it is mandatory for the owner handling such hazardous substance to take out insurance policy under the Act so that innocent people, who may suffer damage to their property or may suffer injuries or loss of life because of hazardous substance, should not be left

without any remedy. Many a time the owner may not be financially sound to provide relief or to pay the compensation to such persons, therefore, law mandates that the person, who owns or has control over handling of any hazardous substance at the time of accident, shall take out insurance policy before he starts handling such hazardous substance. It is applicable to the vehicle owner, factories or any place where such hazardous chemical may be stored or kept.

12. In the present case, even though the vehicle was loaded with Beesol chemical, which is stated to be hazardous substance, there is nothing to show that said chemical had spilled out or had caused any damage to the property or life of any person from the public. Vehicle simply fell turtle in the valley in which driver of the vehicle died on the spot. Nothing more had happened. No public liability was incurred by accident of the vehicle due to the chemical loaded in the same. Arguments advanced by the learned counsel that insurance company is not liable because the policy of insurance under the Public Liability Insurance Act, 1991 was not obtained, is totally irrelevant and unnecessary for the purpose or decision of the present case.

13. In view of the facts and circumstances and the legal position noted above, it is clear that a valid insurance policy was taken by the respondent No. 1 for the vehicle and the insurance company is liable to indemnify him for the liability which he has incurred in the said accident. Learned Commissioner, Workmen's Compensation, committed serious error in absolving insurance company from its liability. Therefore, impugned order to that extent is liable to be set aside.

14. For the aforesaid reasons, appeal is allowed and the impugned order dismissing the claim against the respondent No. 2 insurance company is hereby set aside and it is hereby declared that the respondent No. 2 insurance company shall be liable to indemnify respondent No. 1 for the loss incurred by him in the said accident and to pay compensation amount with interest as granted by the Commissioner, Workmen's Compensation.

15. The respondent No. 2 insurance company shall bear its own cost and shall also pay costs of the claimants-appellants throughout.