(2011) 04 CHH CK 0019

In the Chhattisgarh High Court

Case No : M.A.C. No''s. 1214 and 1241 of 2010

Future Generali India Insurance Company Ltd. and Another — APPELLANT

Vs

Kalyan Dhurandar and Two Others — RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 162, 166, 168, 2, 43

Citation : (2012) 3 TAC 539

Hon'ble Judges : Prashant Kumar Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Advocate : Sachin Singh Rajput in M.A.C. No. 1214/2010 i.e. Future Generali, for the Appellant; Sachin Singh Rajput, Advocate for Respondent No. 3 in M.A.C. 1241/2010 i.e. Future Generali, Kalyan Dhurandar in M.A.C. Nos. 1214 and 1241 of 2010 for Respondent No. 1 and Shri Satyendra Sahu, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—These are the two appeals filed against the impugned award dated 16th August, 2010 passed by the IX Motor Accident Claims Tribunal (F.T.C.) Raipur in Claim Case No. 15/2010. M.A.(C) No. 1241/2010 has been filed by the owner of the vehicle challenging the impugned award so far as it relates to fixing of liability imposed upon him as well as on the question of quantum. MAC. No. 1214/2010 has been filed by the Insurance Company namely Future General India Insurance Company Limited challenging the award by which the Insurance Company has been directed to pay the amount of compensation to the claimant and recover it from the owner as also against the non-affording adequate opportunity to lead evidence.

2. Cross objections have also been filed by respondent No. 1 for enhancement of compensation.

3. Brief facts of the case according to the version of claimants are that the injured claimant Kalyan Dhurandar was sitting on Gaura Chowra near Mahamaya Temple alongwith others. At that time, the offending vehicle i.e., Mahindra Max

Pick-Up bearing Regn. No. C.G. 04-JS/9984 which was being driven by non-applicant No. 1 Avinash Kumar in a rash and negligent manner dashed the claimant, as a result of which he sustained fracture in the right leg bone. He was immediately admitted in Government Hospital, Arang and thereafter in Government Hospital, Mahasamund and then again in a private hospital of Dr. A.K. Verma where looking to the critical condition, his right leg was amputated, as a result of which claimant became permanently disabled to the extent of 80%. At the time of accident, the claimant was about 19 years and was earning Rs. 300-400/- per day by working as Hamali. The injured claimant has filed claim petition for the award of compensation to the tune of Rs. 43,90,000/- on various heads for the permanent disability caused to him on account of injury sustained by him.

4. The learned Claims Tribunal held that the offending vehicle which was being driven by non-applicant No. 1 in a rash and negligent manner dashed the appellant, as a result of which, appellant has become permanently disabled. The Tribunal has awarded a total compensation of Rs. 5,94,000/- with simple interest @ 7+% per annum which the claimant is entitled to receive from non- applicant Nos. 1 & 2. However, the Tribunal has directed the Insurance Company to pay the said compensation to the claimant and recover the same from the non-applicant Nos. 1 and 2.

5. We have heard learned Counsel for the parties at length and have also gone through the records. The Insurance Company has examined Syed Safiulla as N.A.W. 2 who was working as an Assistant Grade-II in the office of R.T.O., Durg. We have also perused the copy of the driving licence of the driver of the vehicle in question. In the licence, an endorsement regarding authorization to drive light motor vehicles as well as transport vehicle has been made besides the other endorsements. Syed Safiullah (N.A.W. 2) has stated about the issuance of driving licence for driving motor-vehicles and light motor vehicles from 17th March, 2004 to 20th December, 2012 and also for driving heavy goods vehicle w.e.f. 31st December, 2009 but has not stated about the fact of issuance of the driving licence to drive the transport vehicle.

6. Hon''ble the Supreme Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., has laid down the law while dealing with a similar matter, the relevant part of the same in Paras 9 to 15 are reproduced as under :

9. There is no evidence to record and no claim has either been made by the insurer that the vehicle in question was having a permit for a 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. A light motor vehicle is a motor vehicle to drive which Jadhav possessed an 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.

10. The definition of "light motor vehicle" as given in Clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in Clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be a non-transport vehicle as well.

11. To reiterate, since a vehicle cannot be used as a transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case, there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle u/s 66 of the Act. Moreover, on the date of accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or a goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act.

12. It was pointed out by the appellant that the legal representative of Jadhav, the driver, had filed a petition for compensation under the Act. The insurer had resisted the claim taking the stand that the driver of the vehicle did not possess a valid driving licence to drive the vehicle. The plea of the insurer was rejected by the Claims Tribunal and the petition for compensation was allowed and compensation paid to the legal representative of the driver. No appeal was preferred by the insurer in that case.

13. In the present case, the insurer alleged that the appellant had committed breach of the terms of the Insurance Policy and had violated the provisions of the Act by entrusting a "transport vehicle" to a person who did not hold a valid licence and the insurer was, thus, not liable to indemnify the appellant. Under the policy firstly a light motor vehicle meant the gross weight of which did not exceed 6000 kilograms and secondly against the column "driver" the policy stated :

Drivers clause.-Persons or classes of person entitled to drive : any person including the insured.

Provided that, a person driving is holding an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence :

Provided also that, if a person holding an effective learner''s licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

14. Now the vehicle in the present case weighed 5920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the Insurance Policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on the wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorization on the licence of the driver under Form-6 under the rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA-28-567.

15. Accordingly, the appeal is allowed. Order of the National Consumer Disputes Redressal Commission is set aside and that of the State Consumer Disputes Redressal Commission restored though on different ground. The appellant would be entitled to costs.

7. Further the Apex Court in case of Oriental Insurance Co. Ltd. Vs. Angad Kol and Others, , held in Paras 24 and 25 as under :

24. The Court distinguished its earlier judgment in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd., stating : (Prabhu Lal case, SCC P.707, 41)

41. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable.

25. However, in the present case, the finding of fact arrived at that the vehicle in question was not proved to be a goods vehicle is not correct. The Regional Transport Officer, in his deposition, stated that the vehicle in question was a goods vehicle.

8. Besides the above, Section 66 of the Motor Vehicles Act, 1988 provides for necessity for permits which is quoted below :

66. Necessity for permits.--(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that, a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage :

Provided further that, a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for the drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed :

[Provided that, the holder of a permit of any articulated vehicle may use the prime mover of that articulated vehicle for any other semi-trailer.]

(3) The provisions of sub-section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification, in the Official Gazette, specify in this behalf;

(h) Clause (h) omitted by Act 26 of 2000 w.e.f. 11th August, 2000

(i) To any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) Subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) To any transport vehicle which has been temporarily registered u/s 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(l) Clause (1) omitted by Act 39 of 2001 w.e.f. 27th September, 2001

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made u/s 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.

A perusal of Section 66 of the MVA shows that Clause (i) of sub-section (3) thereof provides that the provisions of sub-section (1) shall not apply to any goods vehicle the gross vehicle weight of which does not exceed 3,000 kilograms.

9. A perusal of the Registration Certificate of the vehicle in question shows that the Unladen Weight (U.L.W.) was allowed upto 1400 kilograms and the Gross Vehicle Weight (G.V.W.) was allowed upto 2300 kilograms that is less than 3000 Kilograms. Therefore, in the light of the above mentioned facts and circumstances, the Claims Tribunal ought to have determined the question as to whether the vehicle was being used for transport purpose and if it was being used for commercial purpose what was the actual weight allowed under Unladen Weight (ULW) and Gross Vehicle Weight (GVW) and whether the gross weight of the vehicle in question did not exceed 3,000 kilograms and whether the driver was having valid and effective driving licence and what were the circumstances at the time of driving the vehicle. In fact, the Tribunal should have conducted an enquiry as provided in Section 168 of the Motor Vehicles Act 1988 and Rule 226 of the C.G. Motor Vehicles Rules, 1994 but it has failed to conduct any enquiry on the above points.

10. It has been provided in Rule 226 of C.G. Motor Vehicles Rules, 1994-that the Claims Tribunal shall obtain whatever information and documents which may be

found necessary from the police, medical and other authorities and proceed to award the claim whether the parties who were given notice, appear or not, on the appointed date. Further we cannot ignore the provisions of Section 168 of the Motor Vehicles Act which provides that on receipt of an application for compensation made u/s 166, the Claims Tribunal shall after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim and subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just.

11. The Insurance Company has not been provided adequate opportunity when an application was moved for calling the witnesses from the office of R.T.O. and rejected the application vide order dated 20th July, 2010.

12. In view of the above, facts and circumstances, we are of the opinion that the matter requires reconsideration at the end of the Tribunal. Therefore, we allow these appeals in part, set aside the impugned award dated 16th August, 2010 and remit the matters back to the Tribunal for decision afresh in light of the observations made hereinabove. Needless to mention that the parties shall be allowed to adduce further evidence, amend the pleadings, file documents or verify the documents etc., already filed and thereafter the claim petition shall be decided on merits after conducting the enquiry, at the earliest. The parties shall appear before the Trial Court on 10th May, 2011. The records of the Tribunal shall be sent back forthwith. Since, the appeals are directed to be remitted back, the cross objections filed by the claimant shall stand disposed off with liberty to raise the plea of enhancement before the Claims Tribunal. No order as to cost(s).