
(2004) 01 BOM CK 0071
In the Bombay High Court
Case No : F.A. No. 269 of 1994

Jankibai Laxman Dhoke and Others APPELLANT
Vs
Ramesh Laxmanrao Uike and Others RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Bombay Motor Vehicles Taxation Rules, 1959 — Rule 118(1)
Motor Vehicles Act, 1939 — Section 110A, 2(8), 95
Motor Vehicles Act, 1988 — Section 112, 147, 147(1)

Citation : (2004) 3 ACC 449 : (2005) ACJ 2133 : (2004) 3 ALLMR 437 : (2004) 4 BomCR 763

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Masood Shareef, for the Appellant; A.M. Bapat and S.R. Pathak, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—The legal representatives of deceased Laxman have filed this appeal being aggrieved by the common award dated 10.12.1993 passed u/s 110-A of the Motor Vehicles Act, 1939 (for short "the Act") by the Member, Motor Accidents Claims Tribunal, Yavatmal, in Claim Petition No. 7 of 1989 and other claim petitions, exonerating truck owner, respondent No. 2 and insurance company, respondent No. 3 from the liability to pay compensation.

2. Brief facts are as under:

The accident occurred on 13.12.1988 at about 3 p.m. on Kalamb-Yavatmal Road. On that day, deceased Laxman along with his goats, she-goats and hens was travelling in the truck bearing registration No. MTV 3512. The truck was being driven by respondent No. 1 in a rash and negligent manner. When the truck reached near the spot of accident, driver of the truck lost control of the driving and the truck had gone on the wrong side of the road and dashed against a tree. Consequently, Laxman and others sustained grievous injuries and Laxman

succumbed to the injuries on the spot itself. The legal representatives of deceased Laxman and others had instituted the claim petitions. The learned Member of the Motor Accidents Claims Tribunal passed a common award exonerating the owner of the motor vehicle and the insurance company from the liability to pay compensation and directed the driver of the truck to pay the entire compensation. This award is under challenge in this appeal.

3. On the basis of the factual background, following two points arise for determination in this appeal--

(i) Whether the owner of the motor vehicle involved in the accident is liable to pay compensation?

(ii) Whether the insurance company is also liable?

Point No. 1:

4. It is not in dispute that the truck in question is a goods vehicle as defined u/s 2(8) of the Act. Rule 118(1) of the Bombay Motor Vehicles Rules, 1959 (for short "the M.V. Rules") framed under the Motor Vehicles Act prohibits carrying a passenger in a goods vehicle. Learned Counsel for the claimants contended that the policy of the insurance covers all third parties except the passengers who are not carried for hire or reward. In support of his submissions, he relied upon the decision of three Hon"ble Judges of the Supreme Court in the case of Rikhi Ram and Another Vs. Smt. Sukhrania and Others, . The learned Counsel also contended that the driver being the employee of the truck owner, was rash and negligent in driving the vehicle and, therefore, his master, i.e., truck owner, is liable for all actions of his driver. In support of his submissions, he relied on the decision of the Apex Court in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343.

5. Learned Counsel further contended that the driver allowed in the truck the carriage of goats, she-goats and hens to protect and secure the live stock and that he transported the goods along with its owner and, therefore, the Claims Tribunal has committed an error in exonerating the insurance company from the liability to pay compensation. He contended that in such circumstances, the impugned award cannot be sustained in law.

6. The learned Counsel for the truck owner contended that admittedly the truck in question is a "goods vehicle" and the truck driven by the driver though was an employee of the owner, taking the passenger inside the truck was outside the scope of his employment and moreover the owner was not present in the truck at the time of the accident and, therefore, the owner cannot be held vicariously liable. In support of this submission, he relied on the Division Bench judgment of this Court in the case of Maimuna Begum v. Taj 1988 ACJ 417.

7. The learned Counsel for the insurance company contended that the accident occurred on 13.12.1988 and, therefore, the claim petitions filed by the victims or the legal representatives of the deceased would be governed by the provisions of

the Motor Vehicles Act, 1939 and not by the provisions of the Motor Vehicles Act, 1988. He contended that the amendment introduced by the Act 54 of 1994 would not be applicable and, as such, the insurance company is not required to cover the statutory liability under the provisions of Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, though the deceased Laxman is said to be travelling along with the goats, she-goats and hens, etc., in the truck. He contended that the deceased Laxman was travelling as a passenger in the "goods vehicle" and, therefore, the Tribunal was perfectly justified in exonerating the insurance company from the liability to pay the amount of compensation. In support of these submissions, he relied on the decision of Supreme Court in National Insurance Co. Ltd. Vs. Ajit Kumar and Others, .

8. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not in dispute that the deceased Laxman was travelling in goods truck along with the goats, she-goats and hens, etc. It is also not in dispute that the truck driver was employed by the owner, respondent No. 2, for the purpose of driving the truck. It is also admitted position that the truck met with an accident and Laxman died as a result of the accident arising out of the use of the motor vehicle.

9. The Division Bench of this Court in Maimuna Begum's case 1988 ACJ 417, took the view that the driver was employed and the owner used to pay bhatta to the driver whenever the driver was sent outstation and had issued instructions not to carry the passengers and in this basic factual background the Tribunal was justified in not holding the owner vicariously liable. No doubt, the driver was driving the truck in the regular course of his employment but taking passengers was not only outside the scope of his employment and/or authority but was a criminal act because the truck in question is a "goods vehicle" as defined u/s 2(8) of the Motor Vehicles Act. Rule 118(1) of the Motor Vehicles Rules, 1959 framed under Motor Vehicles Act prohibits carrying a passenger in a "goods vehicle". No doubt, to do so is an offence punishable u/s 112 of the Motor Vehicles Act. Relying on this decision, Mr. Bapat, learned Counsel for the truck owner, contended that the Tribunal in the present case was perfectly justified in exonerating the owner of the truck to pay compensation. This contention is devoid of merit and the aforesaid decision cannot be made applicable to the facts and circumstances of the present case.

10. In the present case, owner Manohar Prabhakar Deo, witness No. 1 for N.A. 2, though has stated in examination-in-chief that he had not allowed the driver to carry the passengers, he clearly admits in his cross-examination like this, "N.A. No. 1 was working with me as driver since 1 1/2 months prior to the incident. There was no agreement between me and N.A. No. 1 that he would not carry any passengers in the truck. I have given him instructions before the conductor, coolies".

(Emphasis supplied)

11. Thus, the situation that emerges from the evidence is that the driver on his own allowed the passengers being carried in the goods truck and his act in doing so may be illegal or unauthorised, but that does not mean that the owner can escape the liability. In this context, it may be useful to refer to the decision of the Supreme Court in the case of *State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others*, wherein in para 19 it has been held that "the crucial test is whether the initial act of the employee was expressly authorised and lawful. The employer, as in the present case the State Government, shall nevertheless be responsible for the manner in which the employee, that is, the driver and the respondent executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, the master cannot escape the liability so far as third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. In the present case, it has been established beyond doubt that the driver of the vehicle had been fully authorised to drive the jeep for a purpose connected with the affairs of the State and the dispute is only in respect of the manner and the mode in which the said driver performed his duties by allowing another employee of the State Government, who was also going on an official duty, to drive the jeep, when the accident took place. Once it is established that negligent act of the driver and respondent was "in the course of employment", the appellant State shall be liable for the same".

12. In the aforesaid decision, the Apex Court referred the following cases:

I.C.I. Ltd. v. Shatwell (1965) AC 656;

Ilkiw v. Samuels 1958 65 ACJ 445 (CA, England);

London County Council v. Cattermoles (Garages) Ltd. (1953) All ER 582;

Ormrod v. Crosville Motor Service Ltd. (1953) 2 All ER 753;

Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343;

Ricketts v. Thomas Tilling Ltd. (1915) 1 KB 644;

Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt, 1966 ACJ 89;

Staveley Iron and Chemical Co. Ltd. v. Jones (1956) 1 All ER 403;

Young v. Edward Box and Co. Ltd. (1951) 1 TLR 789;

and held that it is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. The employer shall be liable when an employee was doing an authorised act in an unauthorised manner but not in a prohibited way because such employee was acting within the scope of his employment and in so

acting had done something negligent or wrongful. A master is liable even for acts which he has not authorised provided they are so connected with acts which has been so authorised. On the other hand, if the act of the servant is not even remotely connected with the scope of employment and is an independent act, the master shall not be responsible because the servant is not acting in the course of his employment but has gone outside.

13. In the present case, there is no evidence to show that the act of the driver is not even remotely connected within the scope of his employment and is an independent act and, therefore, the owner cannot escape the liability on the ground that the driver was not acting in the course of his employment, who has gone outside. On the contrary, it would be clear that the driver was acting within the scope of his employment and he was authorised to drive the vehicle, but did an unauthorised act of carrying the passenger in the "goods vehicle" and in such situation it is difficult to hold that the driver was not acting within the scope of his employment. Though the owner was not in the truck at the time of the accident, he is vicariously liable.

Point No. 2:

14. Section 147(1)(b) reads as under:

Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

xxx xxx xxx (b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)--

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

The words "injury to any person, including owner of the goods or his authorised representative carried in the vehicle" have been introduced by way of amendment by Act 54 of 1994 with effect from 14.11.1994 and, therefore, this amendment cannot be made applicable retrospectively to the insurance policy obtained prior to coming into force of the amendment and, therefore, it is obvious that in the present case the insurance company was not required to cover the risk of third party statutorily.

15. It is not disputed that the motor vehicle involved in the accident was duly insured with the respondent No. 3 and perusal of the policy would show that it was valid for the period which covered the date of the accident but it appears that by virtue of the said policy the provisions of the Motor Vehicles Act, 1939 do not enjoin any statutory liability (Sic. obligation) on the owner of the vehicle to

get the vehicle insured for any passenger travelling in the "goods vehicle" and the insurer would have no liability therefor.

16. The situation that emerges in the present case is that the deceased Laxman was travelling in the truck along with the goats, she-goats and hens, etc., but as a passenger and, therefore, the provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get the vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor. The learned Counsel for the insurance company rightly relied on the decision of the Apex Court in the case of National Insurance Co. Ltd. Vs. Ajit Kumar and Others, , wherein the Supreme Court referred to the earlier decisions in New India Assurance Company Vs. Shri Satpal Singh and Others, and the decision of five-Judge Bench in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, and held that "the difference" in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the new Act is of significance. A bare reading of the provisions make it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage".

17. Thus, it is obvious that the provisions of the Act do not enjoin any statutory liability (Sic. obligation) on the owner of the goods vehicle to get his vehicle insured for any passenger travelling in a "goods carriage" and the insurer would have no liability therefor. The Tribunal, in such circumstances, was justified in exonerating the insurance company from the liability to indemnify the owner and no interference into the finding on this point is warranted.

18. In the result, the appeal is allowed. The impugned award is modified and the owner of the vehicle along with the driver is held liable to pay the entire amount of compensation jointly and severally awarded by the Tribunal to the appellant/ legal representatives of the deceased with costs throughout.