
(2019) 04 BOM CK 0108

In the Bombay High Court

Case No : First Appeal No. 1757 Of 2018, Civil Application No. 6662 Of 2018

Kamal

APPELLANT

Vs

Archana Raju @ Rajaram Bhujbal And Ors

RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, 14(2), 14(2)(a), 14(2)(b)
Central Motor Vehicle Rules, 1989 — Rule 3, 9, 131, 132, 132(5)

Citation : (2019) 04 BOM CK 0108

Hon'ble Judges : Sunil K. Kotwal, J

Bench : Single Bench

Advocate : S.T. Shelke, S.V. Kulkarni

Judgement

1. This appeal is directed by original respondent No.1 in Motor Accident Claims Petition ("MACP", for short) No.559 of 2007 against the judgment and award passed by the Motor Accident Claims Tribunal ("Tribunal", for short), Ahmednagar, whereby compensation of Rs.4,44,000/- was awarded to claimant Nos.1 to 3 and joint and several liability to pay the compensation was saddled on the then opponent Nos.1 and 2 and direction was given to opponent No.2 - United India Insurance Company to first pay the compensation to the claimants and lateron recover it from opponent No.1, who is owner of the offending tanker. Respondent Nos.1 to 3 are original claimants and respondent No.4 is the original opponent No.2 Insurance Company. Hereinafter the parties are referred in accordance with their status in the proceedings before the Tribunal as claimants, owner of the offending vehicle and insurer of the offending vehicle.

2. Facts leading to institution of this appeal, in brief, are that on 12th January, 2007, deceased Raju @ Rajaram Dnyandeo Bhujbal was riding his motorcycle from Kedgaon towards Ahmednagar and that time, tanker bearing registration No.MH-18-C/7200 came from opposite direction and gave dash to the motorcycle of the deceased, resulting into his death. The accident occurred due to rash and negligent driving by the driver of the offending vehicle. Therefore, claimants filed

claim petition before the Tribunal for compensation. Direction was given to the insurer of offending vehicle to pay the compensation to the claimants and later on recover it from the owner of the offending vehicle, because owner of the offending vehicle committed breach of terms and conditions of policy of the insurance. In this appeal, the owner of the offending vehicle has only challenged the abovesaid direction.

3. Heard Shri S.T. Shelke, learned counsel for the owner of the offending vehicle and Shri S.V. Kulkarni, learned counsel for the insurer of the offending vehicle.

4. Learned counsel for the owner of the offending vehicle submits that on the date of accident, undisputedly, the offending vehicle was insured with the respondent - Insurance Company. He submits that the learned Tribunal erroneously held that owner of the offending vehicle committed breach of condition of policy of the insurance, on the ground that driver of the offending vehicle did not hold valid and effective driving licence on the date of accident i.e. 12th January, 2007. He submits that the offending vehicle was used for the transportation of hazardous or dangerous goods i.e. petrol and diesel. But at the time of accident, the tanker was empty.

5. Next contention of the learned counsel for the owner of the offending vehicle is that Section 14 of the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act") speaks regarding validity period of licence. He has drawn my attention to Section 14(2) (a) of the MV Act and Proviso thereto that driving licence to drive a transport vehicle carrying goods of dangerous or hazardous nature is effective for a period of one year and its renewal shall be for period of one year and the renewal is subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus. His contention is that driving licence of the driver of offending vehicle was renewed for a period from 8th December, 2006 to 15th December, 2009, in view of letter of the concerned R.T.O. (Exh-48) and the driver of offending tanker had undergone necessary refresher course. Therefore, it cannot be held that on the date of accident, the driver of offending vehicle did not hold valid and effective driving licence.

6. Next contention of learned counsel for the owner of the offending vehicle is that even the witness (DW2) examined by insurer has admitted in his cross-examination that the licence is renewed for the period of one year from the date of application. Therefore, the contents of letter (Exh-48) that driving licence of the driver of offending vehicle was renewed from 21st January, 2006 to 5th December, 2006 is in conflict with the oral evidence of DW2. He submits that the renewal of the driving licence should have been with effect from 21st January, 2006 to 20th January, 2007. He submits that due to typographical mistake, the R.T.O. informed that the driving licence of driver of offending vehicle was renewed only upto 5th December, 2006. Therefore, the insurer of offending vehicle cannot be absolved from its liability to pay the compensation to the claimants. He placed reliance on "New India Assurance Company Ltd., Aurangabad Vs. Chandrakala Madhukar Mengawde and others" [2018 (3) Mh.L.J.

949].

7. Next contention of learned counsel for the owner of the offending vehicle is that it is not necessary that there should be endorsement on the licence by authority that the driver was allowed to drive transport vehicle carrying hazardous or dangerous goods. He submits that as driver of offending vehicle had undergone refresher course on 14th January, 2007, the necessary compliance of Proviso to Section 14(2)(a) of the MV Act has been made by owner of the offending vehicle.

8. Learned counsel for the insurer submits that from the information submitted by Deputy R.T.O., Shrirampur dated 20th February, 2017 (Exh-58), it becomes clear that the driving licence of the driver of offending tanker to transport hazardous goods from that tanker was renewed for the period 21st January, 2006 to 5th December, 2006 and subsequently, it was renewed on 7th January, 2009 to 6th January, 2010. He submits that on the date of accident i.e. 12th January, 2007, the driving licence of the driver of the offending vehicle was not renewed by the concerned Deputy R.T.O. and therefore, on the date of accident, the driver of the offending tanker did not hold valid and effective driving licence.

9. Next contention of learned counsel for insurer is that even the driver of offending tanker did not undergo refresher course as mandated under Proviso to Section 14 (2) of the MV Act. He submits that the certificate of refresher course filed by the owner of the offending vehicle shows that he had undergone the refresher course on 14th January, 2007 and it was valid only upto 14th January, 2008. He submits that from this certificate, it becomes clear that the driver of the offending tanker was not holding valid and effective driving licence or had not undergone refresher course during the period of renewal of driving licence of the said driver. He placed reliance on "National Insurance Co.Ltd Vs. Kusum Rai and others" [2006 (4) SCC 250], to substantiate his contention that it was an obligation on the part of owner of the offending vehicle to take adequate care to see that driver had appropriate licence to drive the vehicle.

10. I have considered the respective contentions of learned counsel for both the parties. I have also gone through the provisions of Section 14 (2) of the MV Act and other relevant provisions. The crux of this matter is "whether, on the date of accident i.e. on 12th January, 2007, the driver of the offending vehicle, which is admittedly used for transport of hazardous goods, held valid and effective driving licence. If finding is yes, then joint and several liability can be fastened against owner of the vehicle as well as insurer of the vehicle". However, if on the date of accident the driver did not hold valid and effective driving licence to transport hazardous goods, in that event on account of breach of condition of policy of the insurance, the insurer of the vehicle can claim exemption from its liability to indemnify the owner of the vehicle. In such event, pay and recover order can be passed against the owner and insurer of the offending vehicle.

11. Undisputedly, even on the date of accident, the offending vehicle was used

for transport of hazardous goods like petrol and diesel. It is the contention of the owner that on the date of accident, before the accident, the petrol carried by that vehicle was unloaded and while returning, the accident occurred when the tanker was empty. Even if assuming that the tanker of the offending vehicle was empty at the time of accident, even then this situation is not sufficient to absolve the owner of the vehicle from its liability because even at the time of accident, the offending vehicle falls in the category of "transport vehicle" for transporting hazardous goods and therefore, driver of the vehicle required driving licence to transport hazardous goods.

12. Rule 132 of the Central Motor Vehicle Rules, 1989 (hereinafter referred to as "MV Rules") reads as under :-

"132. Responsibility of the transporter or owner of goods carriage.- (1) It shall be the responsibility of the owner of the goods carriage transporting any dangerous or hazardous goods to ensure the following, namely:-

(a) that the goods carriage has a valid registration to carry the said goods and the said carriage is safe for the transport of the said goods; and

(b) the vehicle is equipped with necessary first-aid, safety equipment, tool box and antidotes as may be necessary to contain any accident.

(2) Every owner of a goods carriage shall, before undertaking the transportation of dangerous or hazardous goods in his goods carriage, satisfy himself that the information given by the consignor is full and accurate in all respects and correspond to the classification of such goods specified in rule 137.

(3) The owner of a goods carriage shall ensure that the driver of such carriage is given all the relevant information in writing as given in Annexure V of these rules in relation to the dangerous or hazardous goods entrusted to him for transport and satisfy himself that such driver has sufficient understanding of the nature of such goods and the nature of the risks involved in the transport of such goods and is capable of taking appropriate action in case of an emergency.

(4) The owner of the goods carriage carrying dangerous or hazardous goods, and the consignor of such goods shall lay down the route for each trip which the driver shall be bound to take unless directed or permitted otherwise by the Police Authorities. They shall also fix a time table for each trip to the destination and back with reference to the route so laid down.

(5) It shall be the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of these rules.

(6) Notwithstanding anything contained in rules 131 and 132, it shall be sufficient compliance of the provisions of these rules if the consignor transporting dangerous or hazardous goods and the owner of the goods carriage or the transporter, abides by these conditions within six months after the date of

coming into force of the Central Motor Vehicles (Amendment) Rules, 1993."

13. Undisputedly, the offending vehicle was registered to carry the hazardous or dangerous goods. Sub-rule (5) of Rule 132 provides that it is the duty of the owner to ensure that the driver of the goods carriage carrying dangerous or hazardous goods holds a driving licence as per provisions of rule 9 of the MV Rules, which provides educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods, which mandates that the person driving a goods carriage carrying goods of dangerous or hazardous nature to human life shall, in addition to being the holder of a driving licence to drive a transport vehicle, also has the ability to read and write at least one Indian language out of those specified in the VIII Schedule of the Constitution and English and also possess a certificate of having successfully passed a course consisting of following syllabus and periodicity connected with the transport of such goods. This rule provides the period of training as three days and other particulars of syllabus, which is not relevant for deciding this appeal.

14. In addition to this, Section 14 of the MV Act deals with renewal of driving licence of motor vehicle, including the renewal of driving licence required for transport of hazardous goods. Section 14 of MV Act reads as under :-

"14. Currency of licences to drive motor vehicles. - (1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall, -

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years;

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence, -

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, -

(A) be effective for a period of twenty years from the date of issue or renewal; or

(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal;

Provided that every driving licence shall, notwithstanding its expiry under this sub- section, continue to be effective for a period of thirty days from such expiry."

15. A bare glance at Proviso to Section 14 (2) (a) makes it clear that for the renewal of driving licence of the driver of carriage carrying hazardous goods, special distinct provision is made under the statute. The Proviso to Section 14 (2) (a) mandates that the driving licence of the driver of transport vehicle carrying dangerous or hazardous goods can be renewed for the period of only one year and the renewal of such licence shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus. Section 14(2) (b) deals with other licences, excluding the licence for driving of hazardous carriage. No doubt, Proviso to Section 14(2) (b) provides that every driving licence shall, notwithstanding its expiry under the sub-section, continue to be effective for a period of thirty days from such expiry. However, benefit of this extension period of thirty days is not available for the driving licence held for driving of hazardous goods carriage, as this provision is applicable only for other vehicles excluding the hazardous goods carriage. Therefore, contention of learned counsel for the owner is not acceptable that driving licence of the driver of offending vehicle shall be treated effective and valid on the date of accident i.e. 12th January, 2007 though it was renewed upto 5th December, 2006.

16. While considering the validity of the licence on the date of accident, after perusal of record, it becomes clear that though copy of the driving licence of the driver of offending vehicle (Exh-36) is placed on record, as xerox copy of his driving licence was illegible, information was called from the Dy. R.T.O., Shrirampur regarding the validity of driving licence of driver of offending vehicle namely Sanjay Karbhari Wakchaure. The information submitted by Dy. R.T.O., Shrirampur (Exh-64) received by the Court clearly shows that the driving licence of driver Sanjay Karbhari Wakchaure was renewed from 21st January, 2006 to 5th December, 2006 and subsequently on 7th January, 2009 to 6th January, 2010. When this specific written information is received from Dy. R.T.O., Shrirampur, merely on the basis of admission given by Ratan Kasar (DW2) that licence was renewed for the period of one year, it cannot be inferred that driving licence of the driver of offending vehicle was renewed upto 20th January, 2007. Thus, contention of learned counsel for the owner is not acceptable that because Proviso to Section 14(2) (a) of the MV Act provides renewal of licence for the period of one year, we can presume that licence of driver of the offending vehicle was renewed from 20th January, 2006 to 20th January, 2007. In the circumstances, I have no hesitation to hold that on the date of accident i.e. 12th January, 2007, the driver of the offending vehicle did not hold driving licence to drive the goods vehicle carrying hazardous goods.

17. Even assuming that the driving licence of driver of offending vehicle was renewed upto 20th January, 2007, as contended by learned counsel for the owner of the offending vehicle, even then under Section 14(2) (a) and Proviso thereto, the renewal of the driving licence for hazardous goods carriage is

subject to condition that the driver undergoes one day refresher course. However, record shows that the driver of the offending vehicle had undergone the required refresher course for the period from 6th January, 2005 to 8th January, 2005 and that certificate was valid upto 8th January, 2006. The subsequent refresher course undergone by the driver was on 14th January, 2007 and it was valid upto 14th January, 2008. Thereafter, driver has undergone refresher course on 9th January, 2008 and it was valid upto 8th January, 2009. Thus, it emerges that after renewal of the driving licence to drive hazardous goods carriage, till the date of accident i.e. 12th January, 2007, the driver of offending vehicle did not undergo the refresher course as required under law. Because driver of the offending vehicle has undergone the refresher course on 14th January, 2007 i.e. after accident, it cannot be said that on the date of accident, the renewal of the driving licence of the driver of the offending vehicle was valid under Section 14(2) (a) Proviso. In other words, the validity of renewed driving licence for driving hazardous goods carriage, starts only after undergoing refresher course by the driver and not before it. Retrospective effect cannot be given to the refresher course certificate which is valid from 14th January, 2007 to 14th January, 2008. Thus, otherwise also, as upto the date of occurrence of the accident, the driver of the offending vehicle had not undergone the required refresher course as mandated under Section 14(2) (a) Proviso, only one conclusion is to be drawn that on the date of occurrence of the accident, the driver of the offending vehicle used for transport of hazardous articles, did not hold valid and effective driving licence.

18. Therefore, the insurer of the offending vehicle has duly proved that the owner of the offending vehicle had committed breach of condition of policy of the insurance on the date of accident.

19. Before parting with the judgment, I must make it clear that the law laid down in the case of "Mukund Dewangan Vs. Oriental Insurance Company Limited" [(2017) 14 SCC 663] is not relevant for deciding the dispute in the case at hand, as the ratio decidendi is altogether different. So also the ratio in the case of "New India Assurance Company Ltd., Aurangabad Vs. Chandrakala Madhukar Mengawde and others" (supra) is distinguishable for the reason that in that case, the driver of the offending vehicle had licence to drive light motor vehicle without an endorsement on his licence entitling him to drive a transport vehicle. Relying on the ratio in the case of "Mukund Dewangan Vs. Oriental Insurance Company Limited" (supra), this court held that absence of such endorsement on the driving licence of driver is no ground for Insurance Company to shirk its liability in respect of compensation.

20. On the other hand, in "National Insurance Co.Ltd Vs. Kusum Rai and others" (supra), the Apex Court ruled that it is the obligation on the part of owner to take adequate care to see that driver has an appropriate licence to drive the vehicle. Even in "Gautam Filling Station Vs. Mannu Singh and another" [2017 (1) T.A.C.490 (All.)], the Allahabad High Court held that driver of

tanker carrying hazardous goods must have authorisation to drive transport vehicle carrying dangerous and hazardous goods.

21. In view of above discussion, I have no hesitation to hold that as the owner of the offending vehicle committed breach of condition of policy of the insurance, the Tribunal rightly exonerated the insurer of the offending vehicle and the Tribunal has rightly given direction to the insurer of the vehicle to first pay compensation to the claimants and recover it from the owner of the offending vehicle. I do not find any illegality in the judgment and award passed by the Tribunal, which calls for interference by this Court. Therefore, the First Appeal fails.

22. First Appeal No.1757 of 2018 is dismissed. In view of dismissal of First Appeal, Civil Application No.6662 of 2018 does not survive and hence, stands disposed of.

23. The statutory deposit amount, deposited by the appellant in this Court be refunded to the appellant.

24. The parties to bear their respective costs of the appeal.

The effect and operation of this judgment and order is stayed for a period of eight weeks from today, at the request of learned counsel for the appellant.