

(1997) 04 KAR CK 0003
In the Karnataka High Court
Case No : M.F.A. No. 1473 of 1993

Manager, United India Insurance Co. Ltd.	APPELLANT
Vs	
Hanamantha Rangappa Nayak and Others	RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 149 (2) (a) (ii), 173

Citation : (1998) 2 ACC 778 : (1998) ACJ 1333

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : S.V. Tilgul, for the Appellant; Basavaraj Kareddy, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This appeal is by the insurance company u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 3.5.1993 delivered by Mr. Shankar Murgad, Motor Accidents Claims Tribunal-I (the District Judge), Raichur, in M.V.C. No. 253 of 1992 awarding as total compensation a sum of Rs. 35,000/- with interest at the rate of 6 per cent per annum from the date of petition till the date of realisation to the claimants/respondents fastening the liability jointly and severally on the insurance company, the owner and driver of the vehicle and directed them to pay the compensation within two months.

2. The facts of the case in brief are that on 27.6.1992 at about 7.00 p.m. the accident in question took place near Lakkamadinni Indira Nagar on Manvi-Sirwar road on account of the rash and negligent driving of the lorry bearing No. CNP 3777 by its driver, the respondent No. 1, as a result of which the claimant's son Shivappa died. The Tribunal held that the accident was due to the rash and negligent driving of the vehicle which ran on the body of the deceased and the Tribunal further found that the claimants were entitled to the compensation. Dealing with issue No. 3, which was to the effect that whether it is proved by respondent No. 3 that the respondent No. 1 was not having valid driving licence at the time of accident, the Tribunal passed the award recording its finding as

under:

It is contended by respondent No. 3 that driver had no driving licence at the time of accident, but the same has not been established by material on record.

The Tribunal held that the driver had a valid driving licence at the time of the accident and therefore it held that the respondent No. 3, insurance company, is liable to pay the entire amount of compensation to the claimants. Feeling aggrieved by the said award, the insurance company has come up in this appeal.

3. I have heard Mr. S.V. Tilgul, learned Counsel for respondent No. 3 and Mr. S.A. Kalagi, learned Counsel for the owner and driver of the vehicle. Learned counsel for the appellant has contended that the insurance company was not liable to pay any compensation on account of breach or violation of terms of the insurance policy. Inviting my attention to the provisions of Section 149(2)(a)(ii) of Motor Vehicles Act, 1988, the learned Counsel contended that the breach of condition in the present case was that the vehicle in question was a "heavy goods vehicle" and the same was allowed by its owner to be driven by a person who was not duly licensed to drive such a vehicle. The learned Counsel has invited my attention to the driving licence of the driver respondent No. 1 and contended that in the list of vehicles for which licence was issued entitling or permitting him to drive, the "heavy goods vehicle" is not mentioned and therefore the Tribunal should not have held that the respondent No. 1 was holding a duly valid licence to drive a "heavy goods vehicle". That being the position, it is contended that u/s 10 and Section 149(2)(a) of the Motor Vehicles Act, 1988, the insurance company could not have been held liable to pay compensation. The counsel contended that the Tribunal has committed a substantial error apparent on the face of the record in fastening the liability on the insurance company. He has also contended that the liability to pay the entire compensation is only on the owner and driver of the vehicle and therefore the award may be modified to the extent that the liability fastened on the insurance company may be held as illegal and this Court may set aside that part of the award.

4. The contentions of the learned Counsel for the appellant have been hotly contested by Mr. S.A. Kalagi, learned Counsel for respondent Nos. 3 and 4 and submitted that the burden did lie on the insurance company to prove the breach or violation of the terms of the contract by the insured and not on the owner or driver of the vehicle. The counsel pointed out that no evidence has been produced by the insurance company in this behalf. The counsel further contended that there is no real and substantial distinction between the "heavy passenger vehicle" and a "heavy goods vehicle" and according to him, both the vehicles, as per the definition given in the Act, are almost of the same nature as their unladen weight exceeds 12,000 kg. The counsel invited my attention to Sections 2(16) and 2(17) of the Act. He further contended that when Section 10 is read along with Section 147, this aspect of the matter also will have to be taken into consideration. As such, the learned Counsel contended that the finding of the Tribunal to the effect that the respondent No. 1 was authorised to drive "heavy

passenger vehicle" and no separate licence as such to drive the "heavy goods vehicle" was required and therefore the Tribunal was justified in fastening the liability for payment of the compensation amount on the insurance company.

5. Mr. Basavaraj Kareddy, learned Counsel for respondent Nos. 1 and 2 supported the arguments of learned Counsel for the owner and driver of the vehicle. He contended that the person holding a "heavy passenger vehicle" licence should be deemed to be licensed to drive a "heavy goods vehicle" also.

6. I have applied my mind to the contentions of the learned Counsel for the parties. Section 149 of the Act provides the duty and responsibility of the insurer to satisfy the judgment and award against the insured in respect of third party risk and the responsibility has been defined as the same of a "judgment debtor" in respect of the amount of award, costs and interest to be paid under the award. Sub-section (2) of Section 149 of the Act provides two conditions subject to which the award is held to be binding on the insurer. Firstly, notice of the commencement of the proceedings in which the award is passed, should be given to the insurer and once the insurer has been served with the notice, he has got a right to put his defence against the action sought on any of the grounds mentioned therein. One of the grounds is breach of condition in the policy and particularly the conditions specified in Section 149(2)(a)(ii). Sub-clause (ii) of Clause (a) of Sub-section (2) provides that breach of the conditions may also take place if the vehicle is allowed to be driven in violation of condition No. 2, namely, the condition excluding the driving of the vehicle by the person who is not duly licensed or on its being allowed to be driven by a person who is disqualified from holding or obtaining a driving licence during the period of disqualification. It means, if an insured allowed his vehicle to be driven by a person who is not duly licensed to drive the vehicle, then he may be said to have committed breach of conditions of the policy.

7. It is admitted between the parties that the vehicle had been insured. But, what were the terms of the insurance and whether there was any term in the insurance policy to the effect that the vehicle in question shall not be driven and shall not be allowed to be driven by a person who is not duly licensed to drive it, has not been established. Even, there is failure to produce the policy itself. Neither the insurance company nor the insured have produced the insurance policy. If the same had been produced, it would have revealed if there is a term or condition that the vehicle shall not be allowed to ply or driven by a person who is not duly licensed. We cannot proceed on assumption as the Tribunal has done. No doubt, if there is a term that the vehicle shall not be allowed to be driven by a person who is not holding valid licence and if the insured allowed it to be driven by such a person, in such a case the insurance company may get rid of the liability to pay the compensation.

8. Primarily the dispute is between the claimants/dependants of the deceased as the case may be, on the one side and the owner of the vehicle and the insurance company on the other side. When the company is trying to save its skin from the

liability, it was its duty to produce the insurance policy. No doubt, u/s 10 of the Act when a licence is issued, it has to be issued in a form and it must indicate which categories of the vehicles are permitted to be plied or driven by the person to whom the licence is issued. When law requires this specification u/s 10 of the Act, then it is the duty of the authorities to specify the type of vehicles which the person is entitled to drive under the licence. As a consequence thereof, it can be said that a person holding a licence is only entitled to drive the vehicles specifically mentioned in the licence and no other vehicle unless he has got another licence for those vehicles. In the present case as the very basis of defence has not been established that under the terms of policy there was a condition prohibiting the insured from allowing any person to drive the vehicle in question if he had no licence duly issued for the purpose, in my opinion, the question of breach cannot be said to have been established by the insurance company. The burden was on insurance company to establish the condition first, and then its breach by the insured; whether in the present case the insured can be said to have committed breach of conditions when the respondent No. 1 was allowed to drive the vehicle in question.

9. In my opinion, though I am confirming the findings of the Tribunal that though the driver had driving licence for vehicles mentioned therein including "heavy passenger vehicle" but the question whether respondent No. 3 in the appeal was having duly issued licence to drive heavy goods vehicle or not, or whether there was any breach of condition, I hold that the alleged condition has not been established by production of insurance policy and I do not go into the details of the contention raised by the learned Counsel for the appellant with regard to Annexure R-1, the licence. Thus considered in my opinion in establishing the basic condition, the breach of which is alleged, as appellant has failed, I hold that the burden of proof was there on the insurance company to prove the condition and breach and it has failed to prove the defence taken by it. Therefore, the Tribunal was justified in passing the award making the insurance company also liable to pay the compensation in view of Section 149(1) of the Act.

10. In the result, the appeal as such is hereby dismissed. Costs are made easy.