

(2005) 07 GUJ CK 0008
In the Gujarat High Court
Case No : First Appeal No. 122 of 1985

Manguben and Others

APPELLANT

Vs

Bhuptaji R. Parmar and Others

RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 13(2), 149(2)(A), 96(2)
Motor Vehicles Act, 1988 — Section 2(21)

Citation : (2006) ACJ 2187 : (2006) 1 GLR 746

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : R.K. Mansuri, for Petitioner Nos. 1, 2, 3, 4 and 5, for the Appellant;
K.M. Parikh, for the Respondent

Judgement

A.L. Dave, J.—This First Appeal arises out of a judgment and award by M.A.C. Tribunal, Sabarkantha at Himmatnagar rendered in M.A.C. Petition No. 303 of 1982.

2. The appellants had preferred the said claim on account of accidental death of Dhiraji Sonaji and had claimed an amount of Rs. 75,000/-. It was the case of the claimants - appellants that the deceased, while travelling in Trailer No. GRS-9986 attached to Tractor No. GRG-8837, met with an accident in the outskirt of village Berna.

3. The claim petition was opposed to by the insurer of the vehicle ? respondent No. 2 -New India Insurance Co. Ltd. - contending that the driver of the vehicle did not possess a valid driving licence to drive a tractor.

4. The Tribunal, after considering the evidence led by parties, by the impugned judgment and award rendered in M.A.C. Petition No. 303 of 1982 and other cognate matters, passed an award of Rs. 41,000/- in favour of the claimants but, came to a conclusion that only the driver and the owner of the vehicle involved in the accident were jointly and severally liable to pay the said amount of

compensation with interest @ 6% with proportionate cost. The Tribunal also came to a conclusion that respondent No.3 - the Insurer of the vehicle is not liable to pay the compensation and, therefore, the claim against the said Insurance Co. was dismissed. Aggrieved by the said judgment and award, the claimants have preferred this appeal.

5. Learned advocate Mr. Mansuri for the appellants is heard. He submitted that it is not the case that the driver of the tractor did not have any licence at all. He had a valid driving licence for driving a light motor vehicle and whether that licence is valid or not for driving a tractor and whether it amounts to breach of policy condition is a dispute between the Insurer and the Insured. Mr.Mansuri submitted that so far as the claim of 3rd party is concerned, the insurer cannot be escape from its liability. It has to make good the award and then, if deemed proper, recover the same from the insured. He has in support of his contention relied on the decision in the case of Bhailalbai Garbabhai Vasava and Another Vs. Munikhan Ismailkhan Sayed and Others, He submitted that the judgment and award to the extent that it exonerates the Insurance Co. from liability be set aside and the Insurance Co. be directed to make good the awarded amount to the claimants.

6. Though the matter has been notified on final hearing board on number of occasions and though the notice of admission has been served on respondent nos. 1 and 2, they have chosen not to contest this appeal. Respondent No. 3 is represented by learned advocate Mr.K.M.Parikh, who has also chosen not to appear before this Court consistently. Even to-day, even on 4th round, he has chosen not to appear before this Court or to contest this appeal. The appeal is of 1985 and despite an award of the Tribunal, the claimants have yet not seen the colour of compensation money. Therefore, the matter must proceed ex-parte against the respondents.

7. The appeal is preferred on the solitary ground of liability of the Insurance Co. The Tribunal has come to conclusion that the driver of the tractor had a valid driving licence for light vehicle which cannot be said to be a valid licence for driving a tractor which would amount to breach of policy condition and, therefore, dismissed the claim against the Insurance Co.

7.1 Aggrieved by the said decision of the Tribunal, the original claimants have preferred this appeal with a prayer that the Insurance Co. should also be saddled with liability to pay compensation. It is the case of the appellants that tractor would be included in the definition of the light motor vehicle and, therefore, respondent No. 1 could not have been held to be not authorized to drive a tractor when he held a valid licence for light motor vehicle. It is also the contention of the appellants that apart from the above aspect, even if it is concluded that the driving licence held by respondent No. 1 was not valid to cover driving of a tractor to which the trailer is attached, then also so far as liability towards the appellants is concerned, Insurance Co. cannot escape and it may pursue its remedy against the owner of the vehicle separately but, the award has to be

against the insurer as well.

7.2 Learned advocate Mr.Mansuri for the appellants has relied on several decisions. One of them being Bhailalbhai Garbabhai Vasava and Another Vs. Munikhan Ismailkhan Sayed and Others, and National Insurance Co. Ltd. Vs. Swaran Singh and Others, . He submitted that the judgment and award, therefore, may be modified to the extent that the liability to pay compensation would be joint and several of all the respondents.

8. This Court has examined the R & P and it is worth a note that as per policy, the policy would be valid provided the person driving the vehicle holds a valid driving licence at the time of accident. The driving licence (duplicate) is produced at Exh.22 which is issued by Regional Transport Authority, Himmatnagar. A plain reading of that document would indicate that the holder of the licence was authorized to drive light motor vehicles, medium motor vehicles and heavy goods vehicle (HGV)throughout India for a period from 9.12.1980 to 8.12.1983 which would cover the date of accident.

9. Now, to appreciate the contention raised by learned Advocate for the Insurance Co. before the Tribunal and legality of its acceptance by the Tribunal regarding want of a valid driving licence by the person driving the vehicle, the R & P of the Tribunal are examined.

9.1 It has to be noted that in the written statement Exh.15 filed by the Insurance Co., no plea regarding want of valid driving licence is taken. The Insurance Co. has not led any documentary or oral evidence in this regard by examining any witness from Regional Transport Authority to show that the duplicate driving licence produced on record by respondent No. 2 is not genuine or bogus or fabricated or invalid for driving the vehicle in question. There is no other evidence to support the argument that the person driving the vehicle had no valid driving licence.

9.2 The argument of the learned advocate for the Insurance Co. before the Tribunal, therefore, appears to be an afterthought. Differently put, there is neither pleading nor evidence to show that respondent No. 1's licence was not valid for driving a tractor trailer. The Tribunal, therefore, has run into an error in accepting the plea of the learned advocate for the Insurance Co. raised for the first time during the course of arguments.

10. Apart from this aspect, even if the plea is examined on the touch stone of statutory provisions, then also it could not have been accepted.

10.1 According to the definition of light motor vehicle as appearing in Section-2 Sub-Section 21 of the M.V. Act of 1988 and Section-2 Sub-Section 13 of the Motor Vehicles Act, 1939, a "light motor vehicle" would mean a transport vehicle or omnibus. the gross vehicle weight of either of which or a motor car or tractor or road-roller unladen weight of any of which does not exceed 7500 kilogram. The weight of 7500 kilogram is enhanced from 6000 kilogram by Amendment Act

(54 of 1994). At the time of the accident, it was 4000 kilogram as such. It is, thus, clear that tractor would be included in the definition of light motor vehicle. There is no evidence on record to show as to what was the unladen weight of the vehicle involved in the accident and no inference can be drawn.

10.2 Apart from that, even if it is assumed that it was more than permissible unladen weight, it would only be a technical breach of provisions of the Motor Vehicles Act and it cannot be considered as sufficient to exonerate the Insurance Co. from its liability arising out of the insurance policy. Respondent No. 1 driver of the vehicle is shown to be holding a valid driving licence to drive a light motor vehicle, a medium motor vehicle and heavy goods vehicle. He cannot be said to be a person not authorized to drive a vehicle. It would be appropriate to refer to decision in the case of National Insurance Co. v. Swaran Singh and Ors. (Supra) where it has been held that whether a plea is taken by the Insurance Co. about breach of policy condition on account of want of a valid driving licence, the burden of proof lies on the Insurance Co. to establish such a breach and as discussed above, the Insurance Co. has neither taken a plea in the written statement nor has adduced any evidence in support of such a plea which is taken by the learned advocate at the time of the arguments for the first time. The Insurance Co. could not have been exonerated from the liability of paying compensation as indemnifier, once it is held that the claimant is entitled to claim compensation from the driver and the owner of the vehicle involved in the accident. In the said judgment of National Insurance Co. v. Swaran Singh (Supra), the Apex Court took into consideration the provisions contained in Section 149(2)(A)(ii) equivalent to Section 96(2)(a) of the Motor Vehicles Act, 1939 and observed that where a driver possessing licence for one type of motor vehicle was found to be driving another type of motor vehicle, the insurer will not be allowed to avoid its liability merely on technical breach of condition concerning driving licence. Minor breaches of licence conditions are inconsequential so far as the benefit of coverage of insurance to third party are concerned. In Para.82 of the said judgment, it is observed, thus :

... 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 on 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 fact, 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.

10.3 If the facts of the present case are examined in light of these observations, the evidence of claimant Manguben at Exh.30 does not throw any light on question as to how the accident occurred as she is not an eye witness to the

incident. Affidavits of claimants - Jawanji Amthaji Parmar and Samuben Bhathiji Parmar at Exh.33 and 35 respectively would show that the accident occurred while the tractor-trailer was being driven out of a mine and proceeding towards north. It was being driven by the respondent no. 1 at a high speed in a rash and negligent manner. As a result of which, it turned turtled. Barring this, general allegations of rash and negligence driving, there is no material to know exact cause of accident. As such, it is not possible to infer, attribute or relate cause of accident to the alleged contention.

11. In the written statement by respondent no. 2 Exh.19, the averments made in the claim petition are denied and it is contended that respondent No. 1 did possess a valid driving licence. In the written statement by the Insurance Co., no specific plea is taken either regarding want of valid driving licence or to show that want of valid driving licence on part of the driver contributed to the cause of accident. Thus, examining the plea of the learned advocate for the Insurance Co. taken before the Tribunal, for the first time, at the time of arguments only, it has to be held that such plea could not have been entertained by the Tribunal. Even if it is factually and legally examined, then also the driver did possess a valid driving licence viz. a valid driving licence for light motor vehicle, medium motor vehicle and heavy motor vehicle which would include tractor. There is no evidence to show unladen weight of the vehicle in question. There is no evidence to show that the accident occurred because of want of valid driving licence and no other cause. The Tribunal could not have exonerated the Insurance Co. from its liability on such verbal technical contention in total absence of pleading and evidence. In the opinion of this Court, therefore, the conclusion of the Tribunal that the Insurance Co. cannot be saddled with the liability to pay compensation was erroneous and cannot be upheld.

12. The appeal, therefore, deserves to be allowed to the extent that the liability to pay compensation would be joint and several of all the respondents including respondent No. 3. The judgment and award of the Tribunal stands confirmed with modification that respondent No. 3, the Insurance Co. shall also be liable jointly and severally to pay compensation as per the award. Appeal is allowed to the aforesaid extent. Direct service is permitted.

13. At this stage, it is brought to the notice of this Court by learned advocate for the appellants that appellant No. 2 has expired during the pendency of this appeal and, therefore, he seeks permission to delete her name. Permission granted. Amendment to be carried out forthwith.