(2019) 08 BOM CK 0086

In the Bombay High Court

Case No : First Appeal No. 530 Of 2014

M/s Maratha Cement Works — APPELLANT

Vs

Vaishali And Ors — RESPONDENT

Date of Decision : 23-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 427
Motor Vehicles Act, 1988 — Section 14, 14(2), 14(2)(a), 14(2)(b), 140, 171, 184

Citation : (2019) 08 BOM CK 0086

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : Rajeshree Dewani, Sahil Dewani, Y.B. Mandpe, H.N. Potbhare, S.D. Zoting

Final Decision : Allowed

Judgement

1. The present appeal is against the judgment of the Motor Accident Claims Tribunal (MACT), Chandrapur in Motor Accident Claims Petition No. 120/2006.

2. Deceased Kashinath Dandekar, aged about 37 years was serving as Police Constable in Police Station, Gondpipri. His monthly salary was Rs. 9,671/-. On 5-6-2006, he was proceeding from Chandrapur to Ballarsha on his motorcycle bearing no. MH-34-T-9833. When he reached near Nandgavan Fata, offending Tanker bearing no. MH-34-M-4921 came in high speed in a rash and negligent manner and gave dash to deceased Kashinath from back side. Due to accident, Kashinath died on the spot. Police Station Officer, Ramnagar, Chandrapur registered an offence punishable under Sections 279, 304-A, 427 of the Indian Penal Code and Section 184 of the Motor Vehicles Act against the driver of offending vehicle which was owned by the appellant (Respondent No. 1 in Claim Petition) and insured by respondent no. 5 (Respondent No. 2 in Claim Petition). The parties are referred by their nomenclature in the claim petition.

3. The claim petition was filed by the legal heirs of deceased claiming compensation of Rs. 10,00,000/-. The respondent nos. 1 and 2 i.e. owner and

Insurance Company appeared and filed their respective written statements. The Insurance Company raised defence that driver of offending vehicle was not having valid driving licence to drive transport vehicle and, therefore, Insurance Company is not liable to pay the amount of compensation. Learned MACT recorded its finding that driver of the offending vehicle was not having valid driving licence, therefore, Insurance Company i.e. the respondent no. 2 is not liable to pay compensation. Accordingly, petition was allowed and the respondent no. 1 (appellant) was directed to pay compensation of Rs. 19,18,570/- along with interest @ 12% per annum from the date of petition i.e. 3-7-2006 till realization of full amount.

4. Owner of the offending vehicle i.e. appellant has challenged the impugned judgment in this appeal.

5. Heard learned Advocate Mrs. Rajeshree Dewani for the appellant. She has pointed out Section 14 of the Motor Vehicles Act and submitted that driving licence, Exhibit 9 was issued on 6-7-1994. It was renewed from time to time and it was lastly renewed on 18-2-2006. It was valid till 17-2-2009. Accident took place on 5-6-2006. Therefore, the driver was having valid licence in view of Section 14 of the Motor Vehicles Act. Learned Advocate has submitted that renewal of driving licence to drive transport vehicle is effective for a period of three years. Driving licence, Exhibit 9 was effective for a period of three years and, therefore, it was issued to drive a transport vehicle. Learned Advocate has submitted that the Insurance Company failed to establish the defence. The burden is always on the Insurance Company to prove breach of policy condition. Mere absence, fake or invalid driving licence at relevant time not in themselves available defence. In support of her submissions, she pointed out decision in the case of National Insurance Co. Ltd. Vs. Swaran Singh and ors. [AIR 2004 SC 1531].

6. Learned Advocate for the appellant has pointed out judgment in the case of Oriental Insurance Company Limited Vs. Angad Kol and ors. [(2009) 11 SCC 356] and submitted that licence granted to the driver of the offending vehicle vide Exhibit 9 was valid driving licence as per Section 14 of the Motor Vehicles Act. Learned Advocate has submitted that fundamental breach of policy condition is not proved by the Insurance Company. In support of her submissions, she pointed out decision in the case of Lakhmi Chand Vs. Reliance General Insurance [(2016) 3 SCC 100].

7. Learned Advocate Mrs. Dewani has submitted that as a general rule, the interest ought not to have been granted more than 7.5% but learned tribunal has granted interest more than 7.5% i.e. 12%. In support of her submissions, she pointed out decision in the case of Dharampal and ors. Vs. U.P. State Road Transport Corporation [(2008) 12 SCC 208] and judgment of this Court in First Appeal No. 375/2013 (Dnyaneshwar @ Umesh Dhanraj Agale Vs. Raju S/o Ramchandra Sakhare and ors.) decided on 4-7-2019.

8. Heard learned Advocate Shri Zoting for the respondent no. 5 - Insurance Company. He has submitted that Exhibit 9 i.e. copy of driving licence clearly shows that the driver was not having licence to drive transport vehicle. Therefore, there is fundamental breach of policy condition. Hence, Insurance Company is not liable to pay compensation.

9. Heard learned Advocate Shri Mandpe holding for Shri H. N. Potbhare, learned Advocate for the respondent nos. 1 to 4. He has supported the arguments advanced by the side of appellant.

10. There is no dispute about the accident. There is no dispute about the death of deceased. There is no dispute about the amount of compensation granted by the MACT. The dispute is only in respect of liability and rate of interest.

11. From the perusal of copy of driving licence, Exhibit 9, it appears that it was issued on 6-7-1994. It was renewed from time to time and lastly, renewed on 18-2-2006 and was valid up to 17-2-2009. From the contents of licence, it appears that the licence was for driving motor vehicle other than transport vehicle.

12. Section 14 of the Motor Vehicles 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 such 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.

13. As per Section 14(2), once the 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. Exhibit 9 i.e. driving licence issued to the driver of offending vehicle was effective for a period of three years. Therefore, it is presumed that it was issued to drive a transport vehicle.

14. As per Section 14(2), sub-clause (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 such issue or renewal; or ......

From the reading of Section 14 sub-clause (2)(a), it is clear that when the licence to drive a transport vehicle issued or renewed, then it is effective for a period of three years. Exhibit 9 was issued on 6-7-1994. It was renewed from time to time and lastly on 18-2-2006, it was renewed and effective till 17-2-2009.

15. Hon'ble Apex Court in the case of Oriental Insurance Company Limited Vs. Angad Kol and ors. (supra) has held as under :-

"Although the definition of the "light motor vehicle" brings within its umbrage both "transport vehicle" or "omnibus", indisputably, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists. The distinction between a "light motor vehicle" and a "transport vehicle" is evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a "transport vehicle" and a "passenger vehicle" can also be noticed from Section 14 of the Act. Section 14(2) provides for duration of a period of three years in case of an effective licence to drive a "transport vehicle" whereas in case of any other licence, it may remain effective for a period of 20 years. An amendment in the Central Motor Vehicles Rules was carried out on or about 28-3-2001 being JSR No. 221(e) in terms whereof, inter alia, a licence which is to be granted in Form 6 requires a specific authorisation to drive a "transport vehicle". The licence was granted to Respondent 6, in 2003 i.e. after the said amendment came into force. The accident, as noticed hereinbefore, took place on 31-10-2004. Licence having been granted for a period of 20 years, a presumption, therefore, arises that it was meant for the purpose of a vehicle other than a transport vehicle. Had the driving licence been granted for transport vehicle, the tenure thereof could not have exceeded to three years."

16. In view of the above cited judgment, licence, Exhibit 9 was renewed for a period of three years and, therefore, in view of Section 14 sub-clause (2)(a) of

the Motor Vehicles Act, it is meant to drive transport vehicle. Hence, there is no any fundamental breach of insurance policy on the part of the appellant i.e. owner of the vehicle.

17. In the case of National Insurance Co. Ltd. Vs. Swaran Singh and ors. (supra), the Insurance Company may raise defence i.e. breach of policy condition, disqualification of driver/invalid driving licence etc. Burden of proof to establish breach is upon Insurance Company. Mere absence, fake or invalid driving licence at relevant time not in themselves available defences. The Insurance Company failed to discharge the burden. On the other hand in view of Section 14(2)(a) of the Motor Vehicles Act, Exhibit 9 is the valid driving licence to drive a transport vehicle.

18. In the case of Lakhmi Chand Vs. Reliance General Insurance (supra), the Hon'ble Apex Court has held that to avoid liability, Insurance Company must not only establish defence claimed, but also establish that breach of policy was so fundamental that it ended contract/that breach concerned caused the accident. Mere factum of carrying more passengers than permitted capacity in goods carrying vehicle by insured does not amount to fundamental breach of terms of policy.

19. In the present case, the driver of the offending vehicle was having licence to drive the motor vehicle from 6-7-1994. It was renewed from time to time and lastly, it was renewed on 18-2-2006 and it was valid till 17-2-2009. The accident took place on 5-6-2006. This itself shows that the driver of the offending vehicle was having long experience to drive transport vehicle. The accident took place due to his rash and negligent act and not because of licence. Therefore, Insurance Company failed to prove fundamental breach on the part of owner of the vehicle.

20. It is clear from the driving licence, Exhibit 9 filed on record that driver of offending vehicle was having licence to drive motor vehicle. It was firstly issued on 6-7-1994 and renewed from time to time. It was renewed on 18-2-2006 and effective till 17-2-2009. This itself shows that the driver was having valid licence to drive the vehicle. The contents of Exhibit 9 shows that it was for driving motor vehicle other than transport vehicle but it is issued/renewed for a period of three years and as per Section 14(2)(a) of the Motor Vehicles Act, it is meant for to drive transport vehicle. Learned MACT not considered Section 14 in its real perspective and wrongly exonerated the Insurance Company. There was no any fundamental breach proved by the Insurance Company on the part of the appellant/owner. Therefore, Insurance Company is liable to pay amount of compensation.

21. In respect of interest, the learned MACT has granted interest at the rate of 12% per annum. In the case of Dharampal and ors. Vs. U.P. State Road Transport Corporation (supra), the Hon'ble Apex Court has held as under that "interest is compensation for forbearance or detention of money which ought to

have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the Court to determine such rate of interest. The accident in the present case had taken place on 1-9-2004 and the Tribunal had passed the award on 18-5-2005. Rate at which the interest is to be awarded would normally depend upon the bank rate prevailing at the relevant time. Since in S. Rajapriya case, (2005) 6 SCC 236 decided in the month of April, 2005, the prevailing rate of interest on bank deposits was found and held to be 7.5% per annum, it is appropriate to award the same rate of interest, as the same was the prevailing rate of interest on the date of the passing of the award i.e. 18- 5-2005 in the present case. Hence appellants entitled to interest @ 7.5% per annum from the date of claim application to date of payment."

22. In view of the above cited judgment and the present rate of interest of the bank, the claimants are entitled for interest at the rate of 7.5% per annum from the date of claim petition till the realization of whole amount. In that view of the matter, the appeal is allowed.

23. The impugned judgment is hereby quashed and set aside in respect of liability fastened on the appellant and in respect of rate of interest. The judgment in claim petition is modified as under :-

"1. The petition is hereby allowed with costs against respondent no. 2 (The Branch Manager, The New India Assurance Co. Ltd. Through Branch Chandrapur, District : Chandrapur).

2. The respondent no. 2 - Insurance Company shall pay Rs. 19,18,570/- towards compensation to petitioners along with interest @ 7.5% from the date of petition i.e. 3-7-2006 till its full realization including amount of no fault liability under Section 140 of the Motor Vehicles Act."

Rest part of the judgment is maintained as it is.

24. Respondent - Insurance Company shall deposit the amount of compensation before the Motor Accident Claims Tribunal, Chandrapur within a period of two months.

25. The amount of compensation, if any, deposited by the appellant/owner be refunded.

26. Pending civil applications are accordingly disposed of.

