(2012) 11 DEL CK 0036

In the Delhi High Court

Case No : MAC. APP. 262 of 2011

M/s. National Insurance Co. Ltd. APPELLANT

Vs

Phool Devi and Others RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Citation : (2012) 11 DEL CK 0036

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : D.K. Sharma, for the Appellant; Sumeet Gabha, Advocate for Respondent Nos. 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The Appellant National Insurance Company Limited takes exception to a judgment dated 15.01.2011 passed by Motor Accident Claims Tribunal (the Claims Tribunal) solely on the ground that while awarding a compensation of Rs. 2,23,040/- in favour of the Respondents No. 1 to 7, the Appellant was made liable to pay the compensation, in spite of the fact that Respondent No. 8, driver of the TSR No. DL-1RC-0720, possessed a driving licence to drive only LMV (NT) and a motorcycle and was not competent to drive a transport vehicle (commercial). Thus, the Appellant was entitled to recovery rights. The learned counsel for the Appellant contends that the reliance on National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, and a judgment of this Court in MAC Appeal No. 142/2009 titled Jai Bhagwan Rana v. The Oriental Insurance Co. Ltd. & Ors. decided on 12.05.2009 was misplaced as the judgment in Annappa Irappa Nesaria (supra) shall save a person driving a light motor transport vehicle only upto 28.03.2001. It is stated that in the instant case the accident occurred on 19.08.2005 thus the driver Respondent No. 7 was not competent to drive a TSR on the strength of a licence to drive LMV (non transport).

2. The case is squarely covered by a judgment of this Court in Shashi Bhushan &

Ors. v. National Insurance Company Limited MAC. APP. 517 of 2007, decided on 31.05.2012. Paras 9 to 11 of the report are extracted hereunder:-

9. In National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, , His Lordship Mr. Justice S.B. Sinha (as he then was) drew a distinction between the validity of a licence for LMV, to drive a light goods carriage or a light passenger vehicle before amendment in form 4 prescribed under Rule 2 (e) in the Central Motor Vehicles Rules, 1989 (the Rules). Before the amendment in 2001 the entries Medium Goods Vehicle and Heavy Goods Vehicle existed which have been substituted by a "transport vehicle". It was held that a person holding a licence for Light Motor Vehicle after 28.03.2001 would not be competent to drive a "transport vehicle". In the aforesaid case, the accident occurred on 09.12.1999. It was in that context that it was held that the driver by holding a valid licence for LMV was authorized to drive a Light Goods Vehicle as well. In this case, the accident took place on 21.04.2005 and thus the driver who was holding a driving licence to drive a Light Motor Vehicle was not competent to drive a transport vehicle. Paras 12 to 17 of the report are extracted hereunder:-

12. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

13. The word "Form" has been defined in Rule 2(e) to mean a Form appended to the rules.

I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Medium goods vehicle

(g) Heavy goods vehicle

(j) Motor vehicles of the following description:

After amendment the relevant portion of Form 4 reads as under:

I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Transport vehicle

(j) Motor vehicles of the following description:..

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium good vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

15. "Light Motor Vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof read as under:

Authorisation to drive transport vehicle

Number.... Date....

Authorised to drive transport vehicle with effect from.... Badge number...

Signature...

Designation of the licensing authority Name and designation of their authority who conducted the driving test.

16. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for ''medium goods vehicle'' and ''heavy goods vehicle''. The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods carriage vehicle.

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

17. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

10. In National Insurance Co. Ltd. Vs. Kusum Rai and Others, a driver holding a driving licence to drive a Light Motor Vehicle was held to be not entitled to drive a taxi.

11. Subsequently, in New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another, ; the Supreme Court differentiated between a transport vehicle and non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to drive a light goods vehicle. It was further held that the person must possess the licence for the class of vehicle involved in the accident

3. The Appellant also examined Naresh Chand (R4W2) clerk from the office of MLO West Zone-I. He testified that the Respondent Jai Kant Kumar possessed driving licence No. P04022005424935 to drive LMV (NT) and motorcycle. He deposed that the holder of the licence was not competent to drive a TSR as the same fell in the commercial category. No other licence was produced by the owner driver inspite of service of the notice except Ex. R4W1/1. The insurance policy was duly proved as Ex R4W1/6. Thus, the Appellant-Insurance Company successfully proved the breach of the terms and conditions of policy.

4. It is not the case of Respondents No. 8 and 9 that they saw any driving licence possessed by Respondent No. 8 Jai Kant Kumar which was valid to drive a TSR. The Appellant Insurance Company is therefore entitled to recover the

compensation paid from the driver, owner and the insured respectively in execution of this very judgment without having recourse to separate recovery proceedings.

5. The Appeal is allowed in above terms.

6. The statutory deposit of Rs. 25,000/- shall be refunded to the Appellant Insurance Company.

7. Pending applications stands disposed of. A copy of the judgment be transmitted to the Trial Court for information.