(2012) 07 KAR CK 0012

In the Karnataka High Court

Case No : M.F.A. No. 7594 of 2008 (MV)

M/s. Oriental Insurance Company Limited — APPELLANT

Vs

Hanumayya and N. Suresh — RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 2 (16), 2 (21), 2 (47)

Citation : (2013) 1 KarLJ 167

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; Manjunath for Sri V.B. Shivkumar, Advocates for R2, for the Respondent

Judgement

Hon''ble Mr Justice K.N. Keshavanarayana

1. This appeal by the insurer is directed against the judgment and award dated 15.02.2008 passed by the XVIII Additional Judge, Court of Small Causes and Member MACT, Bangalore (SCCH-4), in MVC No. 7180/2006, insofar as it relates to fastening the liability to satisfy the award on it. Respondent No. 1 herein by name Hanumayya filed claim petition u/s 166 of the Motor Vehicles Act (for short, M.V. Act), seeking compensation for the personal injuries sustained by him in the motor vehicle accident that occurred at about 8.30 pm. on 06.10.2006.

2. According to the claimant, on the said date and time, while he was proceeding in the lorry bearing registration No. KA.05.AC.8109 as its cleaner, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed against the parked lorry near Pepsi Factory on Mysore Road, as a result, he sustained grievous injuries.

3. Respondent No. 2 herein, who is the owner of the lorry arraigned as Respondent No. 1 before the Tribunal, though served with the notice of the claim petition, remained absent and he was placed ex-parte, thereby he did not contest the petition.

4. The insurer of the lorry contested the claim petition. Though the insurer admitted issuance of policy in respect of the lorry in question and its validity as on the date of accident, sought exoneration on the ground that the driver, who was on the wheels of the vehicle in question at the time of the accident, did not possess valid and effective driving licence to drive the class of vehicle and therefore, the insurer is not liable to indemnify the insured.

5. The Tribunal on assessment of oral and documentary evidence, after answering the issue regarding actionable negligence in the affirmative in favour of the claimant, quantified the compensation payable to the claimant at Rs. 45,000/-. With regard to the liability, the Tribunal held that, since the driver possessed the license to drive Light Motor Vehicle and since the un-laden weight of the vehicle in question was less than 7500 Kgs, it is a Light Motor Vehicle, as such, he is authorised to drive the said vehicle and therefore, the insurer is liable to indemnify the insured. In this view of the matter, the Tribunal directed the insurer to satisfy the award. Aggrieved by the said judgment and award, the insurer is in appeal before this Court.

6. I have heard Sri. A.M. Venkatesh, learned Counsel for the appellant-Insurer and Sri. Manjunath for V.B. Shivakumar, appearing on behalf of Respondent No. 2. Respondent No. 1, the Claimant before the Tribunal, in spite of service of notice of this appeal has remained absent and un-represented. I have perused the records secured from the Tribunal.

7. Copy of the policy marked as Ex. R1 indicates the gross weight of the lorry as 16200 Kgs. Copy of the Registration Certificate of the lorry in question now made available before this Court by the learned Counsel for the owner also indicates the gross vehicle weight of the lorry as 16200 Kgs. though its un-laden weight is 6150 Kgs.

8. The question would be, as to whether such a vehicle would answer the description of Light Motor Vehicle defined u/s 2(21) of the M.V. Act ?

9. As per Section 2(21) of the M.V. Act, ''Light Motor Vehicle'' means, a Transport vehicle or Omni Bus, the gross vehicle weight of either of which or a Motor Car or Tractor or Road-roller, the un-laden weight of any of which, does not exceed 7500 Kgs.. Reading of the definition makes it clear that for a transport vehicle or omni bus to fall within the category of Light Motor Vehicle, what is relevant is its gross weight, whereas for a motor car or tractor or road-roller to be classified as Light Motor Vehicle, the consideration is its un-laden weight. The vehicle in question is not a motor car or tractor or road-roller.

10. As per Section 2(47) of the M.V. Act, ''Transport vehicle'' means a public service vehicle, goods carriage, an educational institution bus or a private service vehicle. The vehicle in question is a goods carriage. Therefore, it is a Transport Vehicle''.

11. Section 2(16) of the M.V. Act defines ''Heavy Goods Vehicle'' to mean, any

goods carriage, the gross vehicle weight of which, or a tractor or a road-roller, the un-laden weight of either of which exceeds 12000 Kgs. Thus, if the gross vehicle weight of a Goods Carriage is more than 12000 Kgs., it would be a Heavy Goods Vehicle. Even under this definition, in relation to goods carriage, the relevant factor is gross vehicle weight, whereas in case of a tractor or a road-roller, the relevant factor is, un-laden weight of the vehicle. Admittedly, the gross vehicle weight of the vehicle in question is 16200 Kgs. Therefore, the vehicle in question falls within the definition of ''Heavy Goods Vehicle'', as defined u/s 2(16) and not ''Light Motor Vehicle'' as defined u/s 2(21) of the M.V. Act. In this view of the matter, the person possessing license to drive light Motor Vehicle'' cannot be held to be authorised to drive Heavy Goods Vehicle.

12. The Tribunal under a mis-conception that since the un-laden weight of the vehicle in question is less than 7500 Kgs., has proceeded to hold that the vehicle in question answers the description of Light Motor Vehicle, though it is goods carriage. It has misread the definition of light Motor Vehicle''. As per Section 2(21) for a transport vehicle, to become a Light Motor Vehicle, the gross weight of the vehicle should be less than 7500 Kgs. As the vehicle in question is the goods carriage, as such, a transport vehicle and its gross weight is more than 7500 Kgs., it cannot be treated as Light Motor Vehicle. On the other hand, since its gross weight is more than 12000 Kgs., it is a Heavy Goods Vehicle as defined u/s 2(16) of the M.V. Act and therefore, the Tribunal is not justified in holding that the driver, who was driving the vehicle in question at the time of the accident and who held the license to drive ''Light Motor Vehicle'', was entitled to drive the said vehicle. The said finding is perverse and contrary to the provisions of law. In view of the above, it is clear that the driver of the offending vehicle was not possessing a valid and effective driving license to drive the class of vehicle involved in the accident and thereby the insured has violated the terms and conditions of the policy. In this view of the matter, the insurer cannot be held liable to indemnify the insured. Hence, the appeal deserves to be allowed. Accordingly, the appeal is allowed. The judgment and award dated 15.02.2008 passed by the XVIII Additional Judge, Court of Small Causes and Member, MACT, Bangalore (SCCH-4), in MVC No. 7180/2006, insofar as it relates to fastening the liability on the Insurance Company, is hereby set aside. The claim petition as against the Insurance Company is dismissed. However, the claimant is entitled to proceed against the owner of the offending lorry to recover the compensation amount.

The amount in deposit is ordered to be refunded to the appellant-Insurer.

