(2005) 10 J&K CK 0004

In the Jammu And Kashmir High Court

National Insurace Co. Ltd. and Others APPELLANT

Vs

Om Prakash and Others RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 2, 3

Citation : (2007) 1 ACC 241

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Judgement

Nirmal Singh, J.—The relevant facts for the disposal of these appeals are that Om Parkash filed claim petition u/s 166 of the Motor Vehicles

Act (hereinafter referred to as the Act) before the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the Tribunal) for

compensation on the ground that on 8th October, 1995, he was coming to his home from Bus Stand and was driving his car No. JK02A-5874.

When he had to take a turn near Modi Clinic and he stopped his car there, a bus bearing No. JK02D-5785 came from Kachi Chowni side and hit

his car on the right side and sped away from the spot. He sustained grievous injuries. Mohan Lal driver of the offending vehicle was driving the bus

and same was owned by Ram Lai. The offending vehicle was insured with the National Insurance Co. Ltd.

2. The owner and driver contested the claim petition and admitted the accident. However, it was pleaded that the accident took place because of

rash and negligent driving of the claimant-Om Parkash, who hit the bus and claimant sustained injuries. National Insurance Company filed separate

objections and pleaded that the accident took place because of contributory negligence of the claimant and driver of the offending vehicle. It was admitted that the bus bearing registration No. JK02D-5785 was insured with the Company. It was further pleaded that the driver of the offending

vehicle was not holding a valid and effective driving licence at the time of accident and was being plied without route permit and fitness certificate.

On the pleadings of the parties, following issues were framed:

1. Whether on 8th January, 1995 because of rash and negl igent driving of offending vehicle No. JK02D-5785 by its driver, the petitioner was

injured and if so, what is the nature of the injuries? GPP

2. If issue No. 1 is proved in affirmative to how much amount of compensation, the petitioner is entitled to and from whom? OPP

3. Whether the respondent driver did not possess valid driving licence?

OPR

4. Relief. OPP

3. The learned Tribunal after recording evidence decided issue Nos. 1 and 2 in favour of the claimant and held that the accident took place due to

rash and negligent driving of the driver of offending vehicle i.e. bus bearing registration No. JK02D-5785. On issue No. 3 it was held that Mohan

Lai driver of bus was not authorised to drive public service vehicle, as he was not having a valid driving licence. The learned Tribunal has also held

that the insured (owner) has violated the terms and conditions of the insurance policy. Learned Tribunal awarded Rs. 1,53,500 in favour of the

claimant with interest @ 9% p.a. from the date of filing of the claim petition till the payment is made. It was also ordered that the compensation

amount has to be paid by the Insurance Company and the Insurance Company will be at liberty to recover the amount of award so paid from the

insured (owner) of the offending vehicle. Aggrieved by the award of the learned Tribunal, National Insurance Company as well as owner have filed

these appeals which are being disposed of by a common judgment.

4. M/s. C.S. Gupta and Baldev Singh, learned Counsel for the National Insurance Company submitted that the driver was not holding an effective

and valid driving licence in terms of Section 3 of the Act. He submitted that a person can only drive public service vehicle if he has been authorised

in this behalf by the Licensing Authority of the State in terms of Rule 4(1)(a) of the J&K Motor Vehicles Rules, 1991 (for short State Rules). He contended that the appellant Insurance Company has examined the licensing clerk of the Licensing Authority who deposed in his statement that the

driver of the offending vehicle was not holding a valid driving licence, despite that, learned Tribunal has erroneously held the appellant liable to

indemnify the owner of the insurance agreement. Learned Counsel submitted that when insured has violated the terms and conditions of the policy

then the Insurance Company has not to indemnify the owner.

5.On the other hand, Mr. M.L. Gupta, learned Counsel for the owner submitted that the driver was holding a valid and effective driving licence and

was competent to drive the public service vehicle under the rules. He submitted that when the appellant employed the driver he had checked the

licence of the driver and as per the licence he was authorised to drive light motor vehicles, medium and heavy vehicles. He submitted that heavy

vehicles include heavy goods vehicles as well as heavy passenger motor vehicles. He further submitted that the Licensing Authority has also made

an endorsement in the licence on 2nd April, 1996 that driver was authorised to drive a public service vehicle.

6. I have given my thoughtful consideration to the submissions made on behalf of the parties.

7. The sole issue, which is to be considered in these appeals is, whether the driver of the offending vehicle was holding a valid and effective driving

licence. Before considering the rival contentions, it will be appropriate to peruse the driving licence, which has been placed on record. On perusal

of driving licence it is found that the Licensing Authority has authorised the licensee to drive throughout India the vehicles of the following

description:

1. Light Motor Vehicles.

2. Medium Motor Vehicles.

3. Heavy Motor Vehicles.

8. Transport vehicle has been defined in Sub-section (47) of Section 2, which reads as under:

'transport vehicle' means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

9. ""Public Service Vehicle"" has been defined in Sub-section (35) of Section 2 of the Act, which reads as under:

Public Service Vehicle' means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a

maxicab, a motorcab, contract carriage, and stage carriage.

10. In the instant case, driver of the bus was issued licence for driving heavy transport vehicle. Heavy transport vehicle will include heavy goods

vehicles, heavy passenger motor vehicles, as defined under Sub-sections (16) and (17) of Section 2 of the Act, which reads as under:

16. 'heavy goods vehicle' means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of

Which, exceeds 12,000 kilograms;

17. 'heavy passenger motor vehicle' means any public service vehicle or private service or educational institution bus or omnibus the gross vehicle

weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms.

11. As the driver was having a valid and effective driving licence the insured has not violated any terms and conditions of the insurance policy.

12. This Court in National Insurance Co. Ltd. v. Irfan Sidhq Bhat 2004 (2) SLJ 623, while interpreting public service vehicle as defined u/s 4(1)

(a) of the State Rules, held as under:

14. Where the licence authorises the person to drive a 'public service vehicle' within the meaning of Section 2(35) of the Act, there is no question

of further authorisation under Rule 4(1)(a) of the State Rules. The State Rules have to be understood as complimentary to the Act and not in

derogation of it and 'public service vehicle' in Rule 4(1)(a) of the State Rules cannot be understood and given a different meaning from Section

2(35) of the Central Act.

13. In the case in hand the Licensing Authority has also authorised the licensee, Mohan Lal, to drive a public service vehicle all over India,

therefore, the insured has not violated any terms or conditions of the insurance policy, as such, the condition imposed by the Tribunal, that

Insurance Company can recover the amount from the insured and the driver, is not sustainable.

14. For the reasons mentioned above Appeal No. 169/2001 filed by the owner is allowed and the appeal filed by the Insurance Company is

dismissed with costs of Rs. 10,000 to be paid to the claimant along with award amount.

