

(2001) 04 KAR CK 0059

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3186 of 1999

National Insurance Company Limited

APPELLANT

Vs

Sakamma and Others

RESPONDENT

Date of Decision : 02-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 2 (33), 3 (1)

Citation : (2001) 3 KCCR 2176

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : A.M. Venkatesh, for the Appellant; R.V. Jayaprakash, for Respondent 2 and H. Thipperudrappa, for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—The above appeal is preferred by the Insurance Company questioning the liability arising out of the accident concerned in M.V.C. No. 1838 of 1994 on the file of the II Additional District Judge and MACT, Chitradurga, on the ground that the driver of the offending vehicle did not have valid and effective driving licence to drive a goods vehicle.

2. It is not in dispute that Veeranna who was driving the offending lorry was having only Light Motor Vehicle License without any endorsement to drive a transport vehicle.

3. Section 3 of the Motor Vehicles Act was relied upon which is to the following effect:

No person shall drive a motor vehicle in a public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle unless his driving licence specifically entitles him to do so.

4. This Court held in a decision reported in Prakash Vs. Hanumanthraya and

Others, as follows:

Driver who had a license to drive L.M.V. caused the accident, while driving the transport vehicle - Claims Tribunal held that the insurance company is not liable to pay compensation as driver of the offending vehicle had no effective driving license. High Court has also held that the insured was not liable.

5. Reliance was also placed upon United India Insurance Company Ltd. Vs. Palaniammal and others, to the following effect:

To say, that the issue of a license for driving a light motor vehicle would be sufficient to drive a motor vehicle of a different category and classification, is opposed to the very concept of statutory classification of the vehicles into different categories and the issuing of license, and the fulfilment of different capacity requirements in respect of the driving of the vehicles belonging to each one of the categories. Further reliance was placed on a decision United India Insurance Co. Ltd. Vs. K. Subramaniam and Others, to the following effect:

It would be useful in this connection to make a reference to the decision reported in National Insurance Co. Limited v. Mahadevayya, (1981) TLNJ 170. There the question was, whether a mere license to drive a light motor vehicle, which includes an autorickshaw, will not enable the holder of the license to drive an auto-rickshaw as a public carrier and it was held that in the absence of a special authorization, it is not possible to conclude that on the strength of the holding of a licensee to drive an auto-rickshaw, such a vehicle could also be driven as a public carrier. Though in that case the terms of the license were not available, such conclusion was arrived at. However, in the instant case, as noticed earlier, the endorsement clearly show that on and from 16.8.1981, the holder of the license was authorized to drive the tempo as a goods vehicle, as it is not disputed before this Court that the vehicle was used only for the carriage of goods. It, therefore, follows that at the time when the accident took place on 24.12.1980, the driver of the vehicle did not hold a valid license to drive the tempo and under the terms of the policy of insurance, Exh. B-2, the appellant cannot be made liable to pay compensation.

Further reliance was placed on a decision M. Sammamma and Another Vs. Syed Kaja Maunuddin and Others, to the following effect:

On a perusal of the evidence, it has been found from the entries in Exh. A-2 that the driver who drove the vehicle is not having the valid license to drive the lorry. Mere fact that he was in possession of the driving license for a light motor vehicle does not mean that he is having a valid license. What is valid license has to be considered with reference to the vehicle that was involved in the accident. Since different classes of licenses are there and different periods and experience has been required for having those licenses, it cannot be said that a person who is having a light motor vehicle license can drive the vehicle wherein it requires, under the rules, heavy motor vehicle license. In this case, the vehicle involved is the lorry and admittedly, the driver was not having a license for driving the lorry.

Under those circumstances, the Court was perfectly justified in arriving at the conclusion that the insurance company is not liable to pay him.

Further reliance was placed on a decision 1997 ACJ 594 (Oriental Insurance Co. Limited v. Angammal and Ors.) to the following effect:

The learned Judge has also taken into consideration Section 3(1) of the Motor Vehicles Act, Section 2(33) of the Act wherein the "transport vehicle" has been defined, Section 2(25) which defines a "public service vehicle" as a motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a motor cab, contract carriage and a stage carriage, and has come to the conclusion that where a vehicle had been driven by a driver in contravention of Section 3 of the Motor Vehicles Act, which contemplates an effective driving license to drive a motor vehicle and if the vehicle happens to be a tourist vehicle, the driving license should contain a special endorsement and ultimately held that the mere user of the tourist taxi for a purpose of other than that for which it could be used would not affect the character of the vehicle and has allowed the claim of the insurance company.

Further reliance also placed on a decision New India Assurance Co. Ltd., Shimla Vs. Suraj Parkash and Others, is to the following effect:

We find particularly in para-3 of the reply that an objection has been taken that the insurance company is not liable in view of the fact that the driver of vehicle, Maruti Van HPY- 251 did not possess any valid license to drive the taxi as a paid driver and as such no liability can be fastened on the insurer. Ex.R3, policy of insurance (the Schedule) filed disclosed that the insurance was in respect of the vehicle in question which stood registered as a Taxi. If that be the factual position, it would answer the description of public service vehicle, as defined in Section 2(35) to mean any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carrier.

Further reliance was placed on a decision United India Insurance Co. Ltd. Vs. Maqbool Ahmed and Others, is to the following effect:

In the course of his submissions, Respondent's learned Advocate drew my attention to a recent decision of this Court in the case of United India Insurance Co. Limited v. Smt. Lakshamma and Ors. Dealing with the question of validity of a license, a learned Single Judge of this Court has taken the view that as long as the driver possesses some license, that it would be sufficient and that in effect, a license to "drive one type of vehicle would hold good as far as some other type of vehicle is concerned. In my considered view, this decision does required further consideration or reconsideration because, the repercussion would be disastrous. Quite apart from the aspect of liabilities, it is a decision of the High Court which is binding on the subordinate forums and therefore, the law must be clarified by the Division Bench. Personally, I am not in agreement with this decision for the simple reason that the special skills and responsibilities that

are required, not to mention the capacity, to operate a transport vehicle or a heavy motor vehicle are entirely different from the skills and capacities that a person may possess as far as the light vehicle is concerned. There are a category of light motor vehicles such as three wheelers which are undoubtedly used exclusively for transport, but this cannot equate them with heavy transport vehicles. It is very necessary and it is for this reason that the law itself has prescribed separate tests for the issuance of heavy vehicle licenses and particularly as far as transport vehicles are concerned and to my mind therefore, it would be necessary for the Division Bench of this Court to reconsider the law and to clarify the correct position.

On such reference, the Division Bench also held that the insurance company is not liable to pay the compensation. Prakash Vs. Hanumanthraya and Others, .

6. In the light of the above decisions, I am of the view that the insurance company is not liable. In view of the admitted fact that the driver of the offending vehicle had no effective and valid license. In the result, the appeal is allowed. The liability of the Insurance Company is set aside. The amount deposited shall be refunded to the Counsel for the appellant.