

(2015) 04 MAD CK 0362

In the Madras High Court

Case No : CMA(MD) No. 1264 of 2006 and M.P.(MD) No. 1 of 2006

National Insurance Company Ltd.

APPELLANT

Vs

N. Ponnan and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 11, 149, 157, 18
Workmens Compensation Act, 1923 — Section 10

Citation : (2015) 04 MAD CK 0362

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : S. Srinivasa Raghavan, for the Appellant; S. Ramesh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

D. Hari Paranthaman, J—The 1st respondent was a loadman in a trailer bearing registration No. TN67A/1973 drawn by the tractor bearing registration No. TN67/3799 owned by the 2nd respondent and at the time of accident, the same was transferred to the 3rd respondent and the 3rd respondent was the owner.

2. On 19.03.2001, the aforesaid tractor and trailer met with an accident and the 1st respondent/claimant who travelled in the trailer sustained injuries. He filed W.C. No. 282 of 2001 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai, claiming compensation for the injuries sustained by him.

3. The Deputy Commissioner of Labour passed an order dated 29.03.2004 directing the appellant insurance company to pay compensation, since the tractor and trailer involved in the accident insured with them. Accordingly, he awarded compensation of Rs. 92,916/-.

4. This appeal is against the aforesaid order raising the following substantial questions of law:--

"1. Whether violation of policy conditions and that of the permit by the 2nd respondent/1st respondent will entitle the appellant/2nd respondent to recover the award amount from the insured?

2. Whether the insurer can avoid its liability to indemnify the owner of the vehicle if the driver had no valid and effective driving licence to drive such a vehicle involved in the accident at the time of accident?

3. Is not the claim of the 1st respondent/applicant bad for non issuance of notice under Section 10 of the Workmen Compensation Act before filing the claim petition?

4. Is it not obligatory for the owner of the vehicle under Section 157 of the Motor Vehicles Act to intimate the insurer about transfer of the vehicle?

5. Is it not required to adhere to Schedule I of the Workmen Compensation Act to assess the disability of the 1st respondent/applicant?"

5. Though the appellant raised five substantial questions of law in the memorandum of appeal, during the course of arguments, the learned counsel for the appellant has submitted that questions of law Nos. 1, 2 and 4 alone be decided.

6. Heard both sides.

7. According to the learned counsel for the appellant, at the time of accident, there was a violation of policy conditions by the owner of the tractor. According to him, the tractor should be used only for agricultural purpose, but at the time of accident, it carried sand and thus there is a violation of policy conditions and hence the appellant is not liable to pay compensation.

8. On the other hand, the learned counsel for the 1st respondent/claimant has submitted that the accident took place at the time when the tractor was carrying sand from the agricultural land. According to him, mere carrying of sand could not be said that it was not used for agricultural purpose.

9. I have considered the submissions made by either side.

10. It is not the case of the appellant that the vehicle was used for some commercial purpose by carrying sand. Even an agriculturist can carry sand for his agricultural purpose. Unless the appellant is able to establish by way of some evidence that the vehicle was not used for agricultural purpose, the plea of the appellant that the tractor involved in the accident carried sand in violation of policy conditions, could not be accepted. On perusal of the order passed by the Deputy Commissioner of Labour, I am of the view that there is no such evidence placed before the Commissioner. Hence, the 1st substantial question of law is answered against the appellant.

11. As far as the 2nd substantial question of law is concerned, it is the case of the appellant that the driver of the tractor was in possession of a driving licence

only to drive light motor vehicle and he could not drive the tractor with trailer for which, necessary endorsement or badge has be obtained.

12. Under Section 11, it is called "Additions to driving licence" i.e., if a person who is in possession of the driving licence to drive any class of vehicle that is mentioned in Section 10 of the Motor Vehicles Act, has to obtain additional endorsement in the driving licence to drive any other class of vehicle. In this regard, Sections 10 and 11 of the Motor Vehicle Act are extracted hereunder:--

"10. Form and contents of licences to drive.--(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:--

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- (e) transport vehicle;
- (i) road-roller;
- (j) motor vehicle of a specified description."

"11. Additions to driving licence.--(1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licensing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

(2) Subject to such rules as may be prescribed by the Central government, the provisions of section 9 shall apply to an application under this section as if the said application were for the grant of a licence under that section to drive the class or description of motor vehicles which the applicant desires to be added to his licence."

13. In this case, the driver of the tractor was in possession of valid driving licence to drive light motor vehicle. According to the appellant insurance company, the driver should have obtained additional endorsement in the driving licence to drive any other class of vehicle. In the absence of the same, he does

not possess a valid driving licence. It is true that the driver had only possessed a licence to drive light motor vehicle, but he did not have a badge or endorsement to drive the goods carriage.

14. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, (2004) 1 ACC 1 : (2004) ACJ 1 : AIR 2004 SC 1531 : (2004) 118 CompCas 396 : (2004) 1 JT 109 : (2004) 136 PLR 510 : (2004) 1 SCALE 180 : (2004) 3 SCC 297 : (2004) 1 SCR 180 : (2004) AIRSCW 663 : (2004) 1 Supreme 243 , the Supreme Court, considered a case, when the person has been granted licence for one type of vehicle, but at the relevant time of the accident, he was driving another type of vehicle. Paragraphs 81 to 84 are extracted hereunder:--

"81. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

82. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy-goods vehicle", "heavy passenger motor-vehicle", "invalid carriage", "light motor-vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor-vehicle" "motor-cab" "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer", and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motorcycle without gear", for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

83. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of section 149 of the Act. Minor breaches of licence conditions, such

as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

84. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil court."

15. At Paragraph 85, the Supreme Court considered a situation, where the driver's licence was found to be fake, which is extracted hereunder:--

"It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. In *Lehru's* case (*supra*), the matter has been considered at some details. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of law in terms whereof the insurer is to establish willful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or the owners be absolved from any liability whatsoever. We would be dealing in some details with this aspect of the matter a little later."

16. Therefore, I am of the view that the insurance company has to pay the amount and they could seek its remedy of reimbursement from the insured in the civil court. The 2nd substantial question of law is answered accordingly.

17. As far as the 4th substantial question of law is concerned, the learned counsel for the appellant is correct in his submission that the Deputy Commissioner of Labour has proceeded on the basis that the vehicle was owned by the 2nd respondent. But the vehicle was transferred to the 3rd respondent at the time of accident. But it does not require any alteration in the order with regard to the liability on the insurance company, since there was a valid insurance policy on the date of accident.

18. Though the Deputy Commissioner of Labour has held that the 2nd respondent as a owner is liable to pay the compensation and the appellant is liable to indemnify the same, according to the learned counsel for the appellant, the 3rd respondent was the owner at the time of accident. Hence, the appellant insurance company could indemnify the 3rd respondent. However, it would not in any way help the appellant to escape from their liability. It is not the case of the appellant that the claimant was not employed by the 2nd respondent. Hence, the

4th substantial question is also answered against the appellant.

19. In the result, the Civil Miscellaneous Appeal is disposed of. No costs. The claimant is permitted to withdraw the amount deposited. Consequently, M.P(MD) No. 1 of 2006 is closed.