**(2014) 12 KAR CK 0036**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal Nos. 3569/3571 and 3572/2012 (MV)

New India Assurance Co. Ltd. APPELLANT

Vs

K. Manogna RESPONDENT

**Date of Decision :** 11-12-2014

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 134(c), 14(2)(a)

**Citation :** (2014) 12 KAR CK 0036

**Hon'ble Judges :** Ravi V. Malimath, J;K.L. Manjunath, J

**Bench :** Division Bench

**Advocate :** A.P. Abhinandan, Advocate for A.N. Krishna Swamy, Advocate for the Appellant; Sampath Bapat, Advocate for the Respondent

## Judgement

K.L. Manjunath, J.—These appeals are preferred by the appellant-insurance company being aggrieved by the liability saddled on the company by the MACT, Bangalore in MVC Nos. 6081, 6125 and 6126 of 2009 dated 15.3.2011.

2. Heard the learned counsel appearing for both the parties.

3. Three claim petitions were lodged by the legal heirs of Arogyaswamy, Gangadhar Reddy and Prameelamma, who died in a road traffic accident that occurred on 25.4.2009 at about 8.00 a.m. in front of Horticultural Jack fruit Farm next to R.L. Jalappa hospital on NH-4. All the three deceased persons were travelling from Chittoor side to Bangalore in a car bearing Registration No. AP-03/V-7861 and when the car was in front of the Horticultural Department, one Gas Tanker Lorry bearing Reg. No. KA-04-AB-9669 which has been insured with the appellant herein was proceeding in the opposite direction from Bangalore towards Mulabagilu. All of a sudden, the driver of the Tanker lorry took his lorry to the extreme right side and dashed against the oncoming car, as a result of which, three persons died on the spot. The police registered the case against the driver of the tanker. Therefore, the claim petitions were lodged by the L.Rs. of the deceased.

 

4. The appellant-insurance company contended before the court below that the driver of the Tanker lorry had not possessed a valid driving licence to carry the hazardous goods (Liquefied Petroleum Gas). Learned counsel for the appellant therefore contended that on account of the breach of the policy, liability has to be exonerated on the insurance company.

5. In order to prove their respective contentions, in all 4 witnesses were examined on behalf of the claimants. They are P.Ws. 1 to 4 and they relied upon Exs.P1 and P28.

6. On behalf of the insurance company, one Sri. K. Chidambaram, Officer of the insurance company was examined as RW-1. One Sri. K. Kiran Kumar, a witness was examined as RW-2. They relied upon Exs.R1 to R13.

7. The Trial Court considering the evidence let in by the parties came to the conclusion that the driver had possessed valid driving licence to drive the vehicle and held that the liability has to be saddled on the appellant-insurance company and claim petitions were allowed awarding a sum of Rs. 27,84,726/-, Rs. 6,05,000/- and Rs. 29,85,468/- respectively as compensation with interest @ 6% p.a.

8. Being aggrieved by the liability saddled on the appellant-insurance company, the present appeals are filed.

9. According to the learned counsel for the appellant Sri. Krishnaswamy, the driver had not possessed the valid driving licence to drive a filled gas cylinder Tanker which had contained hazardous material. According to him, in view of Section 134(c) of the M.V. Act, when gas cylinders were being transported, a separate endorsement was required in the driving licence of the driver. According to him, on the date of accident such endorsement was not found. Though the driver had obtained such an endorsement for earlier years and even though such an endorsement is made for subsequent years, for the relevant period no such endorsement was found. Therefore, he contends that the Tribunal committed an error in fixing the liability on the insurance company.

10. Per contra, learned senior counsel appearing for the owner of the vehicle Sri. S.P. Shankar submits that such an endorsement is not required because there is nothing on record to show that on the date of accident the vehicle was carrying filled gas cylinders. According to him, the entire pleadings and evidence produced by the parties clearly show that what was contained in the tanker was only gas cylinders and it is not the case of the parties that the gas cylinders were filled with liquefied petroleum gas. According to him, this Hon''ble Court has ruled that to carry empty gas cylinders, no such endorsement is required because the vehicle in question was not carrying hazardous material. He alternatively submits that endorsement would be issued by the RTO in its usual course only after giving a refresher course for a day. According to him, in the instant case the driver had possessed such endorsement earlier also and for subsequent years also. Therefore, even if such endorsement was not there on

 

the date of accident, the same cannot be a ground for the appellant insurance company to take up a contention that the liability cannot be fastened on it. He alternatively submits that even if it is held that such an endorsement was required, in such circumstance it is for the insurance company to satisfy the award and recover the amount from the owner of the vehicle. In the circumstances, he requests the court to dismiss the appeals.

11. Having heard the learned counsel for the parties, what is to be considered by us in these appeals is:

"Whether the liability saddled on the appellant-insurance company is required to be set aside or modified?"

12. The admitted fact is that in the accident three persons died who were in the car. It is also not in dispute that the driver of the Tanker lorry took his Tanker lorry to the wrong side and dashed against the oncoming vehicle. The negligence of the driver of the Tanker lorry is not in dispute. It is also fortified from the sketch produced by the parties. The appellant-insurance company is also not disputing the manner in which the accident occurred and negligence of the driver of the Tanker lorry.

13. The only dispute is, whether the Tanker lorry was carrying the filled gas petroleum product or not or the Tanker lorry was transporting the empty cylinders. Even if it is held that the lorry was transporting hazardous goods, whether in the absence of endorsement on the date of the accident, the insurance company has to be exonerated or not.

14. Section 14(2)(a) of the M.V. Act reads thus:

"(2) A driving licence issued or renewed under this Act shall,-

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

(Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and)"

15. From the reading of the aforesaid provision, it is clear that while carrying the goods of dangerous or hazardous nature, a separate endorsement is required to drive such vehicle and the same shall be in force only for one year and that the same shall be renewed after the driver undergoes a day''s refresher course of the prescribed syllabus.

16. The learned counsel appearing for both the parties are not disputing that the said endorsement is required if the vehicle has to carry the dangerous or hazardous goods.

17. We have perused the entire pleadings and evidence. The pleadings and

evidence reveal that the lorry in question was carrying gas cylinders. But nowhere it has come in the evidence that the said cylinders were filled with LPG gas or not. In the absence of evidence, it is difficult for this court to hold that the lorry was carrying filled gas cylinders. Merely because it was transporting empty gas cylinders, it cannot be held that such an endorsement is required to drive the vehicle. In the absence of an endorsement, as a matter of fact, this Bench has considered the effect of driving the vehicle which is registered for transportation of dangerous or hazardous goods without separate endorsement. We have held that for carrying empty cylinders, no such endorsement is required. Therefore, in the absence of material placed by the appellant-insurance company that the vehicle in question was carrying dangerous or hazardous goods, it would be difficult for any court to hold that the insurance company is not liable to satisfy the award. In addition to that, even if there is a breach of driving licence, it is the duty of the insurance company to satisfy the award of the Tribunal and recover the same from the owner of the vehicle. Based on the evidence and the material placed before the court, we are of the view that there is evidence to show that the lorry in question was packed with gas cylinders. But there is nothing on record to show that those gas cylinders were filled with LPG. In the absence of such evidence, it is difficult for us to reverse the finding of the Tribunal. In the result, we do not see any merit in these appeals.

18. Accordingly, the appeals are dismissed. Amount in deposit, if any, in these appeals shall be transferred to the Tribunal.

 