
(1986) 02 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 965 of 1984

New India Assurance Co. Ltd.

APPELLANT

Vs

Mandar Madhav Tambe and others

RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1986) ACJ 874 : (1986) 2 BomCR 115 : (1989) 65 CompCas 251 : (1986) MhLj 274

Hon'ble Judges : R.A. Jahagirdar, J; Masodkar, J

Bench : Division Bench

Judgement

Masodkar J.

1. This appeal is filed by original opponent No. 3, that is to say, the New India Assurance Co. Ltd., which arises out of the compensation proceedings initiated u/s 110A of the Motor Vehicles Act, 1939(hereinafter referred to as "the Act"). By the impugned order, the insurance company has been held liable to pay the amount of compensation along with other opponents jointly and severally.

2. For the purpose of the present appeal, certain finding as are relevant and are recorded by the trial court are not in dispute, in that the occurrence or the accident took place on July 4, 1979. The vehicle was driven by opponent No. 2 Jay singh Baburao Jadhav. The evidence of the clerk from the Regional Transport Officer's office at Kolhapur, by name Ramchandra Babu Mane, goes to show that the said Jay singh, the driver of the vehicle, was not holding any regular licence to drive on the date of the accident. However, he was given a regular licence as and from July 9, 1979, which was valid up to July 8, 1984. Prior to that, Jay singh Jadhav also has obtained a learner's licence for driving such vehicles on July, 22, 1977, that expired on November 21, a 1977. Thereafter, again Jay singh Jadhav took the learner's licence on July 7, 1979; and afterwards he was given a regular licence on July 9, 1979. Both these licences were issued after the event, that is to say, after July 4, 1979. The earlier licence of 1977 was a learner's

licence which was issued prior to the event. Admittedly, Jay singh Jadhav was not disqualified under the provision of the Act for being licensed as such.

3. On the basis of these undisputed facts which are found by the trial court, the appellant-insurance company contends that the defence available to it u/s 96(2) (b)(ii) of the Act has been made out and that no award could have been made against the insurance company, there being a branch of the condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification. For substantiating this defence, reliance is placed on the policy which is produced at exhibit 151 and particularly on the column in the Schedule describing the driver along with the general exception at clause 3(b) as set out in the policy.

4. It would be useful to extract both these parts of the policy so as to appreciate the competing submission made in the present appeal :

"Driver. - Any of the following :

Any person.

The insured may also drive a motor car/cycle not belonging to him and not hired to him under a hire purchase :

Provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner's licence) and is not disqualified from holding such a licence.

"GENERAL EXCEPTIONS

The company shall not be liable under this policy in respect of -

(3) any accident, loss, damage and/or liability caused sustained or incurred whilst any motor cycle is - ...

(b) being driven by any person other than a driver".

5. On the basis of the above extracted portions from the policy Mr. Trivedi, learned counsel for the insurance company, contends that this is a policy that sets out a condition that excludes driving by any person who is duly licensed and thus the defence is made out. In the submission of learned counsel, the term "duly licensed" would cover the entire proviso available in the descriptive part appended to the term "driver", for Mr. Trivedi contends that by the words, "a valid driving licence at the time of the accident", available in the first part of the proviso in the Schedule in the policy, what is intended is that the person driving must be duly licensed at the time of the accident. In the present case, opponent No. 2 was not licensed at that time and as such the latter part of the proviso in the Schedule in the policy would not be relevant. Even if that were to be otherwise, the same too is satisfied because, at the most, the evidence shows that the driver had once held a learner's licence that is specifically excepted by

the policy. If it be the admitted position that the driver was not having any permanent driving licence and that he had once held only a learner's licence, then, according to Mr. Trivedi, the defence permissible to the insurance company by reason of section 96(2)(b)(ii) of the Act has been fully and satisfactorily made out. Reliance is placed on the judgments reported in the cases of Ambujam v. Hindustan Ideal Insurance Co. [1980] 50 Com Case 404 ; Ambujam Vs. Hindustan Ideal Insurance Company and Another, Brij Lal Khera Vs. Raksha Devi and Another, and Chanchalaben and Others Vs. Shaileshkumar and Others, to contend that the term "duly licensed" would mean a person holding a regular licence and that too on the date of the accident. The facts being as they are, in the present case, opponent No. 2 was not duly licensed and that would be enough to discharge the insurance company from its liability.

6. As against this, M/s. Abhyankar and Naik, learned counsel for respondents Nos. 1 and 2, contend that the terms "duly licensed" cannot be read restrictively so as to include and indicate a holder of regular licence or a permanent licence, as the policy styles the same. Licence, if permissible under the Act or by reason of its rules, would be within the term "duly licensed". Even a holder of learner's licence thus would be "duly licensed". In other words, the contention is that opponent No. 2 having held a learner's licence in 1977 and further there being no evidence with regard to any disqualification for holding or obtaining a driving licence which, in fact, was given to him within three days of the accident, he was "a driver" within the meaning of the policy and that no defence had been made out. Reliance is placed on the decisions in Ishwar Devi Vs. Reoti Raman and Another, and United India Insurance Co. Ltd. v. Tilak Ram [1987] ACJ 481; 61 Comp Case 302 (HP).

7. This debated question, therefore, will have to be resolved by firstly, finding out as to what is the contemplation of the term "duly licensed" as employed by section 96(2)(b)(ii) of the Act. The decision available in United India Insurance Co. Ltd., Chandigarh Vs. Tilak Ram and Others, ; [1987] 61 Comp Case 302, rendered by the Himachal Pradesh High Court, takes the view that the term "duly licensed" is not to be limited to any particular category of licence and would take in any licence of the type which enables one to drive including the one granted as learner's licence.

8. Now, the provisions concerning licensing are available in Chapter II of the Act and that requires every person, by section 3, to possess a driving licence for the purposes of driving. Section 7 of the Act deals with the grant of such driving licences. Such licences can be granted to the other conditions of the section are satisfied. Section 8 of the Act describes the form and contents of a driving licence and makes a reference in Form D as set out in the First Schedule. Form D in the First Schedule in terms shows that the licence is a periodic grant and it has to specify the period during which the licence is valid. There does not appear to be any permanent grant of a driving licence contemplated by Form D in the First Schedule. Such a licence is liable to be renewed and where renewed, there too

the period is to be mentioned as is shown in the Form itself. It is common ground, therefore, that the statute does not us not does it permit issuance of a permanent driving licence. What is contemplated is a licence for a stated period. There is no category even contemplated by the main sections of the learner's or non-learner licence. It is only by reason of the rules that the learner's licence is contemplated, but the authority to grant such a licence is referable to the provisions of section 7 of the Act. For all purpose, thus, the learner's licence is a periodic licence which permits the driver, subject to special conditions, to drive a motor vehicle.

9. If this be the position with to the learner's licence, we do not think that it will be appropriate to treat the holder of a learner's licence as not "duly licensed" for the purpose of sub-clause (ii) of clause (b) of sub-section (2) of section 96 of the Act on which reliance is placed. It will be in keeping with the purpose of that section to give the words "duly licensed" their ordinary and normal meaning, particularly when the law itself has not excluded the licence of a learner from the category of licence. We are inclined thus to hold that the term "duly licensed" would include a holder of a learner's licence. No good reason exists to limit the phrase to the holder of a regular licence.

10. In this, we are in respectful agreement with the view expressed in *United India Insurance Co. Ltd., Chandigarh Vs. Tilak Ram and Others*, by the Himachal Pradesh High Court. The other decision cited at the Bar are distinguishable on their own facts. It is ample to observe that we are mainly concerned with the terms of the policy at exhibit 159 so as to find out whether it successfully excludes driving by a person as is contemplated by the provisions of section 96(2)(b)(ii) of the Act. In other words, of the driving by a person who once held that licence and was not disqualified is permitted, there would be no exclusion as is contemplated by the provision of that clause.

11. Having settled this position, we have to turn to the proviso in the policy for finding out exclusion and on which Mr. Trivedi heavily relies. This proviso, added below the column concerning as to who could be the driver of a vehicle, is of qualifying character. It is not in the nature of general exception. In other words, it is, in fact, a definitive provision. Provisos of such kind are intended to lay down the conditions or qualification which will operate on the subject already mentioned. Any person who would satisfy either of the conditions of the proviso would be "the driver" in terms of this policy. Being a part of the policy and which is to be read in the light and context of the provision of section 96(2)(b)(ii) of the Act, effort should be to find out as to whether the exclusion of "a driver" who had held a licence and was thus duly licensed and was not disqualified has or has not been excluded.

12. Now, as far as the first part of the proviso is concerned, undoubtedly, it does not admit of any debate that the exclusion is clearly set out and is also made out, in that a person who holding no valid driving licence at the time of the accident would not be in the contemplation of the policy to be a driver. In such a

case, exclusion would be complete. Had the matter stood at this first part along with the general exceptions extracted above, then the answer would be clear that Jay singh Jadhav could not halt there. It adds an independent clause after employing the disjunction "or". If the clause after the disjunction "or" is taken note of, it permits a person who had held a permanent driving licence and who was not disqualified to be a driver of the vehicle. In other words, a person once duly licensed and not disqualified is not excluded from being "a driver" of the vehicle.

13. Undoubtedly, Mr. Trivedi relied on the words of this part so as to contend that such a person must be the holder of a permanent driving licence other than a learner's licence, but as we have seen, the category of licence does admit the holder of a permanent driving licence and the statutes like the provisions of section 96(2)(B)(ii) of the Act use the phrase "duly licensed" which includes even the holder of a learner's licence. The intention of the latter clause in the proviso of the policy, with which we are concerned, is obvious in that if the person had held a licence or as such was duly licensed and is not disqualified from holding such a licence, then he could be the driver of the vehicle. If this intention is discernible in the second part of the proviso, then, on the facts available in the present case, it can be said that the driver of the vehicle and held a learner's licence and was not disqualified from holding such a licence. Such a driver was consequently not excluded by the terms of the policy. What appears to us obvious from the terms of the latter clause of the proviso is that the emphasis is on the holder of the licence who is not disqualified to hold such a licence. This intent is inferable as such which would include the holder of a learner's licence. The second part can be read reasonably so as to include those classes of cases once held and there was no disqualification from holding such a licence. No doubt, there is much force in the submissions of Mr. Trivedi that this part of the proviso refers to a permanent driver licence and excludes learner's licence for the purpose of capacity along with the want of disqualification. But, as we have indicated, to so read the clauses would be read something which is not in existence in law, in that a permanent driving licence and to exclude the licensing process as not covered by the learner's licence. Furthermore, if for the first part the learner's licence could be part of the licensing, we fail to see how it would not form part of the latter clause. In the light of the provisions of section 96(2)(b) (ii) of the Act, it is consistent to read the disjunctive part as intending and operating upon the disqualification of drivers who had once been duly licensed. The driving of a vehicle by such a person, we think, who was duly licensed and who was not disqualified is not at any rate clearly excepted by clause (3)(b) of the general exception available in the policy.

14. As we have indicated above, Jay singh Jadhav did hold a licence in 1977 and within a few days immediately after the accident given a regular licence. There is no evidence of his disqualification to hold such a licence. Therefore, he would be in the permissive category of drivers and as such not excepted by the conditions of the policy. At any rate, we feel, by use of the words " a permanent driving

licence (other than a learner's licence) and is not disqualified from holding such a licence," an ambiguity is introduced by the latter part of the proviso, the advantage of which cannot be taken by the insurance company while setting up the statutory defence u/s 96(2)(b)(ii) of the Act. The burden to establish the limited defence in law is on the insurance company and it has to satisfactorily and beyond ambiguity establish that there had been a breach of the specified condition of the policy which impose the condition excluding driving by the persons of the kind mentioned by section 96(2)(b)(ii) of the Act. Here, we find, by reason of the latter part, that persons who once held a licence and are not disqualified are permitted to be drivers. If they are so permitted, the exclusion contemplated by sub-clause (ii) cannot be easily read. If there be an ambiguity, the defence of the kind taken by the insurance company would not be upheld.

15. Generally stated, such clauses of the policy should receive the interpretation consistent with the intent of the parties to the contract and also to further the object of the statute. This should particularly be so when contracts are in printed form and issued in the usual course. If we were to go by the terms of section 96(2)(b)(ii) of the Act, the exclusion could be of persons who are not "duly licensed" or of persons who had been disqualified, as is mentioned therein. To be within it, the terms of the policy should be specific. The terms of the present proviso are differently worded and, possibly, do admit a position that the drivers who were once licensed and are not disqualified are not specifically excluded. We would prefer to interpret such a term in the policy document in the light of the purposes of the statute which makes a provision for indemnifying causes involving third parties in accident and for satisfaction of claims arising therefrom in favour of the party affected rather than to absolve the insurance indemnity.

16. That being the position, we do not think that this is a case where, successfully, a statutory defence available to the insurance company has been made out.

17. The appeal, thus, fails and dismissed. There would, however, be no order as to costs.