
(2000) 01 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 336 of 1992

New India Assurance Co. Ltd., Shimla	APPELLANT
Vs	
Suraj Parkash and Others	RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 2(47), 3(1)

Citation : (2001) ACJ 85 : AIR 2000 HP 91 : (2000) 2 ShimLC 262

Hon'ble Judges : D. Raju, C.J.; L.S. Panta, J

Bench : Division Bench

Advocate : Ravi Bakshi, for the Appellant; Bhuvnesh Sharma and Lalit Sharma, for the Respondent

Final Decision : Allowed

Judgement

D. Raju, C.J.—The above appeal has been filed u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the award dated 21-9- 1992 in Motor Accidents Claims Petition No. 7 of 1991 on the file of Motor Accident Claims Tribunal. Hamirpur, whereunder a sum of Rs. 25,000/- has been awarded as compensation to the claimant, who suffered injuries as a result of accident due to collision between a Maruti Van bearing No. HP-02-0251 belonging to the third respondent and a Motor Cycle. The accident was said to have occurred on account of rash and negligent driving of the Maruti Van by its driver, the 2nd respondent herein. The first respondent herein made a claim for the award of a sum of Rs. 3 lacs from the respondents. The third respondent in the Tribunal below was the insurance company (appellant herein) with whom the Maruti Van was said to have been insured.

2. The respondents contended that the claimant did not suffer injuries on account of rash and negligent driving of the Maruti Van by its driver but it was due to negligent driving of the Motor- cyclist. It was also claimed that the Maruti Van was being driven in violation of the Motor Vehicles Act and in contravention of the terms and conditions of the insurance policy and, therefore, the insurance

company was not liable to pay compensation.

3. On the above claims and counter-claims, the claim petition came to be tried and the learned Judge in the Tribunal below. On an appreciation of the oral and documentary evidence on record came to the conclusion that the accident has occurred because of the rash and negligent driving of the driver of the Maruti Van, the 2nd respondent herein and that it is on account of the same the claimant received injuries resulting in the fracture of the right leg of the claimant, which caused permanent disability to him to the tune of 15 per cent. As for the quantum of compensation, the Tribunal below as noticed above, determined the sum at Rs. 25,000/- and held the insurance company liable to pay compensation to the claimant.

4. Aggrieved, the insurance company has filed the above appeal contending that inasmuch as the Maruti Van in question was registered as Taxi, which is a public service vehicle and was being plied as such taxi and the second respondent-driver only had no proper endorsement in the driving licence to drive a transport vehicle or to the effect that the driving licence was valid for hill road driving also, the insurance company was not liable to pay the compensation. The licence held by the second respondent herein carried endorsement to drive throughout India the Scooter/M. Cycle/Car/Jeep/LTV, only and no doubt there is no specific endorsement with respect to the hill road driving or to drive a transport vehicle,

5. Learned counsel for the appellant Mr. Ravi Bakshi reiterated the stand that in the absence of a specific endorsement, the licence of the second respondent-driver will not enable him to drive the vehicle in question and that too on hill road and, therefore, he must be considered to have been not holding a valid driving licence to drive the vehicle in question and consequently the insurance company cannot be saddled with any liability for the claim arising out of the accident in question. Learned counsel for the claimant Mr. Bhuvnesh Sharma while adopting the reasoning of the Tribunal below, in support of the award also further contended that the licence held by him was sufficient in law to drive the vehicle of the type involved in the accident and driven by the second respondent and, that, therefore, the appellant cannot claim immunity from their liability for the claim. The second respondent-driver has been represented by Mr. Lalit Sharma who also contested the claim made in the appeal by contending that the insurance company would be liable and not exonerated from liability to pay the compensation in terms of the award of the Tribunal below. The third respondent-owner of the vehicle of the Maruti Van though served did not appear and even though notice intimating the actual date for hearing the case on 14-12-1999 has been issued, and yet has not chosen to respond to contest the claim.

6. The learned counsel appearing on either side have invited our attention to some of the decided cases of various High Courts and having regard to the nature of issue involved which may affect a large number of cases in future, we have invited some of the learned counsel to address on this issue arising in the case. Mr. K. D. Sood, has been asked to assist the Court, as *amicus curiae*. In

addition thereto Mr. Deepak Gupta and Mr. Rajiv Mehta, who have normally appeared in such cases for the insurance company to make their submissions, generally on the issue. It will be useful to advert to the decisions referred to and relied upon by the learned counsel on either side. For the appellant-insurance company, its counsel Mr. Ravi Bakshi, relied upon the decisions reported in National Insurance Co. Ltd. Vs. Mahadevayya and Others, ; Anjanadevi Vs. Arumugham and Another, ; AIR 1999 Mad 333 (National Insurance Co. Ltd., Tuticorin v. Smt. Maisy Alex): 1992 Acc CJ 84 (Dhanraj v. Rubia) : 1997 ACJ 594 (Oriental Insurance Co. Ltd. v. Angammal). To support the same stand Mr. Rajiv Mehta, Advocate, invited our attention to the decisions reported in The Oriental Insurance Co. Ltd. Vs. Petchi Muthu Asari and Others, ; United India Insurance Co. Ltd. Vs. K. Subramaniam and Others, ; United India Insurance Company Ltd. Vs. Palaniammal and others, and 1999 AIHC 2458, (Prakash v. Hanumanthraya). Mr. K. D. Sood, brought to our notice the decisions reported in 1993 (3) KLT 84 which is equivalent to Pratap Singh and Another Vs. Smt. Sharmila and Others, ; M. Sammamma and Another Vs. Syed Kaja Maunuddin and Others, and Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., . The learned counsel for the respondents invited our attention to 1997 ACJ 558 (Pratap Singh v. Sharmila); Oriental Insurance Co. Ltd. Vs. Hazira Begum and Others, ; Dhanaraj and Another Vs. Rubia and Another, and Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., : Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.,

7. In National Insurance Co. Ltd. Vs. Mahadevayya and Others, a Division Bench of the Madras High Court held that the driver concerned, who had only a licence to drive a "light motor vehicle", which though included an auto-rickshaw, unless the driver of the auto-rickshaw is shown to have a licence to drive a contract carriage, he cannot be taken to have a valid licence to drive the vehicle which is insured as a contract carriage. On that view of the matter, the insurance company was held not liable to pay the compensation. In Anjanadevi Vs. Arumugham and Another, the very Division Bench which decided the earlier case considered the claim arising out of an accident involving a tourist taxi. Though the driver of the vehicle concerned had a licence to drive the car unless the licence contained a further endorsement duly authorising licensee to drive a tourist taxi, the person who drove the car cannot be taken to have had a valid licence to drive the car which caused the accident in that case. It was the conclusion of the Division Bench that since the insurance policy clearly showed that the vehicle has been registered as tourist taxi, it should be driven by a person who held a licence to drive a tourist taxi and inasmuch as Section 3 envisaged the driver of a tourist taxi to have a special endorsement in his licence to drive such a vehicle, which was factually found not so in the case before the Division Bench, the insurance company was absolved of the liability for the compensation arising out of the accident. In AIR 1999 Mad 333 (supra), the vehicle involved in the accident was a tourist car. The driver was holding in that case a permanent driving licence, authorising the driving of "light motor vehicle" and it was considered by a learned single Judge of the Madras High Court by

following the decision reported in *Dhanaraj and Another Vs. Rubia and Another*, that it satisfies the requirements and as long as the insurance policy did not insist on the driver having a licence specifically to drive a tourist taxi, holding the licensee satisfied the requirement of law and insurance policy and therefore, the insurance company was held liable. In 1997 ACJ 594 (supra), yet another learned single Judge of the Madras High Court held in the case of a driver holding a licence to drive "light motor vehicle", that in the absence of a special endorsement to drive a "tourist taxi", the vehicle in that case being a "tourist taxi", cannot be held to be driven by a person having valid licence and such driving being in contravention of Section 3 of the Motor Vehicles Act, the insurance company was held not liable. In AIR 1999 Mad 413 (supra), yet another learned single Judge of the Madras High Court had held that a driver licensed to drive "heavy passenger motor vehicle" classified and defined u/s 2 (9A), cannot be considered to be licensed to drive "heavy goods vehicle" as defined u/s 2(9) of the Act and though the learned single Judge in that case held that the licence for driving "heavy passenger motor vehicle" is not sufficient to drive the "heavy goods vehicle" since factually, the insurance company did not establish the defence plea stating that the driver was not duly licensed on the date of the accident in violation or breach of the conditions mentioned in the policy by producing the relevant records, the appeal of the insurance company came to be dismissed. In 1991 ACJ 434 (supra), a learned single Judge of the Madras High Court held that when an accident was caused by a "tourist taxi" driven by a person having licence to drive "light motor vehicle", the driver cannot be held to have had a valid licence to drive a "tourist taxi" in the absence of specific endorsement to that extent, and the claim of the insurance company was upheld to exonerate it from liability on the ground that the driver who drove the vehicle which caused the accident had no valid licence. In *United India Insurance Co. Ltd. Vs. K. Subramaniam and Others*, the same view was taken by the very same Judge of the Madras High Court as in the decision reported in 1991 Acc CJ 434, in the case of a driver holding a licence to drive a "light motor vehicle" but found to have driven a "tempo, a three wheeler goods vehicle" in the absence of a specific endorsement on the date of the accident to drive such vehicle, though subsequently such endorsement was obtained after the date of the accident to drive a transport vehicle as paid- employee. In 1999 AIHC 2458 (supra), a learned Judge of the Karnataka High Court has held in the case of a driver having effective licence to drive "non-transport vehicle" found to have driven a vehicle which was insured as "goods vehicle" not to be holding a valid licence to drive the vehicle covered by the insurance policy and the insurance company was held exonerated from liability. In coming to such a conclusion, the decision in *United India Insurance Co. Ltd. Vs. K. Subramaniam and Others*, of the Madras High Court by a learned single Judge has been followed. In *United India Insurance Company Ltd. Vs. Dhanalakshmi and Others*, yet another learned single Judge of the Karnataka High Court held in the case of a driver who had only a licence to drive "heavy passenger vehicle" but was actually driving a "heavy goods vehicle" at the (sic) of accident not to hold a valid driving licence

to saddle the insurance company with liability and thereby held the insurance company not liable to pay the compensation for the accident in question. In *M. Sammamma and Another Vs. Syed Kaja Maunuddin and Others*, a learned single Judge of the Andhra Pradesh High Court held, in a case of the driver holding a driving licence to drive "light motor vehicle" but found driving "heavy motor vehicle" causing accident, not to have a valid driving licence and exonerated the insurance company from liability for the claim.

8. In *Pratap Singh and Another Vs. Smt. Sharmila and Others*, while dealing with a case of a driver holding a licence to drive "heavy motor vehicle" and vehicle involved in the accident was a truck held that in cases where 1988 Act apply, the non-mentioning of category of the "transport vehicle" in the driving licence cannot lead to a conclusion that on the date of accident, the driver was not holding a valid driving licence and the vehicle involved in the case before the Division Bench of the Punjab and Haryana High Court being a truck, which is a "heavy motor vehicle" the licence held by the driver squarely covered the right to drive the vehicle in question in that case and, therefore, the insurance company cannot be held to be not liable for the claim. In (1992) I ACC 132 (supra), which is equivalent to *Dhanaraj and Another Vs. Rubia and Another*, the learned Judges of the Division Bench held in the case of a driver holding a licence to drive a car but with no endorsement on it enabling him to drive a "tourist car" came to the conclusion that as long as the insurance policy does not insist on the driver having a licence to drive a "tourist car", the words, "holds a driving licence at the time of accident" are satisfied and consequently, the insurance company was held liable. In *Oriental Insurance Co. Ltd. Vs. Hazira Begum and Others*, a learned single Judge of the Karnataka High Court while dealing with the case of a driver driving a vehicle registered as "medium goods vehicle" holding a licence to drive "light motor vehicle" came to the conclusion that on a combined reading of Sections 2(21) and 2(47) of the Act the goods carriage with unladen weight of less than 6,000 kg. is a "light motor vehicle" and the vehicle involved in the accident being one with an unladen weight of 5,350 kg., the driver was held entitled to drive the vehicle in question and the insurance company was also consequently held liable.

9. The learned counsel for the appellant insurance company contended that the Tribunal committed an error in holding that the insurance company failed to prove that the vehicle in question is covered within the definition of the words "public service vehicle", in spite of the fact that the Maruti Van in question was registered and got insured also only as a taxi, in which case it would be beyond controversy that the Maruti Van would answer the definition of "public service vehicle". From the records and the reply filed by the Insurance company, 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, MarutiVan HPY 251 did not possess any valid licence 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 carriage.

10. Section 3(1) of the Motor Vehicles Act, 1988 stipulated that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him to drive the vehicle and that no person shall so drive a transport vehicle (other than a motor cab or motor cycle) hired for his own use or rented under any scheme made u/s 75(2) of the Act, unless his driving licence specifically entitled him so to do. Section 2(47) defines transport vehicle, to mean a public service vehicle, a goods carriage, an educational institution's bus or a private service vehicle. Therefore, the vehicle in question answer the description of public service vehicle even on the materials disclosed on record. The conclusion of the Tribunal below to the contra is indicative of non-application of mind to a valid and relevant piece of material on record. Inasmuch as Ex. R-1 driving licence does not contain any specific endorsement to drive a transport vehicle, the driver who drove the vehicle at the time of accident must be held to be not possessed of a valid and effective driving licence. The mandatory requirement of Section 3(1) having not been satisfied by the driver, in not holding a licence to drive with a specific endorsement to drive the transport vehicle (public service vehicle) such a conclusion has become inevitable on the facts of the case.

11. The reliance placed upon the decision reported in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., by the respondents is of no avail. Their Lordships of the Apex Court in that case arrived at the conclusion to hold the insurance company liable only on account of the peculiar facts of the case -- in that there was neither any evidence therein nor was there any claim for the insurer that the vehicle concerned therein was having a permit for goods carriage or that it had a permit or authorisation for plying the vehicle as a transport vehicle.

12. Consequently, we are of the view that the Tribunal below went wrong in saddling the insurance company with liability for the compensation awarded. The appeal is allowed. Respondents 2 and 3 herein (respondents 1 and 2 before the Tribunal below) alone are jointly and severally responsible for the payment of compensation awarded to the claimant (1st respondent herein). No costs.