(2013) 09 CHH CK 0021

In the Chhattisgarh High Court

Case No : First Appeal No. 586/1998

Oriental Insurance Co. Ltd. APPELLANT

Vs

Karimuddin and Others RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 MPJR 1

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Judgement

Sanjay K. Agrawal, J.—The seminal question that arises for consideration in this appeal is whether Insurance Company can disown its liability on the ground that driver of vehicle though duly licensed to drive light motor vehicle but there is no endorsement in the licence to drive light motor vehicle used as commercial vehicle? The defendant No. 1/appellant herein-Oriental Insurance Co. Ltd. (in short ''the Insurance Company'') has filed this appeal u/s 96 of the Code of Civil Procedure, 1908 (in short ''the Code''), challenging the judgment and decree dated 15.5.1998 passed by the Fifth Additional District Judge, Raipur in Civil Suit No. 14-B/1997 (Karimuddin v. Divisional Manager, Oriental Insurance Co. Ltd., another), whereby learned trial Court has partly decreed the suit of the plaintiff/ respondent No. 1 herein by granting a decree of Rs. 60,000 along with 12% simple interest from the date of institution of the plaint till its recovery with cost.

2. Brief facts necessary for adjudication of this appeal are as under:

3.1 Plaintiff/respondent No. 1 filed a suit for damages claiming pleading inter alia that he has purchased Mahendra Jeep (Taxi) (in short ''the offending vehicle'') on 17.05.1990, financed by the defendant No. 2/respondent No. 2-Dena Bank, Gram-Nagri, Tahsil-Dhamtari, District-Raipur. The offending vehicle was got registered, being registration No. MP-23/B/1155. The offending vehicle was insured with the appellant/defendant No. 1-Insurance Company vide comprehensive policy No. 152307/005/0000/31/50/00006/91, valid for the period 19/05/1990 to 18/05/1991. On 25/03/1991 after grant of special permit, he had taken passengers 6 + 1 from Virouda to Singdai via Rajnandgaon and near Rajnandgaon, the vehicle met with an accident on account of mechanical break down and collided against the standing tree. It was further pleaded on that account, the vehicle turned turtle, caught fire and burnt. On 26/03/1991 the information regarding accident of offending vehicle was sent to the Insurance Company, claiming damages. The Officers of the Insurance Company gave assurance that they would pay Rs. 84,000, which they did not pay, leading to filing of suit for recovery of damage Rs. 2,30,000 along with 12% interest from defendant No. 1/appellant herein.

3.2 Defendant No. 1/appellant herein Insurance Company filed its written statement before the trial Court and admitted the fact of the accident and by way of amendment taken a plea that the terms and conditions of the policy were violated while plying the vehicle and driver of the offending vehicle did not possess a valid and effective driving licence on the date of accident and more over, 17 persons were traveling in the offending vehicle in breach of seating capacity, therefore, the Insurance Company is not liable to make payment of damages.

3.3 Defendant No. 2/respondent No. 2 filed its written statement stating that he had financed the loan to plaintiff/respondent No. 1 for purchase of offending vehicle and further pleaded that the amount ultimately, if any, is granted by the trial Court that be directed to be reimbursed to the defendant No. 2/respondent No. 2 herein.

3.4 The trial Court framed five issues, out of the pleadings of the parties and put the parties to notice.

3.5 Respondent No. 1/plaintiff examined three witnesses in support of his case namely (PW1) Karimuddin, (PW2) Shyama Charan Sahu, (PW3) Kaptan Ali and filed documents (Ex. P-1 to P-3). However, defendant No. 1/Oriental Insurance Company Limited examined four witnesses in support of their case namely DW1 Rajesh Kumar Bhargava, DW2 Srikrishna Ahuja, DW3 S.K. Khanna and DW4 C.K. Tiwari and exhibited several documents (Ex.-D-1 to D-84). Defendant No. 2-Dena Bank also examined one witness DW2 Srikrishna Ahuja in support of his case that the loan was given to plaintiff/respondent No. 1 to purchase the offending vehicle.

3.6 Trial Court by its impugned judgment and decree, a partly decreed the suit finding intrer alia that on 25/03/1991, the offending vehicle owned by the plaintiff/respondent No. 1, met with an accident, in which the vehicle was burnt/destroyed completely and for which the plaintiff/respondent No. 1 is entitled for Rs. 60,000 along with 12% interest from the date of institution of suit till its recovery. It has further been held by the trial Court that the plaintiff/respondent No. 1 was having valid and effective driving licence to drive the offending vehicle on the date of accident and there was no breach of policy conditions while plying the offending vehicle.

3. At the outset, Mr. Hari Shankar Patel, learned counsel appearing for the appellant/Insurance Company submits that he is confining his submission in present appeal, to the finding with regard to the liability of Insurance Company only and not challenging the finding with regard to the accident as well as quantum recorded by the trial Court. Mr. Patel further submits that the plaintiff/ respondent No. 1 on the date of accident was only having licence to drive light motor vehicle, which did not have endorsement to drive commercial vehicle and as such, he did not have valid and effective driving licence to drive the offending vehicle, the plaintiff/respondent No. 1 herein having committed breach of the terms of the Insurance policy and provisions of the Act, appellant-Insurance Company is absolutely not liable to make good to loss suffered by plaintiff/ respondent No. 1, and impugned judgment & decree is liable to be set-aside.

4. Per contra Mr. Roop Naik, learned counsel appearing for the respondent No. 1/ plaintiff, while supporting the impugned judgment & decree submits that the Insurance Company has failed to prove that driver did not have valid and effective licence to drive the offending vehicle on the date of accident. Mr. Naik, further submits that the decreetal amount has already been disbursed to the plaintiff/respondent No. 1, pursuant to the interim order dated 18.6.2000 passed by this Court and as such, the appeal has become infructuous and liable to be dismissed.

5. I have heard learned counsel for the parties and perused the record of the trial Court.

6. There is no dispute between the parties that the offending vehicle is Mahendra and Mahendra Jeep is a light motor vehicle insured for commercial purpose and on the date of accident, there was an valid permit for carrying passengers (6+1). It is also not in dispute that plaintiff/respondent No. 1 was holding valid driving licence to drive the light motor vehicle on the date of accident i.e. on 17.5.1990.

7. Section 2(21) defines "light motor vehicle" and Section 2(47) defines "transport vehicle" as under:

2. (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor can or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms;

(47) ''Transport Vehicle'' means a public service vehicle a goods carriage, an education institution, bus or a private service vehicle.

8. Section 3(1) of the act requires holding of the driving licence, which reads as under:

3. Necessity for driving licence--(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motorcycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving licence

specifically entitles him so to do.

9. Section 5 of the Act declares that no owner or person in charge of a motor vehicle shall cause or permit any person which does not satisfy the provisions of Section 3 to drive the vehicle. Section 10 deals with form and contents of licences. It enacts that every driving licence (except a driving licence issued u/s 18 which provides for driving motor vehicles belonging to the Central Government) shall be in such form and shall contain such information as may be prescribed by the Central Government. It also states that a driving licence shall be expressed as entitling the driver to drive a motor vehicle of one or more of the types of motor vehicles specified in sub-section (2). Section 15 provides for "renewal of driving licence".

10. Section 27 of the Act empowers the Central Government to make rule in respect of matters enumerated therein. Section 66 prohibits an owner of motor vehicle to use or to permit the use of motor vehicle as a transport vehicle in any public place save in accordance with the conditions of permit granted by an appropriate authority.

11. The Central Government has framed rules known as the Central Motor Vehicles Rules, 1989 (hereinafter referred to as "the Rules").

12. Rule 16 of the Rules prescribes the form in which driving licence is issued. The form provides that the holder of a licence can drive any vehicle of the description mentioned therein. Where authorization is granted to drive transport vehicle, it is expressly so provided by making an endorsement to that effect.

13. The word "form" has been defined in Rule 2(e) to mean a form appended to the Rules:

Form 4

* * *

I apply for a licence to enable me to drive vehicles of the following description:

* * *

(d) Light motor vehicle

(e) Medium goods vehicle

* * *

(g) Heavy goods vehicle

* * *

(j) Motor vehicle of the following description.

14. The Central Motor Vehicles Rules, 1989 was amended by Ministry of Road Transport and Highways Notification No. G.S.R. 221 (E) dated 28th March, 2001.

After amendment the relevant portion of Form 4 reads as under:

Form 4

* * *

I apply for a licence to enable me to drive vehicles of the following description:

* * *

(d) Light motor vehicle

(e) Transport vehicle

* * *

(g) Motor vehicle of the following description.

Rule 14 prescribes for filing of an application in form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for "transport vehicle" which has been substituted by GSR 221 (E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium goods vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "light motor vehicles" also found place therein.

15. "Light motor vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof reads as under:

Authorization to drive transport vehicle Number.... Date....

Authorized to drive transport vehicle with effect from.... Badge number....

Signature Designation of the licensing Authority

Name and designation of the authority who conducted the driving test.

16. Thus, it is evident that the transport vehicle has now been substituted for medium goods vehicle and heavy goods vehicle w.e.f. 28/3/2001. The light motor vehicle continued at the relevant point of time to cover both light passenger carriage vehicle and light goods carriage vehicle. In the instant case, accident occurred on 17/5/90 and thus, plaintiff/respondent No. 1 who had a valid licence to drive light motor vehicle therefore, was authorized to drive the offending vehicle namely Mahendra and Mahendra Jeep (Taxi) on the date of accident and licence held by driver of vehicle in question cannot be said to be invalid in law.

17. In a decision Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , the appellant was the owner of a truck weighing less than the maximum limit prescribed in Section 2(21) of the Motor Vehicles Act. The said truck was,

therefore, a light motor vehicle. It was registered with the respondent insurer for a certain amount and for a certain period. Within the period of insurance, the truck met with an accident and got completely damaged. The appellant''s claim against the respondent was rejected by the National Consumer Disputes Redressal Commission. The National Commission accepted the respondent''s contention that the truck was a goods carriage or a transport carriage and that the driver of the truck, who was holding a driving licence in Form 6 to drive light motor vehicles only, was not authorized to drive a transport vehicle and, therefore, the insured having committed breach of the terms of insurance policy and provisions of the Act, the respondent insurer was not liable to indemnify the insured. Allowing the appeal, Hon''ble Supreme Court held as under:

14. Now the vehicle in the present case weighted 5920 kilograms and the river had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy convered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have a specific authorization on the licence of the driver under Form 6 under the rules. It has, therefore, to be held that Jadhav was holding an effective valid licence on the date of the accident to drive a light motor vehicle bearing Registration No. KA-28-567.

18. In a decision National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, , the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the Insurance Company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. After considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to the conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. The Supreme Court held as under:

20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

19. Recently, the Supreme Court in a decision S. Iyyapan Vs. United India Insurance Company Ltd. and Another, , has held that Insurance Company cannot disown its liability on the ground that driver of the vehicle though duly licenced

to drive the light motor vehicle, merely because the driver did not get any endorsement in the driving licence to drive commercial vehicle. The Supreme Court held 19 as under:

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

20. Thus, for the reasons aforementioned, it is held that plaintiff/respondent No. 1, having a licence to drive the light motor vehicle was duly entitled to drive the Mahindra and Mahindra Jeep (Taxi) on the date of accident (17/5/1990) and on that day, there was no requirement to get any endorsement in the driving licence to drive the offending vehicle. The finding recorded by the learned trial Court is absolutely justified. It is hereby affirmed.

21. No other point was pressed before me. The finding with regard to accident and quantum, of claim has not been challenged, as such it has attained finality. Even otherwise, those findings are based on material available on record. They are hereby confirmed.

22. Resultantly, the first appeal filed by the defendant No. 1-Oriental Insurance Co. Ltd. Deserves and accordingly dismissed. Judgment and decree passed by trial Court in Civil Suit No. 14-B/1997 on 15/5/1998 (Karimuddin v. Divisional Manager, Oriental Insurance Co. Ltd. & another) is hereby maintained.

23. Parties shall bear their own costs.

24. Advocate fee as per schedule. Decree can be drawn up accordingly.

