(2015) 04 MAD CK 0396

In the Madras High Court

Case No : CMA(MD) No. 879 of 2006

Ramu and Others APPELLANT

Vs

S. Venkatachalam and Others RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 11, 149, 18, 2

Citation : (2015) 147 FLR 690 : (2015) 3 LLJ 592 : (2015) 3 LW 751

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : Porkodi Kannan, for the Appellant

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J—The appellants are the claimants in W.C. No. 53 of 2003 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai. They are the parents of the deceased Mahendran. The deceased Mahendran was employed as a driver in the Mini Lorry bearing Registration No. TN 65-8917 owned by the 1st respondent insured with the second respondent. On 05.02.2003, the Mini Lorry met with an accident and he died in the accident that arose out of and in the course of employment.

2. The Deputy Commissioner of Labour passed an order dated 17.02.2005 directing the 1st respondent/owner of the Mini Lorry to pay compensation of Rs. 3,41,443/- including Rs. 2,500/- towards funeral expenses. The liability was not fastened on the 2nd respondent insurance company on the sole ground that the deceased Mahendran did possess only a licence to drive light motor vehicle and he could not drive Mini Lorry without badge. Hence, the 2nd respondent is not liable to pay compensation.

3. Before the Deputy Commissioner of Labour, the 2nd appellant/mother of the deceased was examined as PW1 and Exs. A1 to A7 were marked. On the side of the 2nd respondent insurance company, two witnesses were examined and Exs.

R1 and R2 were marked.

4. We are concerned with the first witness namely, Thiru. Sakthivel an employee in the concerned Regional Transport Office which issued driving licence to the deceased Mahendran. According to the said witness, the deceased was issued with a licence to drive light motor vehicle, but he drove Mini Lorry without badge. Hence, he did not possess proper driving licence to drive Mini Lorry. Based on the said evidence, the Deputy Commissioner of Labour directed the owner to pay compensation instead of directing the insurance company to pay the compensation.

5. The appellants/parents of the deceased filed this appeal questioning the findings of the Deputy Commissioner of Labour on the ground that the Deputy Commissioner of Labour should have fastened the liability on the insurance company.

6. The only question of law involved in this case is as to whether the Deputy Commissioner of Labour is correct in not fastening the liability on the 2nd respondent insurance company and fastening the liability only on the owner of the Mini Lorry.

7. Heard both sides.

8. The relevant portion in the evidence of Sakthivel who was an employee of the concerned Regional Transport Office which issued the licence to the deceased is extracted hereunder:-

9. The relevant passage from the order of the Commissioner in this regard is extracted hereunder:-

"Thiru. Sakthivel, R2W1 in his evidence has stated that the deceased Mahendran was issued driving licence to drive LMV only. The Mini lorry is a LMV. But the driver should have obtained a ''badge'' to drive such vehicle. If the driver had driven such vehicle without obtaining badge it is a violation of Motor Vehicles Act. He has filed the following document.

Ex. 1 of R2W1 - Copy of driving licence No. F/2546/TN/063/2001 of Mahendran."

"The vehicle involved in the accident in which the deceased was employed has been insured with the 2nd respondent uner Policy No. 650905/2001/67054070, which has been marked as Ex. A5. The policy has the period of coverage from 20.09.2001 to 19.09.2002. Though there is valid policy on the date of accident the deceased did not possess a valid driving licence at the time of accident as per the evidence of R2W1 and R2W2. It is mandatory as per Section 3 of the Motor Vehicles Act 1988 to drive a vehicle with the valid driving licence. Here the 1st respondent engaged the deceased who did not possess a valid driving licence, which is a violation under Motor Vehicles Act and the violation of policy conditions. Hence, I decide the 1st respondent is liable to pay the compensation to the applicants."

10. As per the Registration Certificate marked as Ex. A4 the unladen weight of the vehicle involved in the accident is 2990 kg. As per the Registration Certificate, the Mini Lorry is classified as light motor goods vehicle.

11. Though the Deputy Commissioner of Labour has used the word that the deceased had driven the Mini Lorry which is a goods carriage without a valid badge, the Motor Vehicle Act nowhere uses the word ''badge''. On the other hand, 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 case, 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."

12. In this case, the deceased is in possession of valid driving licence to drive light motor vehicle. According to the 2nd respondent insurance company, the

deceased 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 deceased had only possessed a licence to drive light motor vehicle, but he did not have a badge or endorsement to drive the goods carriage.

13. 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."

14. 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 wilful 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 wilful 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."

15. Therefore, I am of the view that the insurance company has to pay the amount and they could recover the same from the insured in the manner known to law.

16. Hence, following the aforesaid judgment, the order of the Deputy Commissioner of Labour is modified and the liability to pay compensation is fastened on the 2nd respondent insurance company and the 2nd respondent is directed to pay Rs. 3,41,443/- being the total compensation with interest @ 12% per annum from the date of claim petition to till the date of payment.

17. In the result, the Civil Miscellaneous Appeal is allowed in the above terms. On deposit by the 2nd respondent as stated above, the appellants/claimants are permitted to withdraw the entire award amount. No costs.

