

(2014) 03 KAR CK 0312
In the Karnataka High Court
Case No : M.F.A. No. 937 of 2011 (MV)

Renu and Others

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : (2015) 3 ACC 368 : (2015) ACJ 890

Hon'ble Judges : H.G. Ramesh, J.

Bench : Single Bench

Advocate : Anupama Shankar Arahunashi, for the Appellant; K.K. Vasanth, for the Respondent

Final Decision : Partly Allowed

Judgement

H.G. Ramesh, J. This appeal by the claimants is against the judgment and award passed by the learned Third Additional Senior Civil Judge & M.A.C.T., Bangalore, in M.V.C. No. 4344 of 2009, dated 15.6.2010 seeking enhancement of compensation and challenging the finding of the Tribunal fastening liability to pay compensation on the owner while absolving the liability on the insurance company. Claimants are the parents of deceased Vinodkumar who died in the accident that occurred on 23.9.2008. It is the case of the claimants that on 23.9.2008 at about 9.45 p.m. when Vinodkumar was crossing Tumkur Road, a lorry bearing registration No. KA 21-A 4297 came in a rash and negligent manner and dashed against him due to which he sustained grievous injuries all over the body. He was taken to Premier Sanjeevini Hospital, Bangalore and during the course of treatment, he died on account of injuries. As such, claimants filed claim petition before the Tribunal seeking compensation.

2. On the matter being contested by the respondent insurer, the Tribunal raising relevant issues for consideration, after inquiry, holding that the accident was due to negligence of the driver of the lorry in question, awarded total compensation of Rs. 1,80,000 with interest at 6 per cent per annum from the date of petition till the date of deposit. So far as fastening of liability is concerned, The Tribunal

held that driver of the vehicle in question did not possess valid and effective driving licence to drive the vehicle as on the date of accident and there was no endorsement authorising the driver to drive vehicle carrying hazardous goods as the vehicle involved in the accident was a vehicle carrying hazardous goods and accordingly fastened the liability to pay compensation on the owner-insured of the vehicle. Challenging the same, the claimants are before this court.

Heard the learned counsel representing the parties.

3. Learned counsel for the respondent insurance company has relied upon the decision of Madras High Court in the case of Nagamani and Venkatesan Vs. Singaravelu and National Insurance Company Limited--> , to contend that, in the absence of such an endorsement, as the driver had no valid driving licence to drive vehicle carrying hazardous goods involved in the accident in question and as there is violation of policy conditions, the liability is on the owner of the vehicle and the Tribunal is right in exonerating the insurance company from payment of compensation.

On the other hand, the learned counsel appearing for the claimants submitted that in the case of National Insurance Co. Ltd. Vs. K. Ramasamy, Dhanalakshmi, K. Narayanasamy and K. Kaliyamourthy, , it is held that the main purpose of the qualification and training prescribed in rule 9 of the Rules seems to equip the driver of the tanker lorries transporting hazardous substances to meet certain emergencies and to make him aware of certain basic emergency procedures, in case of any spillage of hazardous substances transported in the vehicle is caused due to an accident. Further it is held in the said case that the evidence discloses that the tanker lorry was driven rashly and negligently by its driver and hit the deceased who was attending to the tyre of the lorry in which he was working as a cleaner near the lorry which was parked on the side of the road. The failure on the part of the driver of the tanker lorry to undergo the training prescribed under rule 9 of the Rules does not seem to have in any way contributed to the cause of the accident. In that circumstance, it is held that the insurer is not entitled to avoid its liability to indemnify the insured.

4. In the present case, what is being seen from driving licence, Exh. R3, is that the driver was authorised to drive heavy goods vehicle with goods of hazardous nature from 1998-99 and the same was renewed from time to time up to 2006 and thereafter up to 29.12.2009. Of course, there was suspension of licence for 90 days from 30.12.2008. It appears, at column No. 15, that licence was renewed from 30.12.2006 to 29.12.2009. Prior to that, in column No. 14, it is mentioned that the DL holder is also authorised to drive heavy goods vehicle, goods carriage, hazardous vehicle. The RTO officers, RW 2 and RW 3, examined before the Tribunal have deposed that endorsement is very much necessary though there is renewal of licence and Exh. R3 does not indicate the fact of renewal of driving licence with respect to hazardous vehicle at the relevant point of time.

5. The situation confronted in this case is a case of accident simpliciter. As per the facts, when the deceased was crossing the road, driver of the vehicle in question drove the vehicle in a rash and negligent manner and dashed the same against the deceased due to which the deceased sustained severe injuries to the whole body and consequently succumbed to the injuries.

6. The learned counsel for the appellant referring to the decision of Division Bench of Madhya Pradesh High Court in Baghelkhand Filling Station and Another Vs. Brijbhan Prasad and Others, , wherein, referring to National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC), in para 102, the Division Bench has held that endorsement is not required to be given to the driver for having gone through any specialised training or for having passed any special test. Any driver who has held a driving licence to drive a tanker would be entitled to this endorsement subject to fulfilling of other conditions as contemplated in sub-rule (3) of rule 9, but they do not deal with the professional skill of driving and also held, as regards professional skill of driving, licensing authority has clarified to him at the time of granting of licence and it is not the case of the respondents that his driving licence was not obtained properly. In para 102 of Swaran Singh's case (supra), 2004 ACJ 1 (SC), the Apex Court has held thus:

"...To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

It has further been held as under:

"Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under section 149(2) of the Act."

7. Especially in the case of oil tankers, the main purpose of such endorsement or training required is, to take a special care to overcome the situation like capsizing of vehicle, spilling of oil from the tanker and likelihood of destruction from fire, confronting with dangerous situation and in case of head-on collision, which results in causing damage/danger to the vehicle, namely, the tanker as well as other vehicle involved in the accident, due to fire there is complete destruction of defence resulting in damage to both the men and material.

8. In the case on hand, the situation is such that while the deceased was in the process of crossing the road, the driver of the tanker drove the tanker in a rash and negligent manner and dashed against him, as a result of which the deceased

died due to the injuries sustained in the accident. No such fire or spilling of oil from the tanker is indicated. Even nothing is indicated in the spot mahazar in this regard. In that situation, referring to Swaran Singh's case, 2004 ACJ 1 (SC) , the Division Bench of Madhya Pradesh High Court has held that rule of main purpose is also very much essential to the defence taken by the insurer. No such endorsement and no special training is required, so also the endorsement for that or special knowledge may not be necessary in the situation. Having regard to the occurrence of the accident, the insurer cannot be absolved from its liability. While modifying the order passed by the Tribunal, it is held that the insurer is liable to pay compensation as there is valid insurance policy as on the date of accident. The driver also had a valid driving licence to drive the tanker except the endorsement as was contemplated at the relevant point of time, but it is also clear that the driver had driving licence with endorsement which is one or two years prior to the occurrence of the accident in the case on hand. So far as compensation is concerned, Apex Court even in the case of Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and Another, , adopted a device to award appropriate compensation in the case of children suffering disability on account of a motor vehicle accident on all other heads in addition to the actual expenditure towards treatment, attendant, etc. and observed that, if the disability is above 10 per cent and up to 30 per cent to the whole body, it is Rs. 3,00,000; up to 60 per cent, Rs. 4,00,000; up to 90 per cent, Rs. 5,00,000 and above 90 per cent, it should be Rs. 6,00,000. The accident is of the year 2008, it would be just and appropriate to award Rs. 4,00,000 (rupees four lakh) in modification of the compensation awarded by the Tribunal with 6 per cent interest from the date of petition till deposit. The award of the Tribunal is modified accordingly. The insurer to deposit the amount within three months.

Appeal is allowed in part.