

(2011) 02 CHH CK 0041
In the Chhattisgarh High Court
Case No : M.A.C. No. 1382 of 2009

Rupendra Kumar

APPELLANT

Vs

Omprakash and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 11, 14, 14(2), 166

Citation : (2012) ACJ 1360

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : D.P. Singh, for the Appellant; Sanjay S. Agarwal, Vijay Kumar Sahu and Mr. Anil Gulati, for the Respondent

Judgement

I.M. Quddusi, J.—This appeal has been filed by the appellant (driver) against the impugned award dated 2.7.2009, passed by the Ninth Additional Motor Accidents Claims Tribunal (FTC), Durg, in Claim Case No. 27 of 2008, awarding a total sum of Rs. 3,34,047, holding the owner and driver of the offending vehicle responsible for payment of compensation, jointly and severally, exonerating the insurance company. Therefore, the appellant driver has challenged the impugned award to the extent that the liability to pay the amount of compensation is on the insurance company because of the reason that there was no breach of the conditions of the insurance policy and the appellant driver was having a valid and effective driving licence on the date of accident to drive the offending vehicle, i.e., agricultural tractor for which a farmer's policy was issued by the insurance company. We have heard learned counsel appearing for the appellant as well as learned counsel appearing for the respondents and perused the lower court record as also the findings given in the impugned award.

2. Brief facts, in nutshell, are that on 16.4.2007 in the morning at about 11.30 a.m. Onkar Prasad Dubey, who was a postman in the Indian Post & Telegraph Department, was going to the Sub Post Office at village Anda, on his cycle from village Chandkhuri. At that time in front of Kuthrail Bus Stop the tractor-trolley,

bearing registration No. CG 04-6321 and 6322, being driven in a rash and negligent manner by the non-applicant No. 1, hit the cycle, as a result of which Onkar Prasad Dubey received grievous injuries and during treatment he died on 23.4.2007. The offence was registered at the Police Station Anda, District Durg, against the driver of the offending vehicle. On the date of accident the offending vehicle was insured with the non-applicant No. 4, United India Insurance Co. Ltd.

3. The claimants, being legal heirs of the deceased Onkar Prasad Dubey, filed a claim case u/s 166 of the Motor Vehicles Act, 1988 for award of a total compensation of Rs. 24,03,968.

4. The learned Claims Tribunal having regard to the fact situation and considering the evidence on the record awarded a total sum of Rs. 3,34,047 as compensation along with interest at the rate of 6 per cent per annum from the date of the application. It has been held by the Tribunal that since there was breach of the conditions of the insurance policy therefore the insurance company has been exonerated from any liability and the non-applicant Nos. 1 and 3 (driver and owner) have been held liable to pay the amount of compensation to the claimants, jointly or severally.

5. The appellant, who was the driver of the tractor-trolley (offending vehicle), was issued a driving licence for non-transport purpose to drive light motor vehicle and motor cycle with gear by the licensing authority on 4.1.2000 which was valid up to 3.1.2020. However, the authorisation to drive transport vehicle was added which was valid for three years and lastly it was valid up to 23.7.2010. Licensing authority was the RTO, Raipur and driving licence number was CG 04 20000006657.

6. Before proceeding further it is necessary to peruse certain provisions of the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules, 1989. Sections 11 and 14 of the Motor Vehicles Act, 1988 and rule 2 (b) of the Central Motor Vehicles Rules, 1989, are relevant which are quoted below:

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 was 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.

14. Currency of licences to drive motor vehicles.-

(1) A learner's licence issued under this Act shall, subject to the other provisions of this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall,--

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years:

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus; and

(b) in the case of any other licence,--

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of fifty years on the date of issue or, as the case may be, renewal thereof,--

(A) be effective for a period of twenty years from the date of such issue or renewal; or

(B) until the date on which such person attains the age of fifty years, whichever is earlier;

(ii) if the person referred to in sub-clause (i) has attained the age of fifty years on the date of issue or as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal:

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry.

2 (b). "Agricultural tractor" means any mechanically propelled 4-wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. Agricultural tractor is a non-transport vehicle.

7. A perusal of section 14 (2) of the Act, 1988 would show that a driving licence issued or renewed under the Motor Vehicles Act to drive a transport vehicle is effective for three years, whereas in the case of any other licence it will be effective for a period of 20 years from the date of issue or renewal or until the holder of the licence attains the age of 50 years, whichever is earlier. However, this was amended w.e.f. 14.11.1994 by Act 54 of 1994, prior to that it was 40 years.

8. It is also to be noticed that if a person obtains a driving licence other than mentioned in clause (a) of sub-section (2) of section 14 of the Act, 1988, i.e., to

drive a transport vehicle and wants to get an addition, section 11 of the Act, 1988, as quoted above, would be applicable but if such addition has been made in the driving licence to drive the transport vehicle for 3 years, it cannot cut short the validity of the driving licence issued for non-transport vehicle purpose, i.e., clause (b) of subsection (2) of section 14, as the legislature does not authorise a licensing authority to cut short the period of licence mentioned in that clause.

9. In the case of *Nagashetty v. United India Insurance Co. Ltd.*, 2001 ACJ 1441 (SC), Apex Court has laid down as under:

(10) We are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly u/s 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

10. Clause (b) of rule 2 of the Central Motor Vehicles Rules, 1989, as quoted above, provides for the definition of "agricultural tractor" which clearly lays down that the agricultural tractor means any mechanically propelled 4-wheel vehicle designed to work with suitable implements for various field operations and/or trailers to transport agricultural materials. It is a non-transport vehicle.

11. If the appellant was having a driving licence to drive a non-transport vehicle-- light motor vehicle--he could drive an agricultural tractor which is a non-transport vehicle.

12. Now, we come to the insurance policy. At the very outset in the insurance policy following has been mentioned "Farmer's Package Policy", therefore, it is clear that the tractor in question was insured for agricultural purpose and the same was an agricultural tractor as defined in clause (b) of rule 2 of the Rules, 1989.

13. In view of the above it cannot be said that the appellant was not having a valid and effective driving licence to drive the agricultural tractor which was the offending vehicle on the date of the accident. Therefore, we are of the opinion

that the Claims Tribunal has wrongly exonerated the insurance company from the liability to pay the amount of compensation awarded to the claimants, on the ground that the appellant driver was not having an effective and valid driving licence on the date of accident.

14. In view of the above we allow this appeal and set aside the findings of the Claims Tribunal on the relevant issue Nos. 2 and 3 wherein it has been held that there was breach of the conditions of the insurance policy as the driver was not having a valid and effective driving licence and, therefore, the claimants are entitled to get amount of compensation awarded by the Tribunal from the non-applicant Nos. 1 and 3.

15. We hold that the driver was having a valid and effective driving licence on the date of the accident. Therefore, the impugned award is modified to the extent that the amount of compensation awarded to the claimants shall be paid by the insurance company instead of the appellant and the owner of the vehicle, jointly or severally. We exonerate the appellant and the owner from any liability to pay the amount of compensation awarded by the impugned award. The amount deposited by the appellant shall be refunded. No order as to costs.