

(2012) 04 MAD CK 0033

In the Madras High Court

Case No : W.A. (MD) No. 783 of 2008 and M.P. (MD) No. 2 of 2008

S. Krishnan

APPELLANT

Vs

The Licensing Authority, The Regional Transport Officer, The
Regional Transport Office (Madurai North), Madurai

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 19, 19(1), 19(1)(c), 19(4), 21
Penal Code, 1860 (IPC) — Section 304A

Citation : (2012) WritLR 784

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : S. Arunachalam, for the Appellant; A. Muthukaruppan, Additional
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The writ appeal has been filed as against the order dated 24.10.2008 made in W.P. No. 8204 of 2008. According to the

appellant who is the driver working in the Tamil Nadu State Transport Corporation (Madurai) Ltd. He was driving the bus between Anna bus

Stand and Palamedu on 12.08.2008 at about 5.45 p.m. when the bus reached a bus stop called Ayer Bungalow stop the passengers got down

from the bus and also boarded the bus. According to the appellant when he was about to start the bus from the above said bus stop the

passengers of the bus told him that an aged woman passenger fell down on the road from the front side steps of the bus. Immediately, he stopped

the vehicle and the said aged woman passenger was found with no serious injury and in conscious stage and took her to the hospital. Later on,

after seven days, he was told that she was died. According to him, the accident happened not due to any fault on his part but a F.I.R. was registered against him u/s 304A I.P.C. Subsequently, on 12.08.2008 the police got his driving licence and the same was entrusted to the respondent and thereafter he was issued with a show-cause notice asking him to submit explanation as to why action should not be taken against suspension of driving licence for the above said accident. For the above said show-cause notice, he had submitted his explanation on 26.08.2008 stating that he was not responsible for the accident and the criminal case was not yet over and therefore, he requested the respondent to drop the proceedings against him. After submission of the explanation, the impugned order dated 02.09.2008 was passed suspending his driving licence for a period of six months from 26.08.2008 to 25.02.2009. According to him, the order is per se illegal as the respondent has not followed Section 19(1) of the Motor Vehicles Act (hereinafter referred to as "the Act") and the order itself passed solely on the basis of the report of the Inspector of Police which is only the investigation and the criminal case has not come to an end. No charge sheet at that time was filed and of course he also would contend that this order is passed without jurisdiction. Challenging the impugned order he filed a Writ of Certiorarified Mandamus. The said Writ Petition was stoutly contested by the respondent and the learned Judge has dismissed the same on the ground that all the ingredients of Section 19 (1) of the Motor Vehicles Act has been followed, especially, the order has been passed u/s 19(1)(c) as there is no embargo that the suspension could be done only after the conviction in the criminal Court. Further, the learned Single Judge held that there is an appeal provision as provided u/s 19(4) of the Motor Vehicles Act and without availing alternative remedy the appellant has straightaway come to this Court with the present writ petition hence, the writ petition is dismissed on the ground of alternative remedy. Aggrieved against the said order, the present writ appeal has been filed.

2. We have heard both parties.

3. The main ground of attack of the appellant was that the impugned order suspending the driving licence for a period of six months is no basis at all as it is passed merely on the basis of an F.I.R. when admittedly a criminal

case has not ended convicting him of any offence at that stage. He would also contend that the impugned order was passed based on the report of the Investigation Officer. He would contend that there is no provision u/s 19(1) of the Act to suspend the driving licence before ever he being indicted of the offence. In this connection, it is worthwhile to extract Section 19(1)(c), 2(a) and (3) of the Motor Vehicles Act which reads as under:

19. Power of licensing authority to disqualify from holding a driving licence or revoke such licence:--

(1) If a licensing authority is satisfied, after giving the holder of a driving licence an opportunity of being heard, that he -

(a)...

(b)...

(c) is using or has used a motor vehicle in the commission of a cognizable offence;

(2) Where an order under sub-section (1) is made, the holder of a driving licence shall forthwith surrender his driving licence to the licensing

authority making the order, if the driving licence has not already been surrendered, and the licensing authority shall,-

(a) if the driving licence is a driving licence issued under this Act, keep it until the disqualification has expired or has been removed;

(3) Any person aggrieved by an order made by a licensing authority under sub-section (1) may, within thirty days of the receipt of the order,

appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that

party and may pass such order as it thinks fit and an order passed by any such appellate authority shall be final.

4. The main contention of the appellant is that merely because criminal cases are registered and the same are pending, the driving licence cannot be

suspended as there is no finding given by the appropriate Court fixing the guilt of the appellant. It is admitted by the appellant that there is an F.I.R.

as against him for offence u/s 304-A I.P.C. It is further stated by him in the affidavit that the vehicle was stopped in the bus stand, people were

alighting the bus and thereafter when he was about to start the bus, he heard a sound of the passengers that an aged woman passenger fell down

on the road from the front side steps of the bus. This is the stand taken in the writ petition. After the accident, the respondent department has given

a show-cause notice u/s 19(1) of the Act. For the showcase notice, the petitioner had submitted his explanation. In the explanation he would state

as under:

5. In the above explanation, he gives a different version that the passenger was alighting from the bus and in that process after she got down from

the bus she fell down. Be that as it may. The section contemplates that in the event of an accident if a person has committed an offence u/s 19(1)(c)

of the Act as stated above by which an accident is caused by the use of the motor vehicle whereby a cognizable offence is made definitely, the

authority can take action u/s 19 of the Act.

In this case, admittedly, the passenger died due to the injuries caused by falling down from the bus. In this case, a cognizable offence is made out

as against the appellant u/s 304-A of I.P.C. by virtue of carelessly driving the vehicle which resulted in the death of a person.

Therefore, the Act contemplates initiation of action after following the principles of natural justice. In this case admittedly the show-cause notice

was given and he was given sufficient time for submitting his explanation. He had also submitted his explanation. Though he was given time for

further enquiry, he did not participate in the same, Thereafter, after seven days the authority has rightly considered his explanation and clearly

stated that the explanation submitted by the appellant was not an acceptable explanation. Thereafter, the order of suspension of driving licence

came to be passed. We find even now the explanation is contrary to the affidavit filed by the appellant in the writ petition.

6. In any view of the matter, as rightly pointed out by the learned Single Judge that there is no specific embargo that an action u/s 19(1) of the Act

could be taken only if there is a conviction. Section 19 itself gives the power to the authority to disqualify a person from holding a driving licence

when the licensing authority is satisfied after giving notice to the licensee and enumerated 10 disqualification clauses.

One among them was Section 19(1)(C) which clearly states that when the vehicle is used and a cognizable offence is made out all that is required

is the authority should satisfy itself whether the petitioner has utilized the vehicle

which resulted in a cognizable offence. Admittedly, this appellant used the vehicle and caused the death of a person.

Therefore, it was rightly stated that only because of an F.I.R. registered against the appellant, there cannot be a suspension.

7. In this connection, we also would like to cull out the Government of Tamil Nadu State Transport Authority's road accident data which was

extracted in an order of this Hon'ble Court made in W.P. Nos. 18042 and 18490 of 2010 which is also a case arising out of suspension of driving

licence. The data reads as follow:

GOVERNMENT OF TAMIL NADU: State Transport Authority

ROAD ACCIDENT DATA FROM 1993 TO 2009 TAMIL NADU

N.A: No of Accidents -- NPK: No of persons killed -- N P I : No of persons Injured

Source: DGP, Chennai

The number of road accidents and the causes for such accidents during the year 2009 in the state of Tamil Nadu are as follows: ""Government of

Tamil Nadu -- State Transport Authority NUMBER OF ROAD ACCIDENTS ACCORDING TO CAUSES DURING THE YEAR 2009

(FROM JANUARY "2009 TO DECEMBER "2009): State : TAMIL NADU

NUMBER OF ROAD ACCIDENTS ACCORDING TO CAUSES

N A-NO. OF ACCIDENTS. -- N P K - No. OF PERSONS KILLED. -- N P I - No. OF PERSONS INJURED Source: DGP, Chennai

The above data indicate gradual increase of fatal and grievous injury accidents. The percentage of accidents caused by the drivers' negligence is

90.31%. Thus, strict implementation of the provisions of the Motor Vehicles Act, 1988 is the present day requirement not only at the time of

issuing driving licence, but also even after the licence is issued.

8. From a reading of the above said data itself is very clear that the day in and the day out the accidents occurred in such huge numbers and loss of

life is enormous. It is not the loss of death of one particular person, it is the loss of life of the entire family if a breadwinner dies in the accident. Such

accident took place mostly due to the careless and reckless driving of the driver and therefore, nothing wrong in the authorities immediately taking

action against such erring drivers u/s 19(1)(C) of the Act suspending the driving licence for a period of six months subject to the satisfaction of the

authority after getting necessary explanation. In fact, we are pained to see such action has not been taken even in many cases.

In fact, all over the world once the accidents take place, the licence of the driver is suspended especially in the case of a death of a person due to

the accident. Though these rules are available, this has been seldom invoked in our country and it is a high time that same has to be followed in the

strict sense. Of course, we would also very clearly make a note that such action should not be taken without affording sufficient reasonable

opportunity to the persons concerned and the authority also should consider the explanation in the right spirit and only subject to their satisfaction

the order of suspension is to be made. In fact, the law itself is very clear in all aspects that such order has to be passed only subject to the

satisfaction of the authority concerned and it cannot be accepted that merely because criminal action or departmental enquiry are pending that will

not block the authorities to suspend the licence. In fact, when the criminal case is initiated or conviction is given the subsequent procedure have

also been contemplated in the Act u/s 21 and 22.

The second ground of attack was that the writ petition was also dismissed on the ground that there is an alternative remedy u/s 19(4) of the Act

and the appellant without approaching the appellate authority, has straightaway come forward with the writ petition. As rightly pointed out by the

learned Single Judge that the order under challenge is admittedly an appealable order.

If the appellant's contention is that his explanation has not been properly considered by the respondent that can be raised only in the appeal and

not in the writ petition.

Therefore, the learned Single Judge has rightly dismissed the writ petition on the ground of alternative remedy, as we cannot go into the question of

consideration of the explanation under Article 226 of the constitution as it could be looked into by an appellate authority. Though the learned Single

Judge has granted time of eight weeks for filing appeal from the date of receipt of a copy of the order, the appellant has come forward with this

writ appeal without filing the appeal.

Therefore, the writ appeal is dismissed. However, further eight weeks time is granted from today for preferring the appeal before the appropriate

authority and when such an appeal is filed the appellate authority will consider the same on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs.