

(1988) 11 KAR CK 0008
In the Karnataka High Court

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Folix Correa and Others

RESPONDENT

Date of Decision : 23-11-1988

Acts Referred:

Karnataka Motor Vehicles Rules, 1963 — Rule 19

Motor Vehicles Act, 1988 — Section 3, 4, 5, 96 (2), 96 (2) (b) (ii)

Citation : (1989) 1 ACC 465

Hon'ble Judges : N. Venkatachala, J;D.P. Hiremath, J

Bench : Division Bench

Judgement

N. Venkatachala, J.—The claimants in MVC No. 360/81 before the Motor Accidents Claims Tribunal, at Mangalore (Dakshina Kannada) had claimed compensation of Rs. 4,00,000/- on account of the death of B. Thim-mappashetty who died on 7-8-1981 at about 5 p.m. when he was driving the Scooter bearing No. MXJ 7585. At that time another motor cycle bearing No. MYG 9166 of the First respondent and insured with the 2nd respondent before the Tribunal, came from the opposite side and hit the scooter on which the deceased was going. He sustained fatal injuries and was removed to K.M.C, Hospital at Manipal immediately. In spite of the treatment given to him he succumbed to the injuries on 4-9-1981. He was a clerk in the Syndicate Bank at Manipal and was drawing a monthly salary of Rs. 1,212-97 ps. per month. In course of time he could have drawn monthly salary of Rs. 3,000/-.

2. The first respondent owner of the said motor cycle bearing MYG 9166 was himself driving his vehicle when this accident occurred. While denying that the accident was due to his negligence and also the quantum of loss of dependency he averred that the motor cycle was insured duly under the 2nd respondent and in case he was liable to pay any compensation, the same was liable to be paid by the insurer-2nd respondent.

3. The 2nd respondent-Insurer in its written statement while adopting the same contentions of the 1st respondent on the point of rashness or negligence further

contended that its liability is governed by the terms conditions and limitations as to the use of the vehicle contained in the policy of insurance issued by it. It asserted that the owner-driver of the vehicle had no driving license at the time the accident occurred. In fact the first respondent was holding only a learner's license No. 475 from 14-11-1980 till 13-5-1981 and a fresh license came to be issued only on 14-8-1981 valid upto 13-2-1981. Admittedly, this accident occurred on 7-8-1981 and therefore on the date of the accident the first respondent had no driving license at all. Therefore, it is not liable to indemnify the first respondent against the liability that may be fixed against him.

4. The Tribunal addressed itself to the various issues including the one as to the valid driving license of respondent-1 at the time of the accident. On the point of negligence it found that it was respondent-1 who was solely responsible in causing this accident and determined the compensation at Rs. 75,500/-. On issue No. 4 with regard to the existence of the valid driving license it found in favour of the first respondent and because there was renewal of the learner's license he was deemed to have possessed a valid driving license and therefore the Insurance Company is liable to pay the award amount.

5. It is the original 2nd respondent that has now come up in appeal challenging the finding of the Tribunal below that it is liable to indemnify the owner of the vehicle against his liability. Referring to the relevant term in the insurance policy as to the driver who could drive the vehicle, it is urged that admittedly respondent-1 before the Tribunal as well as in this appeal who is the owner rider of the vehicle did not hold a valid driving license nor had he held a permanent driving license at the time of the accident so as to make the insurer liable to pay the compensation amount. He secured fresh learner's license with effect from 14-8-1981 and since there is breach of the term of the policy the appellant is absolved of any liability. Even the learner's license was for a broken period. There was no valid or permanent license in his favour. During arguments the same point is urged and the appellant's counsel has contended that the term of the policy clearly excludes the holder of a learner's license. Our attention was invited to the relevant term in the policy Ex. D-I and with regard to driver it reads as follows:

Driver : Any of the following:

(a) The insured.

The Insured may also drive a Motor Cycle not belonging to him and not hired to him under a Hire Purchase Agreement.

(b) Any other person who is driving on the Insured's order or with his permission.

Provided that the person driving holds a valid driving license at the time of the accident or had held a permanent driving license (other than a learner's license) and is not disqualified from holding or obtaining such a license.

6. Learned Counsel on both sides have necessarily to interpret this term of the

policy. Referring to this term the Tribunal observed at para-11 of its order that a reading Insurance Policy itself shows that the insured is authorised to drive the vehicle in question. Under proviso (b), any other person who drives the motor cycle with the permission of the insured should possess a valid driving license. But no such condition is stipulated against the insured. Therefore in the absence of any terms and conditions in the insurance policy it cannot be said that the Insurance Company escapes from the liability. Though it refers to certain decisions which related to the driver holding a license at some point of time, the insured was not possessed of a license at the time of the accident but was not disqualified from holding a license. The gist or the finding appears to be that this term of the policy cannot be interpreted to mean that the insured himself should possess a valid driving license. This is apparently clear from the observation of the Tribunal that no such condition is stipulated for the insured. The decision of the Punjab High Court reported in Gurmukh Singh and Another Vs. Ajmer Kaur and Others, only states that even where a person holding a learner's license if commits an accident the insurance company is liable.

7. Section 96(2) of the Motor Vehicles Act relates to the grounds on which an Insurance Company can defend an action against it. If there has been a breach of a specified condition of the policy, one of the conditions being of excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification, the insurer is not liable. The decision of the Madras High Court reported in Srinivasa Roadways Vs. Saroja and Others, and referred to by the Tribunal states that if all the conditions laid down in the Section are not reproduced in the policy and the policy positively undertakes to cover liability in respect of an accident caused by a person who though not having an effective license at the time of accident has not been disqualified to hold a license, the Company cannot escape liability Though the Tribunal referred to a decision reported in Ambujam Vs. Hindustan Ideal Insurance Company and Another, relied upon on behalf of the Insurance Company, it found that it is not applicable to the facts of the case. The head note of the said decision has been reproduced at para-10 of the order. It says:

Motor insurance--Driving license Liability of insurance company--Insurance policy contained a condition that the vehicle be driven by a person holding a valid driving license Accident while the vehicle was being driven on a public place by a person having learner's license whether Insurance Company is liable to pay compensation--Held : no : because insured did not comply with the conditions of policy.

Under the chapter on licensing of drivers of motor vehicles an embargo is created by a statute prohibiting persons from driving in a public place without holding an effective driving license. Obviously effective driving license cannot be an equation for a learner's license, which is only granted to a person learning driving and which by itself cannot vest him with a right independently to

negotiate a motor vehicle on the strength of it.

8. Even if it is assumed that a driving license includes even a learner's license it is argued for the insured that the Tribunal was not justified in holding that the insured himself need not possess a valid driving license. Learned Counsel for respondent-1 supported the finding of the Tribunal in this behalf.

9. In order to emphasise that respondent-1 had once held learner's license and was not disqualified from holding such a license and therefore the insurer is liable learned Counsel for respondent-1 has referred to a decision of the Gujarat High Court in the case of Chanchalaben and Others Vs. Shaileshkumar and Others, of the Report the learned Judges of the Division Bench of that High Court did not agree with the decision of the Madras High Court in the case of Motor Owners' Insurance Co. Ltd. Vs. V. Daniel and Another, The learned Single Judge of the Madras High Court had held in that case that since the driver had no valid license on the date of the accident, the liability of the insurance company was excluded. He had negated the contention raised on behalf of the insured in that case that it would be sufficient if the driver of the vehicle had held at some anterior point of time a license and that the license need not be in force at the time of the accident. The observation according to the learned Judges was a pure ipse dixit. That it is sufficient if the driver had once held a valid license and was not disqualified from holding a license thereafter even after the expiry of the original license was sufficient to exonerate the driver from the allegation that he was guilty of driving a vehicle without a license was evident from the decision of the Queen's Bench Division in *Edwards v. Griffiths* (1933) 2 All ER 875. Even referring to an unreported decision of the same High Court, the learned Judges referred to an identical term in the policy in the case before them. The learned Single Judge of the Gujarat High Court who decided that case had taken the view that on examination of the identical term in the policy with which he was concerned an insurer was bound to make good the risk arising out of an accident committed by a driver who once had a license though he did not have an effective license on the date of the accident and was not disqualified from holding or obtaining it.

10 The facts before the Gujarat High Court in the case of Chanchalben were that the Lambretta driver had held a learner's driving license prior to the date of the accident and undisputedly was not disqualified from holding or obtaining it, he was not disqualified from holding or obtaining a learner's driver's license and therefore Insurance Company was liable to satisfy the award made in the case. It would therefore follow that ultimately it is the term in the policy that would determine the liability of the insurer.

11. In the case of *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravan and Others*, the Supreme Court observed that Section 96(2)(b)(ii) extends immunity to the Insurance Company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not fully licensed, or by any person who has been disqualified for holding or obtaining a driving

license during the period of disqualification. The expression "breach" is of great significance. The very concept or infringement of violation or the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation. It is only when the insured himself placed the vehicle in charge of a person who does not hold a driving license, it can be said that he is guilty of the breach of the promise that a vehicle will be driven by a licensed driver. Unless the insured is at fault and guilty of a breach the insurer cannot escape free to indemnify insured and successfully contend that he is exonerated having regard to the fact that the promisor committed a breach of his promise. With regard to the conditions in the policy it was observed that in order to make the protection real the legislature has also provided that the judgment obtained shall not be defeated by the interpretation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the Insurance Company to satisfy the judgment obtained against the persons insured against third party risks.

12. We have now to see if it can be said that because the term of the policy indicates who should be the driver it exonerates from the operation of this term the insured himself. The main argument of the counsel for respondent-1 is that all that is said about possessing of a license by a driver is applicable only to a driver other than the insured and therefore the insured even if he does not possess any license and causes an accident the Insurance Company is still liable to Indemnify the insured. In our view accepting this interpretation would lead to disastrous consequences. There is absolutely nothing to show that the Insurance Company excluded the insured from this term relating to "driver". As held by the Supreme Court in the case referred to above if the insured himself places the vehicle in charge of a person who does not hold a driving license he is guilty of the breach of the condition of the policy. Therefore, if the insured himself drives the vehicle without valid license he is equally guilty of breach of the term of the policy. To hold otherwise would amount to putting a premium on unlawful acts of the insured which acts if committed by a driver entrusted with his vehicle by him would amount to an offence and also amount to breach of condition of policy.

13. The Tribunal below though did not say in clear terms that the insured need not hold a valid license its Shading almost amounts to that.

14. Now taking the term of the policy itself it is apparently clear that there was a promise on the part of the insured that the vehicle would be driven by a person holding valid driving license or had held a permanent driving license other than a learner's license and was not disqualified from holding or obtaining such a license (emphasis supplied) This would only indicate that if at all the driver had a valid driving license including a learner's license at the time of the accident the Insurance Company would be liable but if he had no license at the time the accident occurred then he must have had held a permanent driving license and

was not disqualified from holding or obtaining such a permanent driving license. In this case admittedly the insured respondent-1 had taken a learner's license which expired on 13-5-1981 and thereafter upto 14-8-1981 he had not either a permanent driving license or a learner's license. As already stated, the accident occurred on 7-8-1981. Section 3 of the Motor Vehicles Act, 1939 prohibits any person from driving a motor vehicle in any public place unless he holds an effective driving license issued to himself authorising him to drive the vehicle. u/s 5 of the act no owner or person in-charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle. The Act itself does not conceive of a person holding a learner's license. However Rule 19 of the Karnataka Motor Vehicles Rules 1963 framed under the Act, relates to a learner's driving license and Sub-rule (1) states that Sub-section (1) of Section 3 of the Act shall not apply to any person driving a motor vehicle in any public place or places specified by the Licensing Authority in the learner's driving license during the course of receiving instructions or of gaining experience in driving with the object of presenting himself for a test required by Sub-section (6) of Section 7 of the Act so long as the conditions stipulated in this Rule are fulfilled.

15. The condition that a person duly licensed to drive the vehicle should be by the side of such learner to be able to readily control or stop the vehicle is perhaps not made compulsory in case of a person holding learner's license in respect of a motor-cycle perhaps for the reason that no such person could be accommodated on a two wheeler anywhere else than on its pillion if it has one. Therefore the person sitting on the pillion could not be equated to the driver of a vehicle other than a two wheeler. Thus even where a person possessed a learner's license in case of a motor-cycle as in this case he becomes solely responsible for effectively driving or riding the vehicle, he is in sole control of it and therefore if a person driving a motor-cycle under learner's license can be said to be a person "duly licensed" or holding a valid license would be the next point for consideration.

16. In the case of Ishwar Devi Vs. Reoti Raman and Another, a Division Bench of the High Court of Judicature at Allahabad, a motor-cycle which caused accident was insured with respondent-2 and one of the terms of the insurance policy was that the person driving holds a license to drive the motor cycle or has held and is not disqualified for holding or obtaining such a license. The rider of the motor cycle Reoti Raman Rastogi did not hold any driving license at the material time as the learner's license which he had obtained earlier had expired already when the accident occurred. Referring to Section 3 of the Motor Vehicles Act, 1939 the learned Judges pointed out that it prohibits a person from driving a motor vehicle in any public place unless he holds an effective driving license issued to himself authorising him to drive the vehicle. It also requires that no person shall drive a transport vehicle unless his driving license specifically entitles him to do so. He had obtained a learner's license after the accident and ultimately had procured a permanent driving license. The object of Section 3 of the Act is to ensure the

safety of the pedestrians as also other persons using the road and provide them with a guarantee from being held by a vehicle driven by a person who has not attained proficiency in the art of driving and has not obtained a driving license. The requirement of Section 3 of the said Act is mandatory. It provides in specific terms that no person shall drive the vehicle without a driving license. This provision is salutary in nature and ensures public safety. It is a safeguard against accidents which may at times prove fatal. Admittedly prior to the occurrence the said Reoti Raman had held a learner's license but on the date of the accident he had no driving license in his name. He obtained a learner's license for a certain period and thereafter obtained a permanent license. Therefore it ought not be said that Reoti Raman was disqualified for holding or obtaining a driving license. The policy covered the third party risk as well. It was held that the Insurance Company cannot avoid the liability by resorting to the aforesaid term of the insurance policy. It thus follows that even a person holding a learner's license was hold to be a person holding a license to drive the motor cycle.

17. Even the Gujarat High Court in the case of Chanchalaben and Others Vs. Shaileshkumar and Others, and other decisions referred to above have taken a consistent view. Perhaps in order to over-come a like situation obtaining in the case the Insurance Company appears to have added a rider "other than a learner's license" in the policy.

18. Section 96(2)(b)(ii) of the Motor Vehicles Act, relates to the defence available to the Insurance Company, namely, that there has been a breach of condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification among other conditions which are not quite relevant for the present purpose. In the instant case the insurance policy seeks to avoid liability solely on the ground that it was stipulated that the person holding a learner's license was excluded. A similar clause was found in an insurance policy that the High Court of Bombay had to consider in the case of New India Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, of the Report the learned Judges observed that even a holder of a learner's license would be a person "duly licensed". Reliance was also placed on the case of United India Insurance Co. Ltd., Chandigarh Vs. Tilak Ram and Others, in which the Himachal Pradesh High Court took the view that the term "duly licensed" is not to be limited, to any particular category of licenses and would take in any license of the type which enables one to drive, including the one granted as learner's license. There is nothing like a permanent driving license contemplated under the Act and it is only for a specific term. It contemplates a license for a constituted period. There is no category contemplated of the learner's or non-learner's license. It is only by reason of the rules that the learner's license is contemplated. But the authority to grant such a license is referable to the provisions of Section 7 of the Act. Therefore they concluded that for all purposes the learner's license is a periodic license which permits the driver subject to special conditions to drive a motor vehicle. We are in respectful agreement with

the view taken by the Bombay High Court which has considered at length the other decisions referred to above. We are thus inclined to hold that the term "duly licensed" would include the holder of a learner's license as well. No good reason exists to limit the phrase to the holder of a regular license. At paras-14 and 15 referring to a similar clause as in the instant case the learned Judges observed as follows:

14. As we have indicated above, Jaysingh Jadhav did hold a license in 1977 and immediately after the accident within a few days was given a regular license. There is no evidence of his disqualification to hold such a license. Therefore, he would be in the permissive category of the drivers and as such not excepted by the conditions of the policy. At any rate, we feel by use of the words "a permanent driving license (other than a learner's license) and is not disqualified from holding such a license", an ambiguity is introduced by the latter part of the proviso, the advantage of which cannot be taken by the insurance company while setting up the statutory defence u/s 96(2)(b)(ii) of the Act. The burden to establish the limited defence in law is on the insurance company and it has to satisfactorily and beyond ambiguity establish that there had been a breach of the specified condition of the policy which imposes the condition excluding driving by the persons of the kind mentioned by Section 96(2)(b)(ii) of the Act. Here we find, by reason of the latter part, that persons who once hold a license and are not disqualified are permitted to be the drivers. If they are so permitted, the exclusion contemplated by Sub-clause (ii) cannot be easily read. If there be an ambiguity, the defence of the kind taken by the insurance company would not be upheld.

15. Generally stated, such clauses of the policy should receive the interpretation consistent with the intent of the parties to the contract and also to further the objects of the statute. This should particularly be so when contracts are in printed form and issued in usual course. If we were to go by the terms of Section 96(2)(b)(ii) of the act, the exclusion could be of the persons who are not "duly licensed" or of the persons who had been disqualified, as is mentioned therein. To be within it, the terms of the policy should be specific. The terms of the present proviso are differently worded and, possibly, do admit a position that the drivers who were once licensed and are not disqualified are not specifically excluded. We would prefer to interpret such a term in the policy document in the light of the purposes of the statute which makes a provision for indemnifying cases involving third parties in accidents and for satisfaction of claims arising therefrom in favour of the party affected rather than to absolve the insurance indemnity.

19. The learned Counsel appearing for the appellant took us through the decision of a learned Single Judge of the Madras High Court in the case of V.S. Ramani v. S.R. Vasudevan and Anr. in appeal against Order No. 405/1981 of the "Motor Accidents Claims Tribunal (V Judge, Government of Small Causes, Madras dated 19-2-1981 and made in O.P. No. 191/1980)" (we are not very sure if the

Government of Small Causes is correct). A certified copy of the order was made available for our reference and at page 75 of the order the learned Judge ultimately observed that the confusion expressed by the Bench with regard to a regular license holder where the insurance policy has extended a coverage cannot be applied to a person who is learning and is not having sufficient experience. The Company therefore in his opinion was right in excluding the person whose learner's license had expired from the scope of indemnity. We are not persuaded to agree with this view of the learned Judge in preference to the majority of the decisions referred to above. It is worthy to note that the intention of the legislator to make insurance of motor vehicles compulsory is to safeguard the interest of third parties who are quite innocent and who incur risk from hazardous and negligent drivers. If that solitary object is kept in view it becomes abundantly clear even from the provisions regarding compulsory insurance that a motor vehicle cannot be brought on road without there being a valid insurance atleast covering the risk to a third party. Even a brand new vehicle taken from a showroom requires to be compulsorily insured and for every driver there is a stage where he is a learner and if such learner drivers drive vehicles on public road, it is but necessary that the risk to a third party must be covered by the insurance policy even at the stage where a driver learns driving. To held otherwise would be rendering the object of compulsory insurance of risk to third parties nugatory.

20. In the view we have taken, even though we do not agree with the observations of the Tribunal below that there is no stipulation that the insured also should possess a driving license or should not have been disqualified from holding a driving license, we confirm the order of the Tribunal below making the appellant Insurance Company as well liable on the ground that there cannot be valid or legal exclusion of the liability if the vehicle is driven by a person holding a learner's license and was not disqualified from holding such a license. The appeal therefore is liable to be dismissed and it is dismissed.