

(2006) 12 MP CK 0033
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Budhiya Bai and Others

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 2, 3, 66
Penal Code, 1860 (IPC) — Section 304A

Citation : (2007) ACJ 17 : (2007) 3 JLJ 319 : (2007) 2 MPLJ 226

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In this appeal insurer calls in question the award dated 22.7.1997 passed by Third Additional Motor Accidents Claims Tribunal, Chhindwara in Claim Case No. 30 of 1995.

The deceased Manglu was going on a cycle from Chhindwara to Boria. He was dashed by Tata 407-MP 22-B 5119 driven by Shamim Khan owned by Sitaram and insured with United India Insurance Co. Ltd. Deceased was a postman, was going to distribute post at 12 noon from Boria to Pindrai. He was dashed from behind by Tata 407 truck. Report of the accident was lodged at Police Station, Chand, an offence u/s 304A, Indian Penal Code was registered against the driver. Age of the deceased was 44 years. He was earning a sum of Rs. 1,500 per month in the government employment. Compensation of Rs. 5,00,000 was claimed.

The owner and driver in the written statement did not dispute the factum of accident, however, contended that driver was not negligent, all of a sudden Manglu turned without giving hand, that was the cause of accident. Vehicle was insured. Liability, if any, was that of the insurer. Driver was holding a valid and effective driving licence at the time of accident.

The insurer in the written statement in addition took the plea that the driver was

not holding valid and effective driving licence, thus, insurer was not liable. Claims Tribunal has found that the accident was outcome of rash and negligent driving of Shamim. Deceased was not negligent. Liability has been saddled on driver, owner and insurer. Compensation in the sum of Rs. 1,05,000 has been awarded along with interest at the rate of 12 per cent per annum from the date of claim petition till realisation.

Mr. N.S. Ruprah, learned Counsel appearing on behalf of the insurer has submitted that the driver was driving Tata 407. There was no endorsement on the licence to drive the transport vehicle, though Tata 407 was light motor vehicle. In the absence of endorsement to drive the transport vehicle, driver was not competent to drive the vehicle in question, as such insurer cannot be held liable by the Claims Tribunal. He has relied upon a decision of the Apex Court in *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, .

Ms. Godavari Devlani, learned Counsel appearing on behalf of the respondent Nos. 1 to 7 has relied upon the decision of the Supreme Court in *Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.*, , to contend that the driver was holding effective licence to drive the light motor vehicle. Even though the vehicle was goods carriage it remained light motor vehicle. She has submitted that Apex Court in *Ashok Gangadhar Maratha's* case (*supra*) has held that licence to drive a light motor vehicle issued in Form 6 was an effective and valid licence to drive such a vehicle. She has also relied upon the decision of the Supreme Court in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , to submit that the Apex Court has laid down that if the driver is holding licence for one type of vehicle, but having found driving another type of vehicle, it has to be proved that it was main or contributory cause of accident. In the instant case, driver was authorised to drive light motor vehicle, Tata 407. Thus, she has submitted that in the absence of any such evidence the liability has been rightly fastened on the insurer also. She has also relied upon the three Division Bench decisions of this Court in *United India Insurance Co. Ltd. Vs. Vimla Bai and Others*, ; *Smt. Savitri Devi and others Vs. Naresh Kumar Harikrishna Madhwani and others*, and *United India Insurance Co. Ltd. Vs. Goverdhan and Others*, , in which this Court has considered Sections 2(21), 2(47), 2(48) and other provisions of the Motor Vehicles Act, 1988 and held that since unladen weight was less than 7500 kg as prescribed for light motor vehicles, the vehicle driven was light motor vehicle, as such there was no necessity of obtaining further endorsement to drive transport vehicle as it was a light motor vehicle. Thus, the driver was holding valid and effective driving licence, hence, insurer has been rightly held liable by the Claims Tribunal.

The only question for consideration is whether the driver was holding licence to drive light motor vehicle, admittedly the vehicle was 5300 kg and unladen weight prescribed u/s 2(21) for light motor vehicle, i.e., a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kg. Definition of "light

motor vehicle" is quoted below:

2(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;

Following is the definition of "transport vehicle" in Section 2(47):

2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

It is also not in dispute that the vehicle in dispute was light motor vehicle and driver was holding the licence to drive 9 light motor vehicle. In *Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.*, a Swaraj Mazda truck, a light motor vehicle was driven, its weight was 6000 kg, vehicle met with an accident on 26.11.1991, the driver was holding a licence to drive light motor vehicle. Contention of the insurer was that the vehicle was goods carriage and thus a transport vehicle. There was no endorsement on his driving licence authorising him to drive light transport vehicle. The Supreme Court held thus:

(6) Naga Saheb Jadhav, the driver was having the driving licence to drive a light motor vehicle. On the day of the accident, the vehicle was not carrying any goods. Contention of the insurer has been that vehicle was a goods carriage and thus a transport vehicle. Rule 16 of the Central Motor Vehicles Rules, 1989, prescribes the form under which a driving licence is to be issued. It is Form No. 6. Jadhav was having a driving licence in Form 6 which was for driving a light motor vehicle. There was no endorsement on his driving licence authorising him to drive a transport vehicle. For a vehicle to be a transport vehicle, it must be a goods carriage which in turn means any motor vehicle constructed or adapted for use solely for the carriage of goods or when not so constructed or adapted used for the carriage of goods. We have the definitions of "heavy goods vehicle" and "medium goods vehicle". There is no definition of "light goods vehicle". Instead the definition is of "light motor vehicle". If we apply the definition of a "light motor vehicle" as given in Clause (21) of Section 2 of the Act to mean a "transport vehicle" which in turn means a "goods carriage" then we have nowhere the definition of a "light motor vehicle" without it being a "goods carriage". Section 2 of the Act begins with the words "unless in this Act the context otherwise requires". We have, therefore, to give a meaningful interpretation to "light motor vehicle" as given in Clause (21). Clause (e) of Rule 2 of the Central Motor Vehicles Rules, 1989 defines "non-transport vehicle" to mean a motor vehicle which is not a transport vehicle [Clause (e)] renumbered as Clause (h) by the 1993 amendment to the Rules. This definition would, therefore, take out of the definition of "transport vehicle" as given in Clause (21) light motor vehicles which are not goods carriages.

XXX XXX XXX (9) There is no evidence on record and no claim has either been made by the insurer that the vehicle in question was having a permit for goods carriage. If we accept the contention of the insurer, there can never be any light

motor vehicle and there can never be any driving licence for driving a light motor vehicle. We cannot put such a construction on Clause (21) of Section 2 of the Act so as to exclude a light motor vehicle from the Act altogether. Light motor vehicle is a motor vehicle to drive for which Jadhav possessed effective driving licence. His driving licence was valid on the date of accident. In allowing the claim of the appellant the State Commission held that "the driver who drove the vehicle at the time of accident, had as a matter of fact, a valid driving licence for driving a light motor vehicle and there is no material on record to show that he was disqualified from holding or obtaining such a licence at the time of accident. In view of these facts and in the circumstances of the case, we are satisfied that policy does not insist on the driver having a licence to drive, to obtain a specific endorsement to drive a transport vehicle". We, however, do not subscribe to such a view.

(10) Definition of "light motor vehicle" as given in Clause (21) of Section 2 of the Act can apply only to a "light goods vehicle" or a "light transport vehicle". A "light motor vehicle" otherwise has to be covered by the definition of "motor vehicle" or "vehicle" as given in Clause (28) of Section 2 of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be non-transport vehicle as well.

(11) To reiterate, since a vehicle cannot be used as transport vehicle on a public road unless there is a permit issued by the Regional Transport Authority for that purpose and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the vehicle in question would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the vehicle as a transport vehicle u/s 66 of the Act. Moreover, on the date of accident, the vehicle was not carrying any goods and though it could be said to have been designed to be used as a transport vehicle or goods carrier, it cannot be so held on account of the statutory prohibition contained in Section 66 of the Act.

(12) It was pointed out by the appellant that the legal representatives of Jadhav, the driver, had filed a petition for compensation under the Act. Insurer had resisted the claim taking the stand that the driver of the vehicle did not possess a valid driving licence to drive the vehicle. The plea of the insurer was rejected by the Claims Tribunal and petition for compensation was allowed and compensation paid to the legal representatives of the driver. No appeal was preferred by the insurer in that case.

(13) In the present case, the insurer alleged that the appellant had committed breach of the terms of the insurance policy and had violated the provisions of the Act by entrusting a "transport vehicle" to a person who did not hold a valid licence and the insurer was, thus, not liable to indemnify the appellant. Under the policy, firstly, light motor vehicle meant the gross weight of which did not exceed 6000 kg and, secondly, against the column "driver", the policy stated:

Drivers clause.-Persons or classes of persons entitled to drive-any person including the insured:

Provided that a person driving is holding an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a licence:

Provided also that if a person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

(14) Now the vehicle in the present case weighed 5920 kg and the driver had the driving licence to drive a light motor vehicle. It is not that, therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory requirement to have specific authorisation on the licence of the driver under Form 6 under the Rules, It had, therefore, to be held that Jadhav was holding effective valid licence on the date of accident to drive light motor vehicle bearing registration No. KA 28-567.

The Apex Court held that the insurer was liable to make payment of compensation.

The Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , has held that in each case the decision has to be taken whether the factum of the driver possessing licence for one type of vehicle, but found driving another type of vehicle was the main or contributory cause of the accident. The Supreme Court has considered that the cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxicab", "motorcab" or "omnibus" for which he has no licence in such cases it has to be decided on the evidence what was the main or contributory cause of accident.

(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 the Central Government to prescribe forms of driving licence for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motor cycle without gear; (b) motor cycle 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", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motorcab", "motor cycle", "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 "motor cycle without gear" [sic may be driving a vehicle], 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 "maxicab", "motorcab" or "omnibus" for which he has no licence. In each case, on evidence led before the Claims 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 the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and/or 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.

In the instant case, the driver was holding licence to drive light motor vehicle which he was driving, it was not in dispute that it was light motor vehicle, as unladen weight of the vehicle was below 7500 kg. In the absence of any evidence adduced by the insurer to show that mere absence of an endorsement on licence to drive transport vehicle, if at all required driver was driving the kind of vehicle for which he was authorised as per the licence. It is not shown that the absence of endorsement is contributory factor to the accident. Thus, in the light of the Apex Court decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, and Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , insurer cannot escape the liability.

In National Insurance Co. Ltd. Vs. Kusum Rai and Others, , relied upon by Mr. N.S. Ruprah, learned Counsel appearing on behalf of the insurer, the Apex Court has relied upon the decision in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , on facts it was held that the vehicle was used as a commercial vehicle and such a defence could have been raised by the insurer, the Apex Court gave liberty to the insurer to recover the amount from owner. Facts in the instant case are different and indicate that there was no inconsistent user of the vehicle. In the instant case there was no inconsistent user of the vehicle. On specific query made to Mr. Ruprah, he is unable to point out that the vehicle was used for a purpose inconsistent with the purpose for which it was insured.

The Division Bench of this Court in Smt. Savitri Devi and others Vs. Naresh Kumar Harikrishna Madhwani and others, , has opined thus:

(6) Contention of Mr. Ruprah, learned Counsel for Oriental Insurance Co. Ltd. that the vehicle was transport vehicle and there should have been endorsement on the licence to drive the transport vehicle cannot be accepted. Light motor vehicle has been defined to mean a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which does not exceed 7500 kilograms. Transport vehicle has been defined in Section 2(47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

Transport vehicle is included in the category of light motor vehicle. Matador vehicle is included in light motor vehicle. Therefore, Gujarat High Court decision in Manohar Jamatmal Sindhi and Another Vs. Ranguba and Others, , does not apply in the present case. The relevant decision applicable would be of Apex Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , on which reliance is placed by learned Counsel for the claimants. Another decision is of this Court in Mohd. Karim Khan and Others Vs. Shamsheer Khan and Another, .

In United India Insurance Co. Ltd. Vs. Vimla Bai and Others, , same view has been taken. In United India Insurance Co. Ltd. Vs. Goverdhan and Others, , it was held as under:

(8) From the definition of "transport vehicle" extracted hereinabove it is apparent that goods carriage is included in the transport vehicle and such transport vehicle if its unladen weight is below 7500 kg, shall be a light motor vehicle as defined in Section 2, Sub-section (21) of Motor Vehicles Act, 1988. Unladen weight of Matador in question undisputedly was less than 7500 kg. Thus, in spite of it being goods vehicle, it was a light motor vehicle and the driver was possessing the licence Exh. D1 for driving light motor vehicle. Thus, the driver was having a valid driving licence to drive the vehicle.

In view of the aforesaid discussion, it is clear that the insurer has been rightly held liable. I find no merit in the only submission made by Mr. Ruprah. Appeal is dismissed. Parties to bear their own costs.