(1985) 04 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : F.A.O. No. 158 of 1984

United India Insurance Co. Ltd., Chandigarh — APPELLANT

Vs

Tilak Ram and Others — RESPONDENT

Date of Decision : 19-04-1985

Acts Referred:
Motor Vehicles Act, 1939 — Section 21, 3(2), 96(2), 96(3)
Punjab Motor Vehicles Rules, 1940 — Rule 2.14

Citation : (1985) 2 ACC 513 : AIR 1986 HP 27 : (1987) 61 CompCas 302

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : R.M. Suri and K.D. Sood, for the Appellant; Dalip Kumar Sharma and Rajiv Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others, (1996) ACJ 253 : (1996) 1 AD 698 : AIR 1996 SC 1150 : (1996) 86 CompCas 199 : (1996) 112 PLR 644 : (1996) 1 SCALE 400 : (1996) 2 SCC 328 : (1995) 6 SCR 687 Supp : (1996) 1 UJ 302

P.D. Desai, C.J.—A fatal accident, which occurred on April 5, 1982, on account of the rash and negligent driving of a motor vehicle, namely, a motor-cycle, by the first respondent, resulted in a claim petition and in an award being made in favour of the second and third respondents (original claimants) in the sum of Rs. 8,220/- with interest but no costs. The award is under challenge in the presenl appeal at the instance of the Insurance Company which has been made liable to satisfy the award. Two grounds were urged in support of the appeal : first, that there has been a breach of a specified condition of the policy which authorised the driving of the insured vehicle only by a person who holds "a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner''s licence) and is not disqualified from holding or obtaining such a licence" and, secondly, that there was a breach of the provisions of Rule 2.14 of the Punjab Motor Vehicles Rules, 1940 (hereinafter referred to as "the Rules") which prohibited a pillion rider when the vehicle was being driven by a person holding a permit to drive as a learner and, as such, the person driving the vehicle could not be regarded as lawfully driving the same pursuant to such permit. To determine the validity of the submissions, the relevant statutory provisions need to be referred to at the outset.

2. Section 2 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act") is the definition Section. It defines the words "driving licence" in Clause (5-A) to mean "the document issued by a competent authority under Chapter II authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description." The word "licence" is not separately defined. The words "motor vehicle" are defined in Clause (18) to mean "any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and include''s a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises." Chapter II contains various provisions relating to licencing of drivers of motor vehicles. Section 3, Sub-section (1), provides that "no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him so to do. "Sub-section (2) provides that "A State Government may prescribe the conditions subject to which Sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle". Sections 4 to 17-B make various provisions concerning driving licences. Section 21, Sub-section (1), confers power on the State Government to make rules for the purpose of carrying into effect the provisions of Chapter II. Sub-section (2) enacts that without prejudice to the generality of the foregoing power, such rules may provide, inter alia, for "the issue of temporary licences to "persons receiving instruction in driving". Chapter VIII containing Sections 93 to 111-A makes provision, inter alia, for insurance of motor vehicles against third party risks. u/s 94, Sub-section (1), no person shall use (except as a passenger) or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle a policy of insurance complying with the requirements of the Chapter, hereinafter to be referred to as "the statutory policy" for the sake of convenience. Section 95 prescribes the requirements of the statutory policy and the limits of liability. One of the liabilities which is required to be covered by the statutory policy the extent specified in the said Section is in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The liability which is not required to be covered is also specified in the Section. Section 96, Sub-section (1) imposes a duty on the insurer to satisfy judgments against the person insured in respect, inter alia, of third party risk as

therein prescribed. Sub-section (2), inter alia, limits the defences available to an insurer in an action in which he is sought to be made liable to satisfy the award and one of such statutory defences is set out in Sub-clause (ii) of Clause (b) of the said sub-section, namely, that there has been a breach of a specified condition of the policy excluding, inter alia, the driving of the vehicle by any person who is not "duly licensed". Sub-section (3), inter alia, provides that where a certificate of insurance has been issued by the insurer in favour of the person by whom the statutory policy is effected, so much of such policy as purports to restrict the insurance by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects liabilities as are required to be covered by the statutory policy, be of no effect.

3. In exercise of the powers conferred, inter alia, by Section 3, Sub-section (2), read with Section 21 of the Act, Rule 2.14 of the Rules has been enacted which reads as under :

"2.14. Driving permits for learners. (1) Sub-section (1) of Section 3 of the Act shall not apply to any person driving a motor vehicle in a public place during the course of receiving instruction or of gaining experience in driving with the object of presenting himself for the test required by Clause (a) of Sub-section (6) of Section 7 of the Act, so long as--

(a) the driver has obtained and carries a learner''s driving permit in Form L. Lr. entitling him to drive the vehicle;

(b) there is beside the driver in the vehicle as instructor a person duly licensed to drive the vehicle and sitting in such a position as to be able to readily stop the vehicle;

(c) there is affixed both to the front and rear of the vehicle a white plate or card 180 millimetres square, bearing the letter "L" in red 100 millimetres high and 90 millimetres wide;

(d) no fare-paying passengers are carried in the vehicle; provided that Clause (b) shall not apply to a person driving a two wheeled motor-cycle with or without a side-car attached.

(2) An application for a permit to drive as a learner shall be made in Form L. Lr. A to the Licensing Authority having jurisdiction in the area in which the applicant ordinarily resides, and shall be accompanied by a fee of five rupees.

(3) A learner''s driving permit shall be valid for a period of six months and may be renewed for a further period of six months on payment of a fee of five rupees for each renewal.

(4) A Licensing Authority may for reasons to be recorded in writing refuse to issue or to renew a learner''s driving permit or may revoke such a permit issued by it.

(5) Any person aggrieved by an order passed Under Sub-rule (4) of this rule may

appeal within thirty days to the District Magistrate, whose decision shall be final.

(6) A person driving as a learner shall produce his learner''s driving permit for examination on the demand of any police officer in uniform."

4. Form L.Lr. prescribes the form for a learner''s driving permit to be issued by the concerned Licensing Authority and Form L.Lr. A. prescribes the form for application for a learner''s driving permit.

5. An analysis of the aforesaid relevant statutory provisions yields the following result: the expression "driving license" is defined but hot the word "license". A "driving license" must be shown to have been issued by a competent authority under Chapter II of the Act and it must authorise the person therein specified to drive any motor vehicle or a motor vehicle of a specified class or description. No person can drive a motor vehicle in any public place unless he holds an "effective driving license" issued to him which authorises him to drive the vehicle. A State Government may, however, enact Rules prescribing the conditions subject to which the aforesaid prohibition shall not apply to a person receiving instruction in driving a motor vehicle. Such Rules may provide for the issue of a "temporary license" to a person receiving instruction in driving. The Rules accordingly framed and in force in Himachal Pradesh provide that the prohibition against driving a motor vehicle in a public place, without holding an effective driving license, shall not apply to a person driving a motor vehicle in a public place, during the course of receiving instruction or of gaining experience in driving with the object of presenting himself for the test of competence to drive, so long as he has, inter alia, obtained and carries a "learner''s driving permit" entitling him to drive the vehicle and there is, beside him in the vehicle, as instructor a person duly licensed to drive the vehicle and sitting in such a position as to be able to readily stop the vehicle. The latter requirement relating to the presence of an instructor does not, however, apply to a person driving a two-wheeled motorcycle with or without a side car attached. The Licensing Authority having jurisdiction in the area in which the applicant ordinarily resides is the prescribed authority to issue a "learner''s driving permit" which would be valid for a period of six months and renewable for a further period of six months. Before a motor vehicle is put to use in a public place, however, there must be in force in relation to the use of such vehicle a policy of insurance complying with the requirements of Chapter VIII of the Act (statutory policy). Once a certificate of insurance is issued, the insurer may avoid the liability to satisfy the judgment against the person insured in respect of the liability required to be covered by the statutory policy including third party risk, if he is able to establish in the course of the claim proceeding, inter alia, that there has been a breach of a specified condition of the policy, namely, that which excluded the driving of the vehicle by any person who is not "duly licensed". No condition in the statutory policy, which purports to restrict the insurance of the person insured thereby by reference to any conditions other than those set out in Section 96(2)(b), shall, however, be of any effect and no breach of such a condition of the policy can be pleaded by way of defence in the

claim proceedings.

6. Now, in the present case, it is not in dispute that the first respondent, who was driving the motor-cycle at the material time, was holding only a learner''s driving permit issued under Rule 2.14. The precise submission under the first head of challenge advanced on behalf of the appellant-Insurance Company Is that in the policy of insurance there was a specific condition providing that the person driving the insured vehicle must hold a valid driving licence, or must have held a permanent driving licence other than a learner''s licence and must not be disqualified from holding or obtaining such a licence and that since the first respondent was holding merely a learner''s driving permit at the time of the accident, there was a breach of the specified condition of the policy and that, therefore, the appellant-Insurance Company was not liable to satisfy the award. For the reasons which follow, the submission must be rejected as devoid of merit.

7. In view of the limited defence available u/s 96, Sub-section (2), Clause (b), Sub-clause (ii), what the appellant-Insurance Company must show in the instant case is that there has been a breach of a specified condition of the policy which excluded the driving of the insured vehicle by a person who is not "duly licensed". What does the expression "duly licensed" mean? Does it mean and include only a person holding a "driving license" or also a person holding a "learner''s driving permit"? The word "license" having not been defined, it must be understood In its ordinary grammatical meaning. According to Webster''s Third New International Dictionary, 1966 Edition, Vol. II, at page 1304, the word "licence", inter alia, means : (1) permission to act, (2) a right or permission granted in accordance with law by a competent authority to engage in some business or occupation, to do some act, or to engage in some transaction which but for such license would be unlawful, (3) formal permission from local authorities and (4) a document embodying such permission or evidencing the license granted. In Words and Phrases, permanent Edition, Vol. 32, at pages 233 and 234, the word "license" is stated to signify the following:

"The term ''license'' in its general and popular sense, as used with reference to occupations and privileges, means a right or permission granted by some competent authority to carry on a business or to do an act which without such license would be illegal and is the grant of a special privilege not enjoyed by citizens generally and words ''license'' and ''permit'' are often used synonymously............ ''License'' means and is synonymous with ''permission'' or ''authority''. ....The law dictionary and lexicographers concur in saying that a ''license'' is a ''permit'' to do a certain thing, and it is clear that these words are used synonymously. ....Little difference exists in meaning of words ''license'' and ''permit'' as used in statute authorising licensing of dealers in malt beverages, and word ''license'' as used in section authorising municipalities to levy business license taxes is a ''permit'' as used in section prohibiting manufacture, distribution, and sale of malt beverages in municipalities without a permit..........In its general sense a ''license'' is a permission to do something which without such permission would have been unauthorized or prohibited."

It is thus evident that the law dictionary and lexicographers are one in saying that "license" means and is synonymous with "permit", "permission", or "authority." The word, in its general and popular sense, means a right or permission granted in accordance with law by some competent authority to do some act, to do a certain thing, to engage in some transaction which but for such license would be unlawful. A document embodying such permission or evidencing such authority is oftentimes called "license". Against the aforesaid background and having regard to the context, collocation and the subject-matter, the words "any person who is not duly licensed" in Section 96, Sub-section (2), Clause (b), Sub-clause (ii) must mean a person who does not hold a permit or authority, by whatever name called, granted in accordance with law by the Licensing Authority. Construed accordingly, the expression will not cover a person who holds a "driving lincese" or a "learner''s driving permit", since both of them are issued in accordance with law by the Licensing Authority and duly authorise a person who holds either to drive a motor vehicle in any public place subject to the conditions attached to each.

8. This construction finds support in the provisions of Section 3, Sub-section (2) read with Section 21, Sub-section (2), Clause (c) and Rule 2.14, the combined effect whereof is to lift the bar against the driving of a motor vehicle in a public place by a person who does not hold an "effective driving license" if such person holds a "temporary license" for receiving instruction in driving which is called a "learner''s driving permit". Besides, there is an internal indication in Section 96, Sub-section (2), Clause (b), Sub-clause (ii) that the words "duly licensed" are not to be construed narrowly so as to mean only the holding of a "driving license" inasmuch as the sub-clause makes a distinction between "any person who is not duly licensed" and "any person who has been disqualified for holding or obtaining a driving license."

9. The conclusion, and the only conclusion which must, therefore, follow, is that since, in the instant case, the first respondent was holding a learner''s driving permit at the material time, it is not legally open to the appellant-Insurance Company to disclaim the liability to satisfy the award on the ground that there has been breach of a specified condition of the policy, namely, that which excluded the driving of the vehicle by a person who is not duly licensed.

10. True it is that the specified condition of the policy of insurance of which a breach is complained of by the appellant-Insurance Company herein is somewhat narrowly worded, in that, it authorised the driving of the insured vehicle only by a person who holds a "valid driving license" at the time of the accident or had held a "permanent driving license (other than learner''s license)" and who is not disqualified from holding or obtaining "such" a license. In view of the provisions of Section 96, Sub-section (3), however, once the certificate of insurance was issued by the appellant-Insurance Company in favour of the owner of the motor-cycle, so much of the statutory policy as purported to restrict the insurance cover

by reference to any conditions which are not in accord with those set out in Section 96, Sub-section (2), Clause (b) are to be regarded as to be of no effect in respect of the liabilities required to be covered by the statutory policy and no breach of such a condition, if any, of the statutory policy can be validly pleaded by way of defence in the instant claim proceedings. Under such circumstances, the remedy, if any, of the appellant-Insurance Company lies against the owner of the motor-cycle in view of the proviso to Section 96, Sub-section (3).

11. On behalf of the appellant-Insurance Company reliance was placed on the decision in Ambujam Vs. Hindustan Ideal Insurance Co. and Another, in support of the view canvassed by it. The motor vehicle involved in that case was a taxi which was being driven at the material time by a mechanic who held only a learner''s licence. The condition in the insurance policy covering the vehicle was that the person driving the vehicle must hold a licence to drive a motor vehicle and the precise point for consideration was whether the mechanic who drove the vehicle was or could be deemed to be one who held a valid licence. The trial Judge had upheld the contention of the insurance company that the mechanic did not have an effective licence to drive the vehicle and had, therefore, exonerated the insurance company. An appeal carried against the said decision was dismissed on the basis of the following reasoning :

"Under the chapter on licensing of drivers of motor vehicles, an embargo is created by statute prohibiting persons from driving in a public place without holding an effective driving licence. Obviously effective driving licence cannot be an equation for a learner''s licence, 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. The intention of the Legislature is made more clear in section 5 which speaks of the responsibility of owners of motor vehicles for contravention of Sections 3 and 4. 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 to drive a motor vehicle. Therefore, even if the owner could be deemed to have given any permission to the learner who was driving the vehicle, it would contravene Section 5 of the Act. On the facts, therefore, we are satisfied that as P.W. 1 who was driving the vehicle had only a learner''s licence, but not an effective licence, which alone could enable him to take a motor vehicle on a public road, and as the accident occurred whilst the vehicle was being negotiated by a person who did not have a regular licence, the insurance company was right when it took up the objection that the policy did not govern such a situation and that it should be exonerated from paying compensation to the injured person."

12. With the greatest respect, I am unable to agree with the reasoning and the conclusion in Ambujam''s case. In the first place, though the provisions of Section 3, Sub-section (1), have been noticed, those of Sub-section (2) have not at all been referred to. The result is that there is an apparent, failure to appreciate that the embargo placed by Sub-section (1) against the driving of a

motor vehicle in any public place by a person who does not hold an effective driving licence is lifted in cases where Sub-section (2) applies and that in such cases a person receiving instruction in driving a motor vehicle, even though he does not satisfy the condition laid down in Sub-section (1), cannot be regarded as contravening the provisions of Sections 3 and 5 of the Act. There being no reference in the decision to the Rules, if any, framed by the concerned State Government u/s 3, Sub-section (2), it is not possible to know whether such Rules were in force and, if so, why the effect of those Rules was not at all considered. In the next place, the true meaning of the expression "duly licensed" used in Section 96, Sub-section (2), Clause (b), Sub-clause (ii) and the consequential limiting of the defence available to the insurance Company in conformity with the said provision have also not been considered. For the foregoing reasons, in my opinion, the decision in Ambujam''s case, with respect, is of no assistance in deciding the controversy in question.

13. The second head of challenge raised on behalf of the appellant-Insurance Company is still more untenable. No such point appears to have been specifically taken in the memo of appeal. The judgment does not show that there was any pillion rider. No specific condition in the policy which prohibited a pillion rider being carried when the vehicle was driven by a person holding a learner''s driving permit is shown to have been incorporated. An involved argument was, however, pressed into service, namely, that under the proviso to Rule 2.14, there was a prohibition against a pillion rider being carried when the insured vehicle was being driven by a person holding a learner''s driving permit and that, under such circumstances, since there was a pillion rider on the vehicle at the time of the accident, there was breach of the permit and that, on that account, the insured vehicle could not be regarded as having been driven for a purpose allowed by the permit and that there was, therefore, a breach of the specified condition of the policy which contemplated the use of the insured vehicle in accordance with the permit. The argument has been stated merely to be rejected. The statutory provision upon which reliance is placed is apparently misread. Rule 2.14, insofar as it is material for the present purposes, provides that Sub-section (1) of Section (3) shall not apply to a person driving a motor vehicle in a public place during the course of receiving instruction or of gaining experience in driving with the object of presenting himself for the test required by Clause (a) of Sub-section (6) of Section 7 of the Act so long as certain conditions therein prescribed are satisfied and one of such conditions is that there must be, beside the driver in the vehicle, an instructor, a person duly licensed to drive the vehicle and sitting in such a position as to be able readily to stop the vehicle. The proviso to the Rule enacts that this condition shall not apply to a person driving a two-wheeled motorcycle with or without a side-car attached. The only effect of the proviso is that the requirement of the presence of an instructor --a person duly licensed to drive the Vehicle is dispensed with in the case of a person driving a two wheeled motor-cycle. I am unable to see how on a true construction of the proviso read with the enacting part, it could be regarded as imposing a

prohibition against the carrying of a person on the pillion or on a side car attached to such a vehicle. This is apart from the other infirmities which vitiate this plea and which have been earlier referred to.

14. For the foregoing reasons, there being no substance in the only two grounds urged, the appeal fails and it is summarily dismissed. The amount deposited in the Registry of this Court will be paid to the claimants or to their duly authorised agent.

