

(2003) 02 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5297 of 1998

United India Insurance Company Limited

APPELLANT

Vs

S.S. Mukharam and Another

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) 2 ACC 425 : (2004) ACJ 1984 : (2003) 3 KarLJ 117 : (2003) 2 KCCR 1229

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : O. Mahesh, for the Appellant; K.T. Gurudeva Prasad, for Respondent-1, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Srinivasa Reddy, J.

1.This appeal at the instance of the insurance company arises from the judgment and award dated 1-8-1998 passed in MVC No. 1756 of 1990 on the file of the MACT, Bangalore under which the Tribunal awarded compensation of Rs. 45,990/- with interest thereon at 6% per annum and costs.

2. The respondent 1-claimant filed the petition u/s 166 of the M.V. Act claiming a compensation of Rs. 1,15,000/- towards the injuries suffered by him in the road accident alleged to have occurred on R.V. Road in front of Pai Hotel on 17-3-1990 at about 1.30 p.m. The petition was opposed by the insurance company. One of the grounds urged on behalf of the insurance company was that the driver who drove the vehicle in question did not possess an appropriate licence for driving the said vehicle and, therefore, no liability can be fastened on the insurance company. The Tribunal framed the following issues as arising for its consideration:

(i) Whether the accident in question occurred due to the rash and negligent driving of tempo bearing No. KEF 5236 and whether the petitioner sustained

injuries in the said accident?

(ii) Whether the petitioner is entitled for compensation? If so, to what amount?

(iii) To what relief?

The Tribunal answered points (i) and (ii) in the affirmative and awarded the compensation as aforesaid. The Tribunal though did not frame a separate issue on the question whether the insurance company should be absolved of its liability to pay the compensation amount because the driver of the vehicle in question did not possess an appropriate licence, did consider it while examining issue (ii) and rejected the contention of the insurance company and held it is liable to pay the compensation amount. Aggrieved, the insurance company has preferred the present appeal.

3. I have heard the learned Counsels on both sides.

4. The only ground urged in this appeal is that the insurance company is not liable to pay any compensation as the driver of the vehicle in question did not possess a valid driving licence to drive the particular vehicle that was involved in the accident and in the absence of the driver possessing a valid driving licence the insurance company's liability to pay the compensation gets absolved. The other findings recorded by the Tribunal such as the quantum of compensation payable and the driver of the tempo being responsible for the accident are not called in question in this appeal. Therefore, the only point that arises for my consideration in this appeal is:

1. Whether the insurance company can be saddled with the liability to pay the compensation amount awarded to the claimant in the present case?

5. Mr. O. Mahesh, learned Counsel for the appellant-insurance company, contends that the driver only had a licence to drive a light motor vehicle and therefore he could not have driven a light goods vehicle, for driving which the driver did not possess a valid licence and if, in the course of such driving without a valid licence, an accident takes place, the insurance company cannot be saddled with the liability of paying the compensation amount. The expression "light motor vehicle" has been defined as, "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". The term "light motor vehicle", therefore, includes a transport vehicle or an omnibus. The expression "transport vehicle" has been defined in clause (47) as follows:

" "Transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle".

If the definitions of "light motor vehicle" and "transport vehicle" are read together, the inescapable conclusion is that a "light motor vehicle" would include within its ambit a public service vehicle, a goods carriage, an educational bus or a private service vehicle. "Goods carriage" also has been defined under Clause

(14) as:

" "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods".

There can be no dispute that a tempo is a motor vehicle constructed solely for the purpose of carrying goods. Even if there could be any dispute about this proposition, still, considering the other limb of the definition, even if it were to be construed as not constructed or adapted for use solely for the carriage of goods, once it is so used it would become a "goods carriage". By a logical interpretation of these terms one could therefore hold without fear of contradiction that given the definition of these terms a person holding a licence to drive a "light motor vehicle" can drive a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle provided the unladen weight of the vehicle does not exceed 7500 Kgs. The question, therefore, that has to be determined in this appeal is, whether the unladen weight of the tempo involved in the accident exceeds 7500 Kilograms. If the answer to this question is in the affirmative it must be held that the driver had no effective driving licence at the time of driving the vehicle in question. On the other hand, if the answer to this question is in the negative, it would automatically follow that the driver had a valid driving licence and the insurance company has to bear the burden of paying the compensation amount. This question need not detain me for long because the vehicle in question is a tempo and its unladen weight would not exceed 7500 Kgs. There is no need to labour much on this point, because Ex. P. 13, the B Register extract of the vehicle clearly gives the unladen weight of the vehicle as 1460 Kgs. and the registered laden weight as 3510 Kgs. This aspect is not also disputed by the appellant. With reference to the eligibility of the driver to drive the tempo, the R.T.O. has also certified vide Ex. P. 14 that the driver holding a L.M.V. licence is authorised to drive transport vehicle the gross weight of which does not exceed 6000 Kgs. Once this aspect is established, the vehicle involved in the accident would have the benefit of insurance coverage for which it was insured. It is not the case of the appellant that the insured had violated any other condition of the contract of insurance. Therefore, without more, I hold that the insurance company is liable to pay the compensation amount.

6. In this regard learned Counsel for the appellant Mr. O. Mahesh has relied on the decision in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., . In that case, the Apex Court was seized of a similar matter as has arisen for my consideration in this appeal. The Apex Court also referred to the definition of the terms, "goods carriage" and "light motor vehicle" in the course of its order for purpose of determining the question, whether or not the driver who had the licence to drive a "light motor vehicle" could be held to have had a valid licence to drive a Swaraj Mazda Truck which is a goods carriage vehicle and observed:

"Now the vehicle in the present case weighed 5920 kilograms 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 has, 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".

What clinched the issue for the claimant in the said case was the unladen weight of the vehicle in question. The unladen weight of the vehicle is the principal basis on which the Legislature has classified the vehicles into various groups for the purposes of application of the provisions of the Act. Merely because there is no specific authorisation in the driving licence authorising the driver of the tempo in question to drive a goods carriage, which is covered under the classification of a light motor vehicle", it would not automatically, disentitle him from driving a tempo. Since the authorisation given in the driving licence to drive a "light motor vehicle" would also include by legal implication the authorisation to drive a "goods carriage", "an educational institution bus", "a public service vehicle" and "a private service vehicle" so long as the unladen weight of the vehicle does not exceed 7500 Kgs., there is no gainsay in arguing that the driver did not possess a valid driving licence at the time of the accident because he did not have a licence to drive a "goods carriage". The decision cited by Mr. O. Mahesh also supports this conclusion and it does not advance the case of the appellant in any way.

7. The learned Counsel for appellant also relied on the decision of this Court in National Insurance Company Limited, Bangalore v Sakamma, M.F.A. No. 3186 of 1999, DD, 2-4-2001. In the said case a learned Single Judge of this Court has taken the view that the insurance company is not liable to pay the compensation amount. In the light of the law laid down by the Apex Court in Ashok Gangadhar Maratha's case, supra, the decision in National Insurance Company Limited's case, supra, is no longer a good law. In United India Insurance Co. Ltd. Vs. Smt. Lakshamma and Others, , New India Assurance Company Limited, Bangalore Vs. B.V. Paramesh and Others, and United India Insurance Company Limited, Mysore Vs. Shivanna and Others, also this Court and the Apex Court have held, under similar circumstances, that the insurance company is liable for payment of the compensation amount. Therefore, I answer the question in the affirmative.

8. In the result, for the reasons stated above, there is no merit in this appeal and it is, accordingly, dismissed.