
(2014) 12 BOM CK 0054
In the Bombay High Court
Case No : First Appeal No. 93 of 2010

Vasant V. Bugde

APPELLANT

Vs

Vasant Raghunath Joshi

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 10(3), 14, 140, 147, 149

Citation : (2015) 1 ABR 632 : (2015) 2 ACC 219 : (2016) ACJ 298 : (2016) 1 AKR 298 : (2015) 2 AnWR 940 : (2015) 2 BomCR 326

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : S.D. Lotlikar, Senior Advocate and J. Simoes, Advocate for the Appellant; Milton Marshall, Advocate for the Respondent

Judgement

U.V. Bakre, J.—Heard Mr. Lotlikar, learned Senior Counsel appearing on behalf of the appellant and Mr. Marshall, learned Counsel appearing on behalf of the respondents no. 2 and 3. The other respondents, though duly served after admission of the appeal, are absent.

2. This appeal is directed against the Judgment and Award dated 17/04/2010 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Mapusa (M.A.C.T., for short) in Claim Petition No. 32/2008. The appellant (owner of the Maruti Van No. GA-01/V-4448) was the respondent no. 2 in the said Claim Petition. The respondents no. 1, 2 and 3 were the claimants. Respondent no. 4 Insurance Company was the respondent no. 3 and respondent no. 5 was the respondent no.1 (driver of Maruti Van No. GA-01/V-4448) in the said Claim Petition. Parties shall, hereinafter, be referred to as per their status in the said Claim Petition.

3. The claimants had filed the said petition under Section 166 of the Motor Vehicles Act, 1988 (M. V. Act, for short) for total compensation of Rs. 10,00,000/- on account of death of Shri Vijendra V. Joshi, the son of the claimants no. 1 and 2 and brother of claimant no. 3, in a motor vehicular accident.

4. Case of the claimants was that on 22/03/2008 at 16.00 hours at Cotula Saligao, Parra Road at Bardez, Goa, the deceased was the occupant of Maruti Van bearing No. GA-01/V-4448 driven by the respondent no. 1 in a rash and negligent manner, due to which it suddenly skidded, since the respondent no. 1 lost control on the said vehicle thereby causing death of its occupant Shri Vijendra Joshi.

5. The respondent no. 1, in his written statement, denied the case of the claimants and stated that while he was driving the Maruti Van, the scooterist suddenly came in the middle of the road and in order to save him, he had to apply brakes, due to which the vehicle driven by him skidded and he lost control over the same.

6. The respondent no. 2 also denied the case of the claimants and stated that his Maruti Van was adequately covered under the Insurance Policy at the time of the accident and that it was driven by respondent no. 1, who was a licenced driver holding valid light motor transport vehicle driving licence, which was valid with effect from 04/03/2005 upto 24/04/2011. In the additional written statement, the respondent no. 2 further stated that he had entrusted his vehicle in the hands of a driver who was not only validly authorised, but was also well experience and carried a proper and effective driving licence at the time he was put in control of the vehicle.

7. Respondent no. 3, in its written statement, alleged that the deceased cannot be said to be "third party" or "any person" under Section 147 of M. V. Act and was not covered under the Insurance Policy, due to which the respondent no. 3 was not liable to pay compensation to the claimants. The respondent no. 3 further stated that the respondent no. 1 drove the said vehicle without a valid and effective driving licence and he was not holding valid badge to drive the Taxi. It was thus alleged that there was breach of policy condition and, therefore, the respondent no. 3 was not liable to compensate the claimants.

8. Accordingly, issues were framed by the learned M.A.C.T.. The claimants examined Shri Vitesh Joshi, the claimant no. 3 as AW1, Shri Santosh Naik, the employer of the deceased, as AW2 and P.S.I. Narayan Chimulkar, the investigating officer in the said accident case, as AW3. On the other hand, the respondent no. 2 examined himself as RW1, one Shri Ravi Pilarnkar as RW2 and Shri Sachin Kandolkar (respondent no. 1) as RW3. The respondent no. 3 examined Shri Nandkishor Arolkar, the Assistant Director of Transport as RW4.

9. Upon consideration of the entire evidence on record, the learned M.A.C.T. held that the accident had occurred due to the rash and negligent driving of vehicle No. GA-01/V-4448 by respondent no. 1 and that the deceased, who was one of the occupants, died as a result of the said accident. The learned M.A.C.T. held that the claimants were entitled to receive the compensation of Rs. 4,28,000/- along with interest at the rate of 6% per annum from the date of filing of the petition till final payment. However, the learned M.A.C.T. directed only the

respondents no. 1 and 2, jointly and severally, to pay the said amount whereas the Claim Petition as against respondent no. 3 was dismissed.

10. Aggrieved by the impugned Judgment and Award, the respondent no. 2, the owner of the offending vehicle has filed the present appeal praying therein to quash and set aside the impugned judgment and award or in the alternative to modify the same thereby directing the respondent no. 3 i.e. the Insurance Company to pay the compensation awarded by the M.A.C.T.

11. Mr. Lotlikar, learned Senior Counsel appearing for the respondent no. 2, submitted that the occurrence of the accident and entitlement of the claimants to receive the compensation is not seriously disputed by the respondent no. 2. He submitted that the accident had taken place on 22/03/2008 and the driving licence of the respondent no. 2 for transport vehicle was valid till 03/03/2008 and it was renewed on 25/04/2008. He, however, added that, admittedly, the respondent no. 2 had licence for non-transport vehicle which was valid from 11/03/1999 to 10/03/2019. He submitted that there is grace period of 30 days to apply for renewal of the licence from the date of its expiry and, therefore, the validity of the licence stands extended by 30 days where such an application for renewal is made. He submitted the licence was valid till 03/03/2008 and the accident had occurred on 22/03/2008 and therefore, the deemed validity of the said licence was there even as on the date of the accident. He further submitted that the respondent no. 2 had given his vehicle on contract basis to some other person, who had allowed the respondent no. 1 to drive the same. He further contended that the respondent no. 1 admittedly had valid licence for driving the transport vehicle and it cannot be expected that the respondent no. 2 (owner) would come to know that the respondent no. 1 had not applied for renewal of said licence and had not got it renewed within the prescribed time. He submitted that only during a fraction of 4 days the respondent no. 2 did not have a valid licence for transport vehicle and unfortunately the accident took place during that period. Learned Senior Counsel submitted that the respondent no. 2 had initially, while engaging the respondent no. 1 as driver, had verified that he had valid driving licence for transport vehicle and that he was not a novice in driving. He submitted that in the circumstances above, it cannot at all be said that there was any breach of condition of policy or more particularly, a willful breach of the policy. He pointed out from the written statement of respondent no. 3 that there is no pleading to the effect that there was willful breach of policy by respondent no. 2. Learned Counsel relied upon the following judgments :

(i) National Insurance Co. Ltd. Vs. Swaran Singh and Others,

(ii) Pepsu Road Transport Corporation Vs. National Insurance Company,

12. Mr. Marshall, learned Counsel for the claimants also submitted that the respondent no. 3 is liable to indemnify the respondent no. 2 and that the claimants are entitled to receive the compensation, jointly and severally, from all the respondents. The learned Counsel for the claimants relied upon the following

judgments :

(i) S. Iyyapan Vs. United India Insurance Company Ltd. and Another,

(ii) National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others,

13. I have perused the material on record and I have considered the arguments advanced by the learned Counsel for the parties and the judgments relied upon by them.

14. The point that arises for my determination is whether the respondent no. 3- Insurance Company is liable to indemnify the respondent no. 2 in respect of the compensation to be paid to the claimants.

15. By order dated 25/09/2008, passed by the learned M.A.C.T., under section 140 of the M. V. Act, the respondents no. 2 and 3 were jointly and severally directed to pay to the claimants the amount of Rs. 50,000/-. The respondent no. 3 paid the said amount. By impugned Judgment, the said amount paid by the respondent no. 3, under section 140 of the M. V. Act, has been deducted from the total compensation and the balance has been ordered to be paid to the claimants. The evidence of RW1, respondent no. 2, reveals that he had given his Maruti Omni Van bearing No. GA-01/V-4448 on contract basis to Shri Ravi Pilarnekar since October, 2007 who in turn, had engaged the respondent no. 1 as driver. RW2 has specifically stated that it was verified by him as well as by Ravi Pilarnekar that the respondent no. 1 was not a novice in driving and that he was a professional and well experienced driver with a clean past driving and moral record and possessed of valid motor vehicle licence issued to him by the Assistant Director of Transport, Mapusa with effect from 11/03/1999 for LMV/NT; with effect from 04/03/2005 for LMV/T; and with effect from 30/06/2004 for MCWGR. He deposed that it was also verified that the respondent no. 1 possessed a valid badge to drive the commercial vehicle issued by the Assistant Director of Transport, Mapusa bearing No. GA-M-32457. The copy of the driving licence of the respondent no. 1 was produced by RW1 as Exhibit 67.

16. RW2, Shri Ravi Pilarnekar has corroborated the testimony of RW1, by saying that he had taken the said Maruti Van No. GA-01/4448 on contract basis from the respondent no. 2 and had engaged the respondent no. 1 as driver for the same. RW3, the respondent no. 1 is the driver of the said Maruti Van bearing No. GA-01/V-4148. RW3 stated that in the year 1998, he was issued driving licence for light motor vehicle and he obtained professional driving licence and thereafter, applied for Taxi badge. He stated that he has been driving four wheeler since the year 1998. He confirmed that Exhibit 67 is the copy of his driving licence.

17. RW4, Shri Nandkishor Arolkar, the Assistant Director of Transport deposed that in order to drive a Taxi, the driver should possess a driving licence for light transport vehicle and Taxi badge. He stated that if the licence expired the same has to be renewed within the 30 days from the date of expiry and if renewed

accordingly within 30 days, its validity relates back to the date of expiry and if the licence is renewed after the period of 30 days from the date of expiry, its validity starts from the date of payment of renewal fees. RW4 stated that the transport licence issued to the respondent no. 1 was valid from 04/03/2005 to 03/03/2008 and it was subsequently renewed from 25/04/2008 and was valid upto 24/04/2011. He stated that the respondent no. 1 had applied for renewal of licence by payment of renewal fees on 25/04/2008. He stated that as on 22/03/2008, the respondent no. 1 was not holding licence to drive taxi. In his cross-examination, RW4 stated that the respondent no. 1 was issued a licence for non-transport vehicle which was valid from 11/03/1999 to 10/03/2019.

18. The insurance policy which is at exhibit 75 contains a clause as follows :

"Persons or Class of Persons entitled to drive:

Any person including the insured provided that the person driving holds an effective and valid driving license to drive the category of vehicle insured hereunder, at the time of accident and is not disqualified from holding or obtaining such a license. Provided also that a person holding an effective and valid Learner's License to drive the category of vehicle insured hereunder may also drive the vehicle when not used for transport of passengers at the time of accident and that the person satisfies the requirements of Rule 3 of Motor Vehicles Rule, 1989."

19. From the above evidence on record, it is seen established that the respondent no. 1, as on the date of accident, had a valid driving licence for non-transport vehicle, but did not have a valid driving licence for transport vehicle, like Taxi. He however, had valid driving licence for transport vehicle till 03/03/2008 and he got the same renewed as from 25/04/2008. The respondent no. 1 did not get benefit of the grace period of 30 days, since he paid the fees after 30 days of expiry of licence, on 25/04/2008 and got the licence renewed as from 25/04/2008. The accident had taken place on 22/03/2008. It means that there was a gap of few days during which the respondent no. 1 did not have valid driving licence for transport vehicle and during that period, the accident occurred . Admittedly, the respondent no. 1, as on the date of accident, had valid driving licence for non-transport vehicle. The evidence on record fully establishes that the respondent no. 1 otherwise was a professional driver, and was not a novice in driving. It is also established that the respondent no. 2, who is the owner of the said Maruti Van, had verified from the respondent no. 1 that he had such valid driving licence for transport vehicle. It cannot be expected that every day the respondent no. 2 would go on checking the validity of the licence of respondent no. 1 for transport vehicle.

20. In the case of "Swaran Singh and others" (supra), relied upon by the learned Senior Counsel, the Three-Judge Bench of the Hon"ble Supreme Court, in paragraphs 92 to 101, thereof, has held as under :

" Where the driver's licence is found to be fake

92. It may be true as has been contended on behalf of the petitioner that a fake or forged licence is as good as no licence but the question herein, as noticed hereinbefore, is whether the insurer must prove that the owner was guilty of the wilful breach of the conditions of the insurance policy or the contract of insurance. In *United India Insurance Company Ltd. Vs. Leheru and Others*, , the matter has been considered in some detail. We are in general agreement with the approach of the Bench but we intend to point out that the observations made therein must be understood to have been made in the light of the requirements of the law in terms whereof the insurer is to establish wilful breach on the part of the insured and not for the purpose of its disentitlement from raising any defence or for the owners to be absolved from any liability whatsoever. We would be dealing in some detail with this aspect of the matter a little later.

Learner's licence

93. The Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(3) and Section 14.] A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that when a vehicle is being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the said Act.

94. The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Sections 3(2) and 6 of the Act provide for restriction in the matter of grant of driving licence, Section 7 deals with such restrictions on granting of learner's licence. Sections 8 and 9 provide for the manner and conditions for grant of driving licence. Section 15 provides for renewal of driving licence. Learner's licences are granted under the Rules framed by the Central Government or the State Governments in exercise of their rule-making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the Rules framed thereunder. It is now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of the main enactment. It is also a well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule. No provision should be considered as surplusage.

95. *New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others*, , whereupon the learned counsel placed reliance, has no application to the fact of the matter. There existed an exclusion clause in the insurance policy wherein it

was made clear that the insurance company, in the event of an accident, would be liable only if the vehicle was being driven by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". The question as to whether such a clause would be valid or not did not arise for consideration before the Bench in the said case. The said decision was rendered in the peculiar fact situation obtaining therein. Therein it was stated that "a driving licence" as defined in the Act is different from a learner's licence issued under Rule 16 of the Motor Vehicles Rules, 1939 having regard to the factual matrix involved therein.

96. The question which arises for consideration in these petitions did not arise there. Neither was the same argued at the Bar nor were the binding precedents considered. *Mandar Madhav Tambe* case therefore, has no application to the facts of these cases nor creates any binding precedent. The view we have taken is in tune with the judgments rendered by different High Courts consistently. [See for example *New India Assurance Co. Ltd. Vs. Latha Jayaraj and Others*,

Conflict of decisions

97. Contention of Mr. Salve that there exists a conflict in the decisions of this Court in *National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others*, on the one hand and *New India Assurance Co., Shimla Vs. Kamla and Others* etc. etc., and *United India Insurance Company Ltd. Vs. Leheru and Others*, on the other, cannot be accepted. We do not find in the said decisions any such conflict.

98. *Nicolletta Rohtagi* was a case where a question arose as to whether an appeal by the insurer on the ground dehors those contained in Section 149(2) would be maintainable. It was held not to be. There cannot be any doubt or dispute that defences enumerated in Section 149(2) would be available to the insurance companies, but that does not and cannot mean that despite such defences having not been established, they would not be liable to fulfil their statutory obligation under sub-section (1) of Section 149 of the Act.

99. So far as the purported conflict in the judgments of *Kamla* and *Leheru* is concerned, we may wish to point out that the defence to the effect that the licence held by the person driving the vehicle was a fake one, would be available to the insurance companies, but whether despite the same, the plea of default on the part of the owner has been established or not would be a question which will have to be determined in each case.

100. This Court, however, in *Leheru* must not be read to mean that an owner of a vehicle can under no circumstances have any duty to make any enquiry in this respect. The same, however, would again be a question which would arise for consideration in each individual case.

101. The submission of Mr. Salve that in *Leheru* case, this Court has, for all intent and purport, taken away the right of an insurer to raise a defence that the

licence is fake does not appear to be correct. Such defence can certainly be raised but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver."

21. In the case of "Pepsu Road Transport Corporation" (supra), relied upon by the learned Senior Counsel, the Hon"ble Apex Court has observed as under :

"As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

In the instant case, the appellant employer had employed the third respondent Nirmal Singh as driver. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal."

22. In the case of "S. Iyyapan" (supra), relied upon by the learned Counsel for the claimants the driver was holding a valid driving licence to drive light motor vehicle. The Motor vehicle in question, by which the accident took place, Mahindra Maxi Cab, a commercial vehicle. Merely because the driver did not get any endorsement in the driving licence to drive a commercial vehicle, the High Court held that the insurer was not liable to pay compensation. Though, the driver was not holding licence to drive commercial vehicle, however, he had valid driving licence for light motor vehicle and Mahindra Maxi Cab was a light motor vehicle.. The Hon"ble Supreme Court held that the insurer cannot disown its liability on the ground that though the driver was holding a licence to drive a light motor vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. The Apex Court held that it is statutory right of the third party to recover amount to compensation so awarded from the insurer and it is for insurer to proceed against the insured for recovery of amount in the event of

violation of any condition of insurance policy.

23. Thus, from the above decisions of the Apex Court, it is clear that even if the insurer succeeds in proving a breach of driving licence, that by itself is not sufficient to avoid the liability. The Insurer, along with the breach of insurance policy has to establish that such breach of licence or conditions of the licence were fundamental to the cause of accident. In other words, it has to be shown that the breach of the policy condition was the immediate cause of the accident. Further, it has to be established that the owner was guilty of willful breach of the conditions of the insurance policy or the contract of insurance. In the present case, the respondent no. 1 had, on the date of accident, valid driving licence for non-transport vehicle and his licence for transport vehicle had expires few days prior to the accident which he got renewed as from 25/4/2008, and the accident took place on 22/03/2008. The respondent no. 1 was otherwise a professional driver and not a novice in driving. When the respondent no. 1 was engaged for driving, the respondent no. 2 had verified that he had valid driving licence for transport vehicle. At least there is no evidence on record to prove that the respondent no. 2 was guilty of willful breach of the conditions of the insurance policy or the contract of insurance. The respondent no. 3 did not lead any evidence to establish that the breach of the policy condition was immediate cause of the accident or that the respondent no. 2 was guilty of the willful breach of the conditions of the insurance policy or the contract of insurance. There is no dispute that the said Maruti Van No. GA-01/V-4448 was insured with the respondent no. 3 and the insurance policy was valid as on the date of the accident and that the respondent no. 2 was the insured. In view of the evidence on record, which is discussed above and the principles laid down by the Hon''ble Apex Court in the judgments supra, I am of the considered view that it was statutory right of the claimants to recover amount of compensation so awarded from the insurer and it may be for insurer to proceed against the insured for recovery of amount in the event of violation of any condition of insurance policy. I am of the view that the learned M.A.C.T. erred in holding that the respondent no. 3 was not liable to pay the compensation. In the facts and circumstances of the case, all the respondents were jointly and severally liable to pay the awarded compensation to the claimants.

24. Therefore, the appeal is allowed.

(i) The impugned judgment and award to the extent of dismissal of the Claim Petition as against the respondent no. 3 is quashed and set aside.

(ii) The impugned judgment and award stands modified to the extent that all the respondents shall, jointly and severally, pay to the claimants, the compensation as awarded by the Reference Court.

25. The appeal stands disposed of, accordingly.