

New India Assurance Co. Ltd.

Vs

Mandar Madhav Tambe and Others

Civil Appeal No. 3486 of 1986

(B. P. Bharucha, B.N. Kirpal JJ)

14.12.1995

ORDER

1. This is an appeal by special leave against the judgment of the Bombay High Court upholding the liability of the appellant-Insurance Company to pay the amount of compensation awarded to Respondent 1 who had suffered some injuries as a result of an accident.

2. On 4-7-1979, an accident occurred involving two scooters. One scooter No. (MTM 6327) was being driven by Respondent 1 (the claimant) and the other scooter (BYZ 5348) was being driven by Respondent 3. As a result of this accident Respondent 1 suffered some injuries and he filed an application before the Motor Accidents Claims Tribunal for compensation.

3. The appellant contested the said application. It was contended on its behalf that on 22-7-1977, Respondent 3 had obtained a learner's licence, which enabled him to drive for the purpose of learning to drive. The validity of this learner's licence had expired on 21-11-1977. When the accident took place on 4-7-1979, Respondent 3 was neither holding a driving licence as contemplated by the Motor Vehicles Act, 1939, nor was he holding a learner's licence. It appears that soon after the accident Respondent 3 obtained a fresh learner's licence on 7-7-1979 and thereafter, on 9-7-1979, obtained a driving licence.

4. The Motor Accidents Claims Tribunal, vide its award dated 2-6-1984, came to the conclusion that the accident had occurred due to the negligence of Respondent 3. It found that Respondent 1 was entitled to compensation of Rs. 2,60,000. An award was accordingly passed directing Respondents 1 and 3 therein, including the appellant-Insurance Company, to jointly or separately pay the said amount together with interest at the rate of 6% per annum.

5. The appellant filed an appeal against the said award. The main contention which was raised on behalf of the appellant was that Respondent 3 was not duly licensed to drive a scooter, and therefore, in view of the provisions of the Motor Vehicles Act and also in view of one specific clause which had been inserted in the insurance policy, the Insurance Company was absolved of all liability. This exclusion clause in the policy which the appellant-Company relied upon, is as follows :

"Provided that the person driving 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 such a licence."

6. The High Court came to the conclusion that the Act did not contemplate the grant of a permanent

driving licence. It then proceeded to hold that the term "duly licensed" in Section 96(2)(b)(ii) of the Act would include the holder of a learner's licence if he had once held such a licence then the aforesaid exclusion clause would not be applicable.

7. While granting leave to appeal this Court made it clear that the leave was being granted on the condition that the appellant herein would pay the amount awarded to the claimant, irrespective of the result of the case.

8. On behalf of the appellant it has been contended by Mr. Suri that at the time when the accident occurred Respondent 3 did not hold any licence. This being so the aforesaid provisions in the insurance policy and also Section 96(2)(b)(ii) of the Act absolved the appellant of any liability.

9. Learned counsel for the respondent relied upon the observations of the judgment under appeal and also on a similar view taken in the decision of the High Court of Himachal Pradesh in United India Insurance Co. Ltd. v. Tilak Ram [1985 ACJ 481 (HP)] and submitted that inasmuch as Respondent 3 had held a learner's licence at one point of time, the insurance company was liable to pay the amount of compensation which had been awarded.

10. The two questions which arise for consideration in this appeal are, firstly, whether the appellant-Company is entitled to invoke the provisions of Section 96(2)(b)(ii) of the said Act, and, secondly, whether the above-quoted exclusion clause in the insurance policy absolves the appellant-Company of any liability in the present case.

11. In order to appreciate the first contention, its necessary to refer to the relevant provisions of the said Act. Section 96(2)(b)(ii), on which reliance is placed by the appellant, reads as under :

"(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

#(a) \* \* \*##

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely :

#(i) \* \* \*##

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who had been disqualified for holding or obtaining a driving licence during the period of disqualifications; or"

12. This clause, inter alia, uses the expression "driving licence" which term has been defined in Section 2(5-A) of the Act as follows :

"driving licence' means the document issued by a competent authority under Chapter II authorising the person specified therein to drive a motor vehicle or motor vehicle

of any specified class or description."

13. Section 3 inter alia provides that no person shall drive a motor vehicle unless he holds an effective driving licence issued to him. Section 7 provides for the grant of driving licence and sub-section (6) thereof states that no driving licence shall be issued to any applicant unless he passes, to the satisfaction of the licensing authority, the test of competence to drive as specified in the 3rd Schedule. It is clear, therefore, that a valid driving licence as contemplated by the said Act would be one which is issued in accordance with the provisions of Chapter II of the Motor Vehicles Act, 1939, after a driving test has been held. A person who holds only a learner's licence is one who has not taken the driving test successfully. Chapter II of the Act does not make any mention of a learner's licence, except in Section 21(2)(c) which enables the State Government to frame rules, inter alia, for the issue of temporary licences to persons receiving instruction in driving. It is in view of this that in the Bombay Motor Vehicles Rules a provision (Rules 16) has been made, the relevant portion of which is as under :

"16. Learner's driving licence - 1. Sub-section (1) of Section 3 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 sub-section (6) of Section 7 so long as -

(i) the driver is the holder of a learner's driving licence in Form LLr. to those rules entitling him to drive the vehicle

(ii) there is besides 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 readily to stop the vehicle"

14. From the aforesaid it is clear that what was obtained by Respondent 3 from the authorities under the Act was not a licence within the meaning of Section 2(5-A) of the said Act. He had obtained a learner's licence which allowed him to be on the road subject to his fulfilling the conditions contained therein. One of the important conditions was that if he was driving a motor vehicle then there must be besides him in the vehicle as 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. It is clear from this that two learners by themselves cannot be in one car which is being driven by one of them. If the learner having a learner's licence under the rules is to drive a car then he must have sitting besides him a person who is duly licensed. This clearly shows that a "driving licence" as defined in the Act is different from a learner's licence issued under Rule 16. In other words, a person would be regarded as being duly licensed only if he has obtained a licence under Chapter II of the Motor Vehicles Act and a person who has obtained a temporary licence which enables him to learn driving cannot be regarded as having been duly licensed. The decision of the Single Judge of the Himachal Pradesh High Court in United India Insurance Co. case [1985 ACJ 481 (HP)] to the extent to which he has taken a contrary view must be held to have been incorrectly decided.

15. Apart from the fact that a learner having such a licence would not be regarded as duly licensed, the aforesaid clause in the insurance policy makes it abundantly 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". This clause specifically provides that even if Respondent 3 had held a current learner's licence at the time of the accident, the appellant would not be liable. In the present case it is clear that Respondent 3 did not

have a permanent learner's licence before the date of the accident and he had held only a learner's licence and it lapsed nearly two years before the accident. The High Court observed that the Act did not contemplate a "permanent driving licence" because a driving licence is valid only for a certain period after which it has to be renewed. This may be so, but the use of the words "permanent driving licence" in the insurance policy was to emphasise that a temporary or a learner's licence-holder would not be covered by the insurance policy. The intention and meaning of the policy clearly is that the person driving the vehicle at the time of the accident must be one who holds a "driving licence" within the meaning of Section 2(5-A) of the Act. This being so, we are unable to agree with the conclusions of the High Court that the appellant was liable to pay amount which had been awarded in favour of Respondent 1.

16. For the aforesaid reasons, the appeal is allowed but with no order as to costs. Having regard to the condition imposed at the time of the grant of special leave that irrespective of the outcome of this appeal, the amount awarded will be paid by the appellant to the claimants, no other relief can be granted to the appellant.