

SUPREME COURT OF INDIA

Oriental Insurance Co. Ltd.

Vs.

Angad Kol

C.A.No.1102 of 2009

(S.B. Sinha and V.S. Sirpurkar JJ.)

18.02.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 21.9.2007 passed by a Division Bench of the High Court of Madhya Pradesh at Jabalpur in Misc. Application No.21/09/2007 whereby and where under the appeals preferred by the claimants/respondents from an award dated 29.1.2007 passed by the IInd Additional Motor Accident Claims Tribunal (Fast Track Court), Kanti (hereinafter referred to as 'the Tribunal') in M.V.C. No.350 of 2004, was allowed. A cross objection filed by the appellant herein has also been dismissed by the said judgment.

3. Heirs and legal representatives of Genda Bai, who died in an accident which took place on 31.10.2004, filed a claim application before the Tribunal, contending in that on the fateful day, when she had been standing near a turning known as 'Hardi turning', a mini door Auto bearing registration No.MP-20G-9937 dashed against her as a result whereof she suffered injuries. She was taken to the District Hospital where she succumbed thereto on the next day.

The deceased was aged about 45 years at the time of her death. She allegedly used to earn about Rs.5,000/- per month by preparing 'Donnapattals'.

4. Indisputably, the vehicle was a goods carriage vehicle which was owned by Respondent No.7, Narendra, and was being driven by Respondent No.6, Umesh. Before the Tribunal, a contention was raised that the driver of the vehicle did not possess a valid and effective driving licence. Overruling the said contention, an award of Rs.1,83,000/- was made.

5. Claimants, as noticed hereinbefore, preferred an appeal thereagainst. Appellant also filed a cross-objection.

Inter alia, on the premise that the contribution to the family by the deceased would have been about Rs.2,500/- per month and on deduction of conventional 1/3rd amount from her income, the annual loss of dependency was calculated at Rs.20,000/- per annum. The High Court applied the multiplier of 15 and, thus, awarded a sum of Rs.3,00,000/- towards loss of dependency. A sum of Rs.40,000/- was furthermore awarded under the heads of loss of estate, funeral expenses, loss of expectancy of life including a sum of Rs.10,000/- to the husband for loss of consortium.

6. Mr. Santosh Paul, learned counsel appearing on behalf of the appellant, would submit that the driving licence having been granted to the respondent No.6, Umesh, in the year 2003 for a period of 20 years, evidently it was not meant for driving a goods carriage vehicle.

7. Mr. Raj Kumar Gupta, learned counsel appearing on behalf of the respondent, however, would submit that as the appellant already deposited 50% of the awarded amount, this Court may direct it to pay the balance awarded amount with a right to recover the same from the owner and/or the driver of the vehicle.

8. Motor Vehicles Act, 1988 (hereinafter called as 'the Act') was enacted to consolidate and amend the law relating to motor vehicles. 'Driving licence' has been defined in Section 2(10) to mean the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. "Goods carriage" has been defined in Section 2(14) to mean 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. The said Act also defines 'heavy goods vehicle', 'heavy passenger motor vehicle', 'medium goods vehicle' and 'medium passenger motor vehicle' as well as a 'light motor vehicle' in Section 2(21) of the Act to mean :

" '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."

9. Although the definition of the 'light motor vehicle' brings within its umbrage both 'transport vehicle' or 'omnibus', indisputably, as would be noticed infra, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists. Section 3 provides for the necessity of driving licence, stating :

"3. Necessity for driving licence.--(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor car or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do. (2) ..."

Section 9 provides for grant of driving licence. Section 10 prescribes the form and contents of licences to drive which is to the following effect :

"10. Form and contents of licences to drive.-- (1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

(a) to (c) ...

(d) light motor vehicle;

(e) transport vehicle;

(i) road Roller;

(j) motor vehicle of a specified description."

10. The distinction between a 'light motor vehicle' and a 'transport vehicle' is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained. The distinction between a 'transport vehicle' and a 'passenger vehicle' can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a 'transport vehicle' whereas in case of any other licence, it may remain effective for a period of 20 years.

11. The driver and the owner of the vehicle did not examine themselves. The driving licence was not produced. The application form praying for grant of driving licence was also not produced.

“The insurance company examined Shri R.K. Hila, an officer of the Regional Transport Authority. The contents of his deposition, as has been noticed by the learned Tribunal in paragraph 7 of the award, is as under: "The onus of issue No.2 is on Opposite Party No.3. But they could not establish their allegation that the vehicle was driver contrary to the conditions of the insurance contract. The witness No.1 of the Opposite Party Sri R.K. Hela of the Regional Transport Authority has stated that the Opposite Party No.1 had licence to driver Light Motor Vehicle for the period 30.07.2003 to 29.07.2023 and the vehicle involved is a Light Goods Vehicle. It is contended that the holder of the licence had to obtain an endorsement to drive goods vehicles but it has not been established whether the vehicle involved in the accident is a goods vehicle and whether the holder of the licence was entitled to drive a goods carriage vehicle. It has also not been established that the vehicle involved was a

goods carriage vehicle. The Opposite Party No.3 could not establish that the vehicle was driven contrary to the terms and conditions of the insurance. As a result the Opposite Party No.3 has not been able to establish that the driver of the vehicle which caused the accident did not have an effective and valid licence. Hence issue No.2 is decided against the Respondent No.3."

12. Indisputably, the Regional Transport Officer, Jabalpur, in a letter addressed to Shri S.K. Yadav in response to his application dated 21.2.2005 furnished the particulars of driving licence No.MP70/0/6436/03 as under:

"As per this office record the particulars of driving licence No.MP70/0/6436/03 are as under :

1. Name of Licence holder : Shri Umesh Gupta
2. Son of : Shri M.L. Gupta MP20/016436/03
3. Address : Karmata, Jabalpur
4. Date of issue : 30.7.2003
5. Date of expiry : 29.7.2023
6. Date of last renewal : 8.4.2013
7. Valid for : 8.4.2013
8. Class of vehicle : M/Cycle + LMV only
9. Paid Employee Endorsement if any"

13. The Central Government had framed Rules known as 'Central Motor Vehicle Rules'. Form 4 prescribed therein provides for different columns for grant of a licence of light motor vehicle, medium goods vehicle or heavy goods vehicle. Rule 14 prescribes for filing of an application in Form 4 for a licence to drive a motor vehicle. An amendment was carried out on or about 28.3.2001 being JSR No.221(E) in terms whereof, inter alia, licence which is to be granted in Form 6 requires a specific authorization to drive a 'transport vehicle'.

14. The licence was granted to Respondent No.6, Umesh, in 2003, i.e., after the said amendment came into force. The accident, as noticed hereinbefore, took place on 31.10.2004.

15. Licence having been granted for a period of 20 years, a presumption, therefore, arises that it was meant for the purpose of a vehicle other than a transport vehicle.

16. Had the driving licence had been granted for transport vehicle, the tenure thereof could not have exceeded to three years.

In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria*¹ this Court noticed the aforementioned development in the matter of grant of licence to a transport vehicle stating that the same became effective from 28.3.2001 in the following terms :

"20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle".

The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

21. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law."

17. The effect of the different terms of licences granted in terms of the provisions of Section 2(14) and 2(47) has also been noticed by this Court in *New India Assurance Co. Ltd. v. Prabhu Lal*² stated :

"30. Now, it is the case of the Insurance Company that the vehicle of the complainant which met with an accident was a "transport vehicle". It was submitted that the insured vehicle was a "goods carriage" and was thus a "transport vehicle". The vehicle was driven by Ram Narain, who was authorised to drive light motor vehicle and not a transport vehicle. Since the driver had no licence to drive transport vehicle in absence of necessary endorsement in his licence to that effect, he could not have driven Tata 709 and when that vehicle met with an accident, the Insurance Company could not be made liable to pay compensation. XXXXXXXXXX

37. The argument of the Insurance Company is that at the time of accident, Ram Narain had no valid and effective licence to drive Tata 709. Indisputably, Ram Narain was having a licence to drive light motor vehicle. The learned counsel for the Insurance Company, referring to various provisions of the Act submitted that if a person is having licence to drive light motor vehicle, he cannot drive a transport vehicle unless his driving licence specifically entitles him so to do (Section 3). Clauses (14), (21), (28) and (47) of Section 2 make it clear that if a vehicle is "light motor vehicle", but falls under the category of transport vehicle, the driving licence has to be duly endorsed under Section 3 of the Act. If it is not done, a person holding driving licence to ply light motor vehicle cannot ply transport vehicle. It is not in dispute that in the instant case, Ram Narain was having licence to drive light motor vehicle. The licence was not endorsed as required and hence, he could not have driven

Tata 709 in absence of requisite endorsement and the Insurance Company could not be held liable.

38. We find considerable force in the submission of the learned counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question."

The Court distinguished its earlier judgment in *Ashok Gangadhar Maratha v. Oriental Insurance*³ stating:

"41. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable."

However, in this case, the finding of fact arrived at that the vehicle in question was not proved to be a goods vehicle is not correct. The Regional Transport Officer, in his deposition, stated that the vehicle in question was a goods vehicle."

18. From the discussions made hereinbefore, it is, thus, evident that it is proved that respondent No.6 did not hold a valid and effective driving licence for driving a goods vehicle. Breach of conditions of the insurance is, therefore, apparent on the face of the records.

19. By an order dated 10.7.2008, the insurance company was directed to deposit 50% of the awarded amount. In this view of the matter, we are of the opinion that interest of justice would be subserved if we, in exercise of our jurisdiction under Article 142 of the Constitution while directing the insurance company to deposit the balance amount before the Tribunal with liberty to the claimants to withdraw the same give right to the appellant to recover the said amount from the owner and the driver of the vehicle being Respondent Nos.6 and 7.

20. In view of the aforementioned findings, the appeal is allowed with no order as to costs.

¹(2008) 3 SCC 464

²(2008) 1 SCC 696

³(1999) (6) SCC 620