Govind Vs. the Manager, New India Assurance Company Ltd. and Others

Govind Vs. the Manager, New India Assurance Company Ltd. and Others

SooperKanoon Citation : sooperkanoon.com/1144845

Court : Mumbai Aurangabad

Decided On : Feb-10-2014

Judge : K.U. Chandiwal

Appeal No. : First Appeal No. 1831 of 2013

Appellant : Govind

Respondent : The Manager, New India Assurance Company Ltd. and Others

Advocate for Pet/Ap. : Mr. Mundhe

Judgement :

Oral Judgment:

1. Heard finally. Admit. By consent, taken up for final hearing. Original record, received, perused.

2. Ex Officio Member, Motor Accident Claims Tribunal, Udgir, on 7.9.2009, while deciding M.A.C.P.No.55/2008, dismissed the claim petition against original respondent No.3 (the New India Assurance Co. Ltd.), and hence feeling aggrieved by the said judgment, original respondent Govind, owner of the vehicle is before this Court.

FACTS

Deceased was proceeding to Udgir on his vehicle (M-80) and had dash with Tempo bearing No.MH-26-B-3507, coming from opposite direction, and the deceased suffered, died at the spot. He was 50 years old, hale and hearty, an agriculturist, and family claimed that he had a good earning. On assessing the evidence, Rs. 2,75,000/- were awarded in favour of claimants with interest at the rate of 9 per cent per annum.

4. The gravamen of submission from Mr. Mundhe, learned Counsel for the appellant, owner of the vehicle is, exonerating the Insurance Company on erroneous assumption of type of vehicle, and incapacitation to drive the vehicle being not a competent person to carry the work, calls for interference.

5. Learned Counsel strenuously took me to the definition of Section 2(21), 2(43) and 2(14) of the Motor Vehicles Act, 1988. These definitions are as under.

"2. Definitions.- In this Act, unless the context otherwise requires, -

(21) "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 7,500 kilograms;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

(14) "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;

According to him, in the light of definition under Section 2(21), it being Light Motor Vehicle / a transport vehicle, the transport vehicle or omnibus is covered and gross vehicle weight of either of the same is not to exceed 7,500 kgs.

The distinction between a light motor vehicle and transport vehicle is 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. There is, again, a distinction between a transport vehicle and a passenger vehicle indicative in Section 14 of the Motor Vehicles Act. Sub-Section (2) of Section 14 provides for a duration of a period of three years in case of an effective licence to drive a transport vehicle whereas, in case of any other license, it may remain effective for a period of twenty years.

6. Learned Counsel has referred to the license of the driver Tanaji issued on 23.7.1990, which was renewed and validity of which was for fifteen years. According to him, the amendment dated 8th March, 2001, would be applicable prospectively and would not cover the license already held by Tanaji on 27.7.1990.

7. In order to stress his point, learned Counsel placed reliance to the judgment of the Hon'ble Apex Court in the matter of **National Insurance Co.Ltd. Vs. Annappa Irappa Nasaria and others (2008 ACJ 721)** and also to the judgment of the Hon'ble Supreme Court reported in **AIR 1999 SC 3181(1) (Ashok Gangadhar Maratha v. Oriental Insurance Co.Ltd**.). In particular, he invited my attention to paragraph nos. 11 and 10 of the latter judgment. He has stressed, that in the light of the particular category of the vehicle, it did not invite mandatory requirement of compliance of Section 66 of the Motor Vehicles Act, and hence, any reference want of permit to the vehicle, has no relevance.

8. Mr.Mundhe has also referred to the judgment of the Hon'ble Supreme Court in the matter of **S.Iyyapanvs. United India Insurance Company Ltd. (2013(6) Mh.L.J.(6) page no.1)**. In S.Iyyappan, on facts of particular case, Hon'ble Supreme Court recorded in paragraph no.19 that the driver was holding a valid driving licence to drive light motor vehicle. There was no dispute in the said case that the vehicle, which was driven, was Mahindra Maxi Cab. The Apex Court even found that merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle. It was only for want of necessary endorsement in the licence of driving Mahindra Maxi Cab, the Insurance Company was directed to pay and recover.

9. Learned Counsel for the Insurance Company has, by reading registration certificate of the vehicle, stressed that it was a light commercial vehicle which was of a goods carriage vehicle. The licence of Tanaji at Exh.33 does not stand in conformity for driving such vehicle. In order to impress his point, learned Counsel

has placed reliance to the judgment of Hon'ble Supreme Court in the matter of **United India Insurance Co.Ltd. through its Divisional Manager vs. Sujata Arora and others 2013 (3) T.A.C. 29 (S.C.**), and the judgment in the matter of **Oriental Insurance Co. Ltd. Vs. Zaharulnisha and others (2008 (2) T.A.C. 801 (S.C.**). He has also relied to the judgment of the Hon'ble Supreme Court in the matter of **Oriental Insurance Company Limited Vs. Angad Kol (009 ACJ 1411 SC**).

10. The judgments relied by both the learned Counsel will have to be tested by putting in juxtaposition to the facts in the present case with legal position as enumerated under the Motor Vehicle Act and the Rules. The evidence illustrate that Tanaji had a driving licence for LMV (Non transport) valid upto 13.9.2010, having issued from 27.9.1990 (for 20 years). The vehicle involved is a goods carrying vehicle in the category of Light Commercial Vehicle which is a transport vehicle. Evidence of R.T.O. Clerk showed that Tanaji was not authorized to drive Light Commercial vehicle. It did not cover authority of driving a commercial vehicle of any category. The vehicle in question was light commercial vehicle. The very formulation of renewal of driving licence to Tanaji for a long period than three years illustrate that, at no time he was authorized to drive commercial vehicle under law. In licence to drive commercial vehicle, it is mandatory to obtain / procure renewal of license after three years.

11. The other feature in the matter is about category of the vehicle and its weight as referred in the R.T.O. papers of the vehicle. The papers illustrate unladen weight of the vehicle is 2220 kgs. while laden weight is 5200 kgs. Section 66(3)(i) of the Motor Vehicles Act, carves out, that no permit is required to any vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms. On facts, the gross weight of this vehicle was 5200 kgs; naturally, it warrants issuance of permit and, that has not been established. The driver was murking to drive the vehicle validly.

In the light of this scenario, juggling to the definitions referred to above reflected under Section 2(14), 2(16), 2(21), 2(47) will not come to coordinate and assist the cause accelerated by the appellant.

The order of the learned Judge exonerating the Insurance Company does not call for interference.

Appeal dismissed. No order as to costs.