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Court : Karnataka Kalaburagi

Decided On : Feb-26-2015

Judge : A.S. Pachhapure

Appeal No. : Miscellaneous First Appeal No. 32560 of 2011 (MV)

Appellant : Moahmmed

Respondent : Mallayya and Others

Judgement :

(Prayer: This MFA filed U/S 173(1) of MV Act against the judgment and award dated: 23.6.2011 in MVC No: 233/2010 the file of the member ADDL. M.A.C.T. at Yadgir, partly allowing the claim petition and awarding compensation of Rs. 1,35,000/- with interest at 6% P.A.)

A.S. Pachhapure, J.

(1) This appeal is filed by the owner of the vehicle challenging the liability imposed on him to pay the compensation to 1st respondent for the injuries sustained in a motor vehicle accident.

(2) The facts reveal that on 05.04.2010 at about 2.00 p.m., 1st respondent was proceeding in the Autorickshaw bearing registration No. KA-33/4953 on Yadgir-Raichur road near Ramasamudra village. The driver of the Autorickshaw drove it

in a rash and negligent manner and horns of a she-buffalo by the side of the vehicle pierced, the 1st respondent and he sustained grievous injuries. He took treatment in the hospital but has suffered disability. Therefore, he made a claim for compensation.

After recording the evidence, the tribunal held the driver rash and negligent and a sum of Rs. 1,35,000/- was awarded as compensation for the injuries suffered. A contention was raised by the insurer that the driver had no valid and effective driving licence to drive the Autorickshaw and that the insurer is not liable to pay the compensation, for the breach of conditions of policy. The tribunal accepting the said contention held that the licence was to drive a non-transport vehicle and as the vehicle in question is a transport vehicle, there was no valid driving licence. Therefore, the liability was imposed on the owner to pay the compensation. Aggrieved by the judgment and award imposing liability, the owner has approached this Court in appeal.

(3) I have heard learned counsel for the parties. An opportunity was given to learned Advocates i.e., Sriyuths. Manvendra Reddy, Sanjay M. Joshi, M. Sudarshan, Babu H. Metagudda, Smt. Preeti Patil, Sri. C.S. Kalaburgi and Sri. Santosh Biradar and they have assisted the Court by advancing their arguments.

(4) The point that arises for my consideration is:

"Whether a person holding a licence to drive a non-transport (LMV) vehicle has the authority to drive the transport (LMV) vehicle and whether the insurer is liable to indemnify the owner-

Learned counsel for the appellant and others submit that Section 2(21) of Motor Vehicles Act (for short 'Act') defines the 'light motor vehicle' which includes the transport vehicle or omnibus or motor car or tractor or road roller and the unladen weight of any which does not exceed 7,500 kilograms. He submits that this definition of 'light motor vehicle' continued despite an amendment to the provisions of the Act as regards to medium goods vehicle, medium passenger vehicle etc. Therefore, it is his contention that the vehicle either a transport or non-transport, fall within the preview of light motor vehicle. A person who held a licence to drive the

light motor vehicle, has authority to drive either transport or non-transport light motor vehicle. On this aspect of the matter, he has referred many decisions, which will be analyzed hereafter. It is his submission that as the driver held valid driving licence, the award imposing liability on him is improper and it is for the insurer to indemnify the appellant/owner.

(5) On the other hand, learned counsel for 2nd respondent/insurer and other Advocates submit that as the driver held a licence to drive light motor vehicle for non-transport, he had no authority to drive the Autorickshaw in which the passengers were carried as it is transport vehicle used for commercial purpose. In the absence of a valid driving licence, the insurer cannot be held liable to indemnify the owner. She contends that the tribunal was justified in imposing liability on the appellant/owner.

(6) Perusal of the provisions of the Act, particularly Section 2(21) is relevant for the purpose to find out as to whether the person holding a licence to drive non-transport vehicle has the authority to drive transport vehicle as well. The said definition is extracted hereunder:

"(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."

As could be seen from the aforesaid definition of 'light motor vehicle' includes transport vehicle, omnibus, motor car, tractor and road roller and these vehicles are included subject to the condition that the unladen weight of any such vehicles should not exceed 7,500 kgs. So the definition as provided supra includes the transport vehicle as well the other vehicles. Further more, the Act also defines "transport vehicle" in Section 2(47) of the Act. The 'transport vehicle' means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. This definition does include the transport vehicle, the unladen weight of which does not exceed 7,500 kgs., though, it excludes the other vehicles referred to in Section 2(21) of the Act. The provisions of Section 54 of Motor Vehicles Act were amended in 1994. So under the aforesaid amendment, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy

passenger motor vehicle were also included in the definition of transport vehicle.

(7) On the basis of this amendment, it is the contention of learned counsel for the appellant that a light motor vehicle, which is also a transport vehicle, is not included in the definition by Act 54 of 1994, Motor Vehicle Amendment Act. Therefore, it is contended that a light motor transport vehicle does not fall within the purview of a transport vehicle. This contention cannot be accepted for the reason that a light motor vehicle includes a light motor transport vehicle and also transport vehicle. There was no necessity to make any amendment. The amended Act No. 54 of 1994 of Central Motor Vehicle Rules does not exclude the light motor transport vehicle for the aforesaid reasons.

(8) Anyhow, the learned counsel for the appellant has placed reliance on the decisions, which are referred hereinafter. In Civil Appeal Nos. 9927-28/2014 dated 28.10.2014, the Apex Court taking into consideration the principle laid down in S. Iyyapan's case has held as follows:

"The question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed.

"18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No. 1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."

So the Apex Court accepted the principle laid down in S. Iyyapan's case, while deciding the issue regarding requirement of a licence to drive transport vehicle. The learned counsel also made available the decision in S. Iyyapan's case

reported in, AIR 2013(7) SCC 62.

(9) Perusal of the facts therein would reveal that the accident had occurred on 23.05.1998 and the Apex Court held that the driver of a maxicab holding licence to drive light motor vehicle though, he had not obtained any endorsement to drive maxicab. The mere absence of an endorsement, it was held the insurer is liable to pay the compensation. But anyhow, it is relevant to mention herein that the facts relating to the aforesaid matter the accident that occurred on 23.05.1998 and licence held by the driver was much earlier from the date of the accident.

(10) At this juncture, it is necessary to refer to the amendment made to the provisions of Central Motor Vehicle Rules by G.S.R. 221(E) dated 28.03.2001. As could be seen from the Central Motor Vehicle Rules, the 1st amendment came into effect from 28.03.2001. The licence fees and licence in respect of different class of vehicles was provided by the amendment of this Rule. The fees in respect of non-transport vehicle is Rs. 200/- whereas, in respect of light commercial vehicle is Rs. 300/-. For obtaining the licence to drive light commercial vehicle, it was necessary for the applicant to have a medical fitness certificate, which was not necessary for the purpose of licence to drive light motor vehicle for non-transport. This was difference as referred to in the amendment to the Central Motor Vehicle Rules. Therefore, from the date amendment i.e., from 28.03.2001, a person has to hold different licences, particularly with reference to non-transport vehicle or light motor vehicle, light commercial motor vehicle, which fall within the definition of light motor vehicle. Though, under the amendment by Act No. 54 of 1994, medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle were also included in the definition of transport vehicle, for the first time under the aforesaid amendment of Rules, the licences were issued to the persons who requested for driving a different class of vehicles. So particularly to drive light transport motor vehicles, a licence is different than the licence to drive the non-transport vehicles.

Though, the definition of transport vehicle was introduced long prior to the amendment of Act 54 of 1994 and this definition was continued to be there, even thereafter, different classifications were made and particularly of the transport and

non-transport vehicles under the aforesaid amendment. For the first time different licences were issued as discussed supra. In this context and looking into the decisions rendered supra, I am of the opinion that the said principles do not apply to the facts on hand for the reason that the accident in the aforesaid case was prior to 28.03.2001.

(11) Learned counsel for the appellant has also placed reliance on the decision of the Apex Court reported in [2008 Kant M.A.C. 311 (SC)] (National Insurance Company Ltd., v. Annappa Irappa Nesaria and Others). In this matter, the accident is dated 09.12.1999 i.e., prior to the amendment of Central Motor Vehicle Rules which came into effect from 28.03.2001. Though, a reference is made to a larger Bench judgment of the Apex Court reported in AIR 1999 (SC) 3181 (Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.). Even, in this matter the accident was on 26.11.1991 and it has no reference to the amendment of Central Motor Vehicle Rules, which came into effect from 28.03.2001. A reference is also made in the judgment of the Apex Court reported in 2004(1) CCC 130 (SC) [National Insurance Co. Ltd. v. Swaran Singh and Ors.], wherein the general principles were laid down by the Apex Court with reference to principles of Sections 3, 4, 5, 149(2)(a)(ii) and taking into consideration the fact that when a person has been granted licence for one class of vehicle but at relevant time he was driving another class of vehicle, whether the insurer can avoid its liability and it held as follows:

"Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder thereof to drive the vehicle falling within that class or description. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of

the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are 'goods carriage', 'heavy-goods vehicle', 'heavy passenger motor-vehicle', 'invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor-vehicle', 'motor cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor', 'trailer', and 'transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for 'motor cycle without gear', for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. In on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute, sufficient ground to deny the benefit of coverage of insurance to the third parties. On all pleas of breach of licensing conditions taken by the insurer, it would be open to the tribunal to adjudicate the claim and decide inter se liability of insurer and insured; although where such adjudication is likely to entail undue delay in decision of the claim of the victim, the tribunal in its discretion may relegate the insurer to seek its remedy of reimbursement from the insured in the civil Court."

The principles of the aforesaid decisions are also not applicable for the reason that it was prior to the amendment of Central Motor Vehicle Rules, which came into

effect from 28.03.2001.

(12) Learned counsel further referred to the Division Bench of this Court judgment reported in [2012 Kant M.A.C. 179 (Kant)] (National Insurance Co. Ltd. v. Smt. Rathanamma and Others). Wherein the accident was subsequent to the amendment and this Court took into consideration the definition of light goods vehicle and held that the driver who had driving licence to drive light motor vehicle has to authority to drive a light goods vehicle as well. Perusal of paragraph No. 11, subparagraph No. 3 would make it clear that though under Section 2(21) of the Act, the word used is light motor vehicle, it is mentioned as light goods vehicle. This Court in the aforesaid matter relied upon the decisions in Annappa's case and many other decisions referred to supra which particularly with reference to those accidents prior to 28.03.2001.

Likewise in MFA No. 30503/2009 C.W. MFA Crob. No. 1034/2009 dated 15th September 2010, it was held by this Court that the insurer is liable to indemnify the owner for the reason that a person holds a licence to drive light motor vehicle for non transport though, he has authority to drive the transport vehicle at that time. The judgment rendered by this Court in MFA No. 30747/2009 dated 9th January 2010, the aforesaid judgments were considered and it was held by me that a person having a licence to drive transport vehicle need not have an endorsement. This judgment has to be held as, per incurium for the reason that subsequently and much earlier to, there are many judgments of the Apex Court wherein a different view has been taken.

(13) The Apex Court had an occasion to consider the amendment to the Central Motor Vehicles Rules in a decision reported in LAWS(SC)-2009-2-207 (Oriental Insurance Co. Ltd. v. Angad Kol). In the aforesaid judgment, the driver had licence to drive light motor vehicle for a period from 30.07.2003 to 29.07.2023 and the Apex Court took into consideration the provisions of Section 3 of the Act, definition of light motor vehicle, transport vehicle etc. and it was held that the driver who had licence to drive a light motor vehicle for non-transport cannot drive a commercial transport vehicle. Though, the Apex Court directed the insurer to pay the compensation exercising powers under Article 142 of the Constitution. The

principles laid down as such is after taking into consideration the Central Motor Vehicles Amendment Rules, which came into effect from 28.03.2001.

(14) A Division Bench of this Court in a decision reported in ILR 2011 KAR 4733 (National Insurance Co. Ltd. v. Yalgurdappa and Another), has taken into consideration the amendment of Central Motor Vehicles Rules, clarification of the vehicle as transport and non-transport and it is held that the driver who had a licence to drive the non-transport vehicle has no competency to drive the transport vehicle. In MFA No. 30903/2009 dated 2nd August, 2014, the aforesaid questions were taken into consideration and it was held that a person has no competency to drive transport vehicle having held a licence for non-transport vehicle. The reference is also made in the judgment of this Court in LAWS (KAR)-2010-3-55 (Bajaj Allianz General Insurance Company Ltd. v. N.M. Rajaprakash).

So from the aforesaid discussion of the provisions of Section 2(21) of the Act and the amendment to the Central Motor Vehicles Rules which came into effect from 28.03.2001, it is necessary for a person who drive a light motor vehicle for (commercial) transport must have a specific licence in this regard. As could be seen from the provisions of Section 3 of the Act, it is provided 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. Therefore, if a person has authority to drive the commercial transport vehicle, he must have a licence as contemplated under the Rules amended, which came into effect from 28.03.2001. If he does not have such a licence, there would be contravention of the Act. He does not have competency to drive such vehicle and thereby there would be breach of conditions of the policy, for which the insurer has to be exempted from the liability. It is only the Apex Court, which has got authority to direct the insurer by exercising powers under Article 142 of the Constitution and such powers are not available to this Court or any other Courts.

(15) In the facts on hand, the driver had no licence to drive transport vehicle, which was used for carrying passengers. Therefore, he had no competency to drive such vehicle. Thereby, there is breach of the conditions of the policy. The tribunal was justified in directing owner to pay the compensation. In that view of the matter, the

point is answered in the negative.

The appeal fails and accordingly dismissed.

The amount in deposit be transmitted to the tribunal.

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