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Court : Karnataka Kalaburagi

Decided On : Mar-14-2016

Judge : The Honourable Mrs. Justice S. Sujatha

Appeal No. : MFA No. 31576 of 2011 (MV)

Appellant : Nemappa

Respondent : Bhimanna and Another

Judgement :

S. Sujatha, J.

1. The Claimant is before this Court assailing the judgment and Award dated 19-02-2011 passed by the Motor Accident Claims Tribunal No. VIII at Muddebihal in MVC No. 180/2008.

2. The Tribunal after appreciating the material evidence available on record, awarded compensation of Rs. 4,66,000/- with interest at 6% per annum from the date of petition till the amount is fully realised exonerating the Insurer and directing the Owner-Respondent No. 1 to satisfy the Award.

3. Learned Counsel appearing for the Claimant would contend that the driver of the offending vehicle was driving a Tom-Tom Vehicle which is classified as Tight motor vehicle . Hence, he had a valid and effective driving licence. The Tribunal

overlooking this aspect, fastened the entire liability on the Respondent No. 1 exonerating the Insurance Company for the reason that the driver had no valid and effective driving licence and as such there was breach of the terms and conditions of the insurance policy.

4. Learned Counsel placing reliance on the judgment of the Apex Court in the case of *S. Iyyapan v. United India Insurance Company Limited*, reported in 2013 [17] SCC 62 : (AIR 2013 SC 2262), contends that the Insurance Company could not disown its liability when the driver had a licence to drive light motor vehicle. There is no mandatory requirement for obtaining an endorsement to drive a commercial vehicle i.e., transport vehicle.

5. Learned Counsel also made an attempt to distinguish Rule 81 of the Central Motor Vehicle Rules, 1989 (the Rules for short) to distinguish the case of this Court in the case of *Mohammed alias Mohd. Haneef v. Mallayya alias Mallappa and another*, reported in ILR 2015 Kar 2064 : (2015 AAC 2402) and contends that Rule 81 of the Rules deals with the fees towards the registration of vehicles and amendment made to the Central Motor Vehicles Rules with effect from 28-03-2001 would not alter the position which existed earlier as regards the driver having a valid and effective driving licence as per Section 3 of the Motor Vehicles Act, 1988 (The Act for short) read with Rule 14 of the Rules.

6. Learned Counsel also places reliance on the Judgment of the Apex Court in the case of *Kusum Lata and others v. Satbir and others*, reported in [2011] 3 SCC 646 : (AIR 2011 SC 1234).

7. Per contra, learned counsel appearing for the insurer justifying the judgment and award passed by the Tribunal placed reliance on the judgment of this Court in *Mohd. s case* (2015 AAC 2402) (supra) and contends that the driver of the offending vehicle had the driving license to drive the light motor vehicle. By virtue of amendment to Form-4 with effect from 28-3-2001, an endorsement was required by the driver to drive the transport vehicle in terms of Section 3 of the Act, which is very much lacking in the present case. Considering this vital aspect, the Tribunal has exonerated the insurance company and fastened the liability on the owner, which cannot be found fault with.

8. Having considered the rival submissions made by the parties at the bar and perusing the material on record, it is noticed that the driver of the offending vehicle had no valid and effective driving license in terms of Section 3 of the Act read with Rule 14 of Rules. This issue is no more res integra. The Division Bench of this Court in the case of National Insurance Company Ltd. Rep. by its Administrative Officer v. Yalgurdappa since deceased by his L.Rs. and another, reported in 2011 (4) KCCR 3093, has categorically held that subsequent to amendment to the Rules with effect from 28-3-2001, particularly Rule 14 read with Form-4, whereby, category of transport vehicle was inserted, makes it mandatory that the driver holding the license of a light motor vehicle is required to get an endorsement for driving the transport vehicle. Admittedly, in the instant case, the license was issued to the driver of the vehicle subsequent to 20-3-2001 and the accident had occurred on 20-3-2003. The driver of the offending vehicle had the valid and effective driving license for the light motor vehicle and at the time of the accident, he was driving the transport vehicle. No endorsement was made on the driving license permitting the driver to drive the transport vehicle. This Court in Mohd. s case (supra) having considered the judgment of the Apex Court in S. Iyyappan s case (supra) and National Insurance Co. Ltd. v. Swaran Singh and others, reported in 2004(1) CCC 130 : (AIR 2004 SC 1531) and other judgments of the Apex Court has categorically held thus:

At this juncture, it is necessary to refer to the amendment made to the provisions of Central Motor Vehicles Rules by G.S.R. 221 (E) dated 28-3-2001. As could be seen from the Central Motor Vehicles Rules, the 1st amendment came into effect from 28-3-2001. 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 of 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 and heavy passenger motor vehicle were also included in the definition of transport vehicle, for the first under the aforesaid amendment of Rules, the licences were issued to the persons who request 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.

9. It is pertinent to note that Form-4 was amended with effect from 28-3-2001 by inserting transport vehicle. Section 3 of the Act contemplates that no person shall drive a motor vehicle in any public place unless he hold an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving license specifically entitles him so to do.

10. Rule 14 of the Rules provides that an application for driving license shall be made in Form-4. A conjoint reading of these provisions with the judgments referred to above, makes it clear that the driver of the vehicle is mandatorily required to obtain an endorsement specifically, to drive a transport vehicle, if he had a valid and effective driving license to drive the light motor vehicle. In the circumstances, I do not see any merit in the arguments advanced by the learned counsel for the appellant. The judgment and award passed by the Tribunal exonerating the insurer cannot be found fault with.

11. Learned counsel appearing for the appellant also sought for enhancing of the compensation awarded. Having perused the quantum of compensation awarded by the Tribunal vis-a-vis the injuries sustained by the injured/claimant, I do not see any infirmity or illegality in the compensation awarded by the Tribunal.

Accordingly, the appeal stands dismissed.

Appeal dismissed.