

Sri Manjunatha Vs. Sri Ravi

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Court : Karnataka

Decided On : Apr-13-2023

Judge : Hanchate Sanjeevkumar

Appeal No. : MFA 12091/2011

Appellant : Sri Manjunatha

Respondent : Sri Ravi

Judgement :

- 1 - MFA No.12091 of 2011 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF APRIL, 2023 BEFORE THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR MISCELLANEOUS FIRST APPEAL No.12091 OF2011(MV-I) BETWEEN: SRI. MANJUNATHA, S/O. SRI. NAGAPPA, AGED ABOUT51YEARS, R/AT MALERAKERI VILLAGE, SHIKARIPURA, SHIMOGA - 577 427. APPELLANT (BY SRI. H.K. BASAVARAJ, ADVOCATE) AND:

1. SRI. RAVI, S/O. DHARAMAPPA, AGED ABOUT21YEARS, R/AT KENGATTI VILLAGE, SHIKARIPURA TALUK, SHIMOGA DISTRICT - 577 427.

2. SRI. SHEKAR @ SHEKHU, S/O. GURAPPA PAWAR, AGED ABOUT28YEARS, - 2 - MFA No.12091 of 2011 R/AT SAVALALA THANDA, BASAVANABAGEVADI TALUK, BIJAPUR DISTRICT - 586 101.

3. THE MANAGER, ICICI LOMBAR MOTOR INSURANCE, HUBLI - 580 224. RESPONDENTS (BY R1 AND R2 ARE SERVED; SRI. B. PRADEEP, ADVOCATE FOR R3) THIS MFA IS FILED U/S1731) OF MV ACT AGAINST THE

JUDGMENT

AND AWARD DATED:16.1.2010 PASSED IN MVC NO.211/2007 ON THE FILE OF CIVIL JUDGE & JMFC, ITINERARY SHIKARIPURA, AWARDDING A COMPENSATION OF RS.1,45,000/- WITH INTEREST @ 6% P.A. FROM THE DATE OF PETITION TILL DEPOSIT. THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appeal is filed by the appellant/owner under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'MV Act' for short) challenging the judgment and award passed by the Tribunal in MVC No.211/2007 dated 16.01.2010 on the file of the Civil Judge (Sr. Dn.) and J.M.F.C., Itinerary, Shikaripura in so far as questioning the liability fixed on the appellant/owner to pay compensation.-. 3 - MFA No.12091 of 2011 2. The brief facts of the case are that on 19.01.2006, when the claimant was carrying on the formation of road work from Channahalli to Hosagoddanakoppa road, while he was removing the trees, the vehicle JCB bearing No.KA-25/N-2523 dashed against him. Due to the impact, he sustained injuries. Therefore, the claimant preferred claim petition under Section 166 of the MV Act, seeking compensation.

3. Heard the arguments on both sides and perused the records. Arguments of counsel for appellant/owner.

4. Learned counsel for the appellant/owner submitted that in the present case, the vehicle involved is JCB in other words, which is an excavator/construction equipment, is a light motor vehicle. The driver who was driving this JCB/excavator/construction equipment was holding driving license to drive the light motor vehicle (non transport). Therefore, the driver was holding valid and effective driving license to drive the JCB as on the date of - 4 - MFA No.12091 of 2011 the accident. Hence, in view of the existence of insurance policy, the insurance company shall indemnify the owner and pay compensation to the

claimant.

5. Further, it is submitted that as per the Central Government Notification No.11028/14/2022 dated 05.11.2004 issued as per sub-section (4) of Section 41 of the MV Act and as per explanation therein this JCB/Excavator/Construction Equipment is a non-transport vehicle. Therefore, in the present case, the driver was holding driving license to drive light motor vehicle (non transport). Therefore, the driver was holding valid and effective driving license. Learned counsel places reliance on the following judgments of this Court in support of his case:

1. In the case of Reliance General Insurance company Limited vs. S.Ramya and others in MFA No.6789/2010 (MV-I) dated 09.11.2020.

2. In the case of the Divisional Manager, New India Assurance Co. Ltd., vs. Udayshankar - 5 - MFA No.12091 of 2011 and others in MFA No.21800/2010 C/w. MFA CROB.No.731/2011 dated 07.02.2014 6. Therefore, submitted, in the present case, the driver was holding driving license to drive light motor vehicle (non transport) and admittedly, as per the book of registration certificate, the vehicle is a JCB/Excavator/Equipment Machine which is a light motor vehicle. Therefore, there is no violation of condition of policy. Hence, the Insurance Company is liable to pay compensation by indemnifying the owner. Hence, prays to modify the liability and fix on the Insurance Company. Arguments of counsel for Insurance Company.

7. On the other hand, learned counsel for the respondent-Insurance Company submitted that in the present case, the vehicle in question is a JCB/Excavator/Construction Equipment which is not a light motor vehicle. This JCB/Excavator/Construction Equipment is not coming within the definition of Section 2(21) of the MV Act. Therefore, the vehicle is not a light motor vehicle.-. 6 - MFA No.12091 of 2011 Further, it is submitted that as per Section 10(2)(j) of the MV Act, this is a motor vehicle of a specified description which requires a separate endorsement on the license to drive these category of vehicles. Hence, in the absence of such endorsement on the license or separate driving license to drive these category of vehicles, it cannot be said that the driver is holding valid and effective driving license just because he was holding driving license to drive light

motor vehicle, either transport or non-transport. Therefore, it is submitted that in the present case, the driver who drove the JCB was not having driving license to drive the motor vehicles of a specified description as stated in Section 10(2)(j) of the MV Act. Hence, he is not competent to drive/operate JCB/Excavator/Construction Equipment. Hence, the finding of the Tribunal is correct in fastening liability on the owner of the JCB/Excavator/ Construction Equipment.

8. In support of his submissions, he places reliance on the following judgments of this Court: - 7 - MFA No.12091 of 2011 1. In the case of M/s. S.T.C.Transport Pvt. Ltd., vs. the New India Assurance Co., Ltd., in MFA No.3860/2011 dated 07.06.2016.

2. In the case of Sadashiv S/o. Sangappa Matannavar vs. Smt. Dyavakka W/o. Balappa Pujar in MFA No.23085/2012 c/w. MFA No.24405/2010 dated 10.09.2015.

9. Upon hearing the rival contentions of the learned counsel for the parties and perusal of records, the following point arises for consideration:

"Whether, a person who is holding driving license to drive the light motor vehicle, either transport or non-transport is competent to drive/operate JCB/Earth moving machine/excavator/ construction equipment?." Analysis/Reasonings 10. The undisputed facts in the present case are that -

1) The motor vehicle involved in the present case is a JCB/earthmoving machine as per the certificate - 8 - MFA No.12091 of 2011 of registration, which depicts the particulars as follows: a. Class of vehicle : Forklifts. b. Type of body : Earthmoving machine c. Makers classification : JCB-3D-2D-excavator/loader. d. Unladen weight :

6990. kgs.

2) The driver who was driving this JCB/earthmoving machine was holding driving license to drive light motor vehicle (non-transport) as on the date of accident.

11. Therefore, based upon the undisputed facts, it is to be considered whether a person who is holding driving license to drive light motor vehicle is competent to drive / operate JCB / Earthmoving Machine / Construction Equipment / Excavator.

12. This Court in Ramyas case stated supra, has only gone into the question whether JCB is a transport vehicle or non-transport vehicle and by following the ratio - 9 - MFA No.12091 of 2011 laid down by the Hon'ble Supreme Court in the case of Mukund Dewangan Vs. Oriental Insurance Co., Ltd.,¹, has held that the JCB is a construction equipment and is considered as a non-transport vehicle. Therefore, fastened liability on the Insurance Company since the driver was holding driving license to drive light motor vehicle (non- transport). In the above stated judgment, this Court had dwelled mainly on the aspect of 'endorsement of transport and non-transport' on the licenses and has not considered whether this JCB/ Earthmoving Machine / Construction Equipment/ Excavator is a light motor vehicle or not.

13. Further, this Court in Udayshankar's case stated supra, has mainly gone into the aspect whether the JCB / Earthmoving Machine /Construction Equipment/ Excavator is a transport or non-transport vehicle and on this basis, it was held that the said construction equipment vehicle is a non-transport vehicle. Hence, it is held that the Insurance Company is liable. But in both these cases it is reported in 2017(14) SCC663- 10 - MFA No.12091 of 2011 is not considered whether this type of motor vehicle of a specified description is coming within the definition of the light motor vehicle as enshrined in Section 2(21) of MV Act.

14. The class or category of a vehicle and type of vehicle are two different aspects to be considered. These definitions of categorizing as class of vehicle and type of vehicle is discussed by the Honble Supreme Court in Mukund Dewangan's case stated supra. Therefore, the class/category of vehicle is different aspect than the type of vehicle. There may be same class/category of vehicle but of two different types. For example, a motor car may be a transport or non-transport. The class/category is same, as in the case of a car but, the types are transport and non-transport. Therefore, in order to consider whether the vehicle comes under the definition of Section 2(21) of the MV Act, what is the class of vehicle is to be

considered. Section 2(21) of the MV Act stipulates as follows: - 11 - MFA No.12091 of 2011 "Section 2(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 [7500]. kilograms.

15. As per the above definition, the vehicle JCB/ Earthmoving Machine/Construction Equipment/Excavator is not omnibus, motor car, tractor and road-roller. Even though the learned counsel for the appellant submitted that the JCB/Earthmoving Machine/Construction Equipment/Excavator and road-roller are similar category of vehicles, that cannot be accepted. The vehicle road- roller is different and JCB/Earthmoving Machine/ Construction Equipment/Excavator is different. Then whether this JCB/Earthmoving Machine/Construction Equipment/Excavator is coming within the definition of transport vehicle because a transport vehicle of gross vehicle weight less than 7,500 kilograms is also light motor vehicle as per Section 2(21) of the Act but the JCB/ Earthmoving Machine/Construction Equipment/Excavator - 12 - MFA No.12091 of 2011 is a transport vehicle or not, is to be considered. Section 2(47) of MV Act stipulates as follows:

"Section 2(47):

"transport vehicle" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicles.

16. As per this definition, the JCB/Earthmoving Machine/Construction Equipment/Excavator definitely is not coming within the definition as JCB/Earthmoving Machine/Construction Equipment/Excavator, cannot be considered under the class of vehicle enumerated in Section 2(47) of the Motor vehicles Act. Rule 2(ca) of the Central Motor Vehicles Rules, 1989 (hereinafter referred to as 'Central Rules' for short) stipulated as follows:

"Rule 2(ca):

"construction equipment vehicle" means rubber tyred, (including pneumatic tyred), rubber padded or steel drum wheel mounted, self- propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, forklift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general - 13 - MFA No.12091 of 2011 construction but modified and manufactured with "on or off" or "on and off" highway capabilities. Explanation.-. A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power.

17. As per explanation provided to Rule 2(ca), the construction equipment is a non-transport vehicle but class of vehicle is a paramount thing to be considered for competency of driving a vehicle. Therefore, class/category of vehicle is to be considered before going to type of vehicle. The type of vehicle does not decide class/category of vehicle whether it is a light motor vehicle of transport or non-transport.

18. The Central Government has issued notification as per powers vested under Section 41(4) stating the type - 14 - MFA No.12091 of 2011 of vehicles. As per this notification, the JCB/Earthmoving Machine/Construction Equipment/Excavator is a non- transport vehicle but as per Clause (j) of Sub-section (2) of Section 10 of the Act stipulates motor vehicle of a specified description. The form and contents of license to drive is stipulated in Section 10 of the MV Act, which reads as follows:

"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) motor cycle without gear; (b) motor cycle with gear;

(c) invalid carriage; (d) light motor vehicle; (e) transport vehicle; (i) road-roller; (j) motor vehicle of a specified description."

- 15 - MFA No.12091 of 2011 19. The Central Government has issued notification dated 5.11.2004 as above stated as per powers vested under sub-section (4) of Section 41 is for classification of vehicles whether transport vehicles or non-transport vehicles. The notification is also clear that under what circumstances and conditions, the non-transport vehicles are considered as transport vehicles. The gross vehicle weight and unladen weight decide what are light motor vehicles coming within the category/class of vehicles stipulated under Section 2(21) of the Act. The mentioning of gross vehicle weight and, unladen weight in Section 2(21) is only for the purpose of determining whether the vehicles are light motor vehicles or not. But foremost thing to be considered is what are the light motor vehicle considered in the light of category/class of vehicle mentioned therein as above discussed. In the present case, admittedly, the offending vehicle is JCB/Earthmoving Machine/Construction Equipment/Excavator which is not fitted to any of the category of vehicles enumerated in Section 2(21) so as to say that the JCB/Earthmoving - 16 - MFA No.12091 of 2011 Machine/Construction Equipment/Excavator is a light motor vehicle. Just because the certificate of registration shows the unladen weight is 6990 kgs., would not be sufficient to characterize that the JCB/Earthmoving Machine/Construction Equipment/Excavator is a light motor vehicle falling within the definition of Section 2(21) of the Act. If JCB/Earthmoving Machine/Construction Equipment/Excavator falls in any of the five categories mentioned in Section 2(21) of the Act coupled with gross vehicle weight/unladen weight, then it comes under the ambit of light motor vehicle. The Central government notification dated 05.11.2004 stated supra does not describe what are the light motor vehicles and what are not but, it only makes a difference as to what are the transport vehicles and non-transport vehicles. The class/category of vehicle and type of vehicle are different. For the same class of vehicle, there may be two types of vehicles. For example, if car or jeep is a category/class of vehicle then whether it is a transport or non-transport vehicle are two types. Therefore, before considering - 17 - MFA No.12091 of 2011 whether a particular vehicle is a transport or non- transport, the category/class of vehicle is to be considered. Based on that category/class of vehicle, coupled with

gross vehicle weight/laden weight/unladen weight, decides whether the vehicle is a light motor vehicle or heavy goods vehicle or heavy passengers vehicle, etc. These discussions are not found in S.Ramya's case and in Uday Shankar's case stated supra. Therefore, the above cited judgments are not applicable to the present case.

20. This Court in Sadashiv's case stated supra, has elaborately discussed regarding what are the vehicles coming within the definition of light motor vehicle as enshrined in Section 2(21) of the Act and what are not by referring to various provisions under the Motor Vehicles Act and Central Government Notification. The principles of law laid down are squarely applicable in the present case. Rule 16 of the Central Motor vehicles Rules, 1989 stipulates as follows: - 18 - MFA No.12091 of 2011

"16. Form of driving licence.-. (1) Every driving licence issued or renewed by a licensing authority shall be in Form 6. (2) Where the licensing authority has the necessary apparatus, [for the issue of a laminated card type or Smart Card type driving licence, such card type or Smart Card type driving licence, as may be specified in the notification issued by the concerned State Government or Union Territory Administration,]. shall be in Form 7. (3) On and from the date of commencement of this sub-rule, every driving licence issued or renewed by the licensing authority shall be in Form 7. (4) Every International Driving Permit issued by a licensing authority shall be in Form 6A and shall be valid for a period of not more than one year from the date of issue, as the case may be, or till the validity of the driving licence, whichever is earlier. (5) The automobile associations authorized by the State Government/Union territory Administration shall be allowed to issue International Driving Permit to their own members as also others subject to counter signature by competent authority."

- 19 - MFA No.12091 of 2011 21. Therefore, as per Clause (j) of sub-section (2) of Section 10 of the Act, a driving license shall be issued for motor vehicles of a specified description. There are various classification of the vehicles in sub-section (2) of Section 10 of the Act. Clause (j) is pertaining to issuance of driving license towards "motor vehicle of a specified description". In the present case, the vehicle

JCB/ Earthmoving Machine / Construction Equipment / Excavator is a vehicle of a specified description. The specified description is stated in Rule 2(ca) of the Central Rules. Therefore, when the JCB / Earthmoving Machine / Construction Equipment / Excavator is not coming within the definition of light motor vehicle as described above, then it is a motor vehicle of a specified description and there should be a separate driving license to be obtained to drive/operate motor vehicle of a specified description. But in the present case, upon perusal of the driving license produced by the owner, the driver was holding a driving license to drive light motor vehicle (non-transport) only. There is no endorsement authorizing the driver to drive - 20 - MFA No.12091 of 2011 also motor vehicle of a specified description like JCB/ Earthmoving Machine/Construction Equipment/Excavator. Therefore, in the present case, it is proved that the driver was not holding driving license to drive/operate JCB/ Earthmoving Machine/Construction Equipment/Excavator.

22. JCB is a company name but the motor vehicle is called as a excavator/earth moving machine/construction equipment. In the certificate of registration book produced by the appellant/owner, the nature of vehicle is clearly described as a earth moving machine and manufacturer is JCB. Therefore, upon perusal of book of registration certificate, it is proved that the JCB/Earthmoving Machine/Construction Equipment/Excavator is not a light motor vehicle coming within the definition of Section 2(21) of the MV Act.

23. Just because a person is holding driving license to drive the light motor vehicle (non-transport), he is not competent person to drive/operate JCB/Earthmoving Machine/Construction Equipment/Excavator. This analogy - 21 - MFA No.12091 of 2011 is to be stated clearly by an example that if any person holds driving license to drive light motor vehicle such as car, auto rickshaw and jeep, can he drive/operate JCB / Earthmoving Machine / Construction Equipment / Excavator?. Certainly NOT. Because, a person who is holding driving license to drive car/jeep/auto rickshaw is not competent enough to operate JCB/Earthmoving Machine/Construction Equipment/Excavator as the nature of operation of vehicles between car/jeep/auto rickshaw and JCB/Earthmoving Machine/Construction Equipment/ Excavator are entirely different. The purpose of issuing driving license

is that a person is having sufficient skill to drive such class of vehicle. Hence, he is authorized to drive such class of vehicles only. Therefore, the purpose of issuance of driving license or before granting license is to test whether the person is having a minimum requisite skill to drive such class of vehicle and granting license by the competent authorities. Therefore, just because a person is holding driving license to drive light motor vehicle either transport or non-transport, it can be - 22 - MFA No.12091 of 2011 construed that he is competent to drive the vehicle of that class/category of light motor vehicle only but not other class/category of vehicle.

24. Therefore, with the aforesaid discussions, if the driving license is perused vis-a-vis provisions of Section 2(21) and Section 10 of the Act and Rule 2(ca) of Central Rules, it would make clear that the offending vehicle is an excavator/earthmoving machine/construction equipment which is colloquially called as JCB vehicle and JCB is not class of vehicle but is the name of manufacturer, falling in clause (j) of sub-section (2) of Section 10 of the Act. Thus certainly this excavator / earthmoving machine / construction equipment which is commonly called as JCB vehicle is not a light motor vehicle coming within the definition of Section 2(21) of the Act, but is a motor vehicle of special description.

25. Therefore, when the offending vehicle in the present case as above stated is a motor vehicle of a - 23 - MFA No.12091 of 2011 specified description, then there must be driving license authorizing a person to drive/operate such specified description vehicle such as earthmoving machine / construction equipment / excavator commonly called as JCB vehicle.

26. Therefore, just because a person holds driving license to drive light motor vehicle as in the present case holding driving license to drive light motor vehicle (non- transport), he is not competent person to drive/operate JCB / Earthmoving Machine / Construction Equipment / Excavator. Therefore, in this regard, the Tribunal is correct in fastening liability on the appellant/owner, even though for other reasons. But for the aforesaid reasons, it is held that the driver who drove the offending vehicle JCB/ Earthmoving Machine/Construction Equipment/Excavator was holding driving license to drive the light motor vehicle (non-transport) and he is found to be not competent to drive/operate JCB /

Earthmoving Machine / Construction Equipment/Excavator. Hence, there is a violation caused.-. 24 - MFA No.12091 of 2011 Therefore, the Insurance Company is not liable to indemnify the owner but the owner is alone liable to pay the compensation.

27. For the aforesaid reasons, it has to be held that the offending vehicle JCB / Earthmoving Machine / Construction Equipment / Excavator was driven by a person who was not holding driving license to drive / operate the motor vehicle of a specified description. Therefore, the Insurance Company has successfully established its defense under Section 149(2) of the MV Act. In order to safeguard the interest of the claimant who is third party, the insurance company, as if judgment debtor, shall satisfy the claim in favour of the claimant who is third party and then recover it from the owner of the JCB/Earthmoving Machine/Construction Equipment/ Excavator bearing No.KA-15/N-2523, who is appellant herein. Accordingly, by following the principles of law laid down in the cases of National Insurance Co. Ltd., vs.-. 25 - MFA No.12091 of 2011 Swaran Singh², Pappu and others vs. Vinod Kumar Lamba and another³, and full bench decision of this Court in the case of New India Assurance Co., Ltd., vs. Yallavva and another⁴, an order of pay and recovery is made. The Insurance Company shall recover the compensation from the appellant/owner as per law as stated in judgments of the Hon'ble Supreme Court in the cases of National Insurance Co., Ltd., vs. Chellabharatamma⁵, Gurumail Singh vs. Bajaj Allianz General Insurance Co., Ltd., and another⁶ and Shamanna and another vs. Divisional Manager, Oriental Insurance Co., Ltd., and others⁷. Thus, the appeal is liable to be dismissed. 2 reported in 2004 ACJ13 reported in (2018) 3 SCC2084 reported in ILR 2020 KAR22395 reported in AIR 2004 SC48826 reported in 2019 ACJ7137 reported in 2018 ACJ2163- 26 - MFA No.12091 of 2011 28. Hence, I proceed to pass the following:

ORDER

i. The appeal is dismissed. ii. The judgment and award passed by the Tribunal in MVC No.211/2007 dated 16.01.2010, is hereby confirmed and modified only to the extent that the Insurance Company shall pay compensation at the first instance, to the claimant and then recover it from the appellant/owner. iii. Costs made easy. iv.

Draw award accordingly. v. Amount in deposit by the owner is transmitted to the Tribunal along with records. Sd/- JUDGE KA CT: THK

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