

Mohan and Others Vs. Thomas K.V. and Another

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Court : Karnataka

Decided On : Feb-26-2001

Reported in : 2002ACJ1631; 2001(4)KarLJ340

Judge : T.N. Vallinayagam, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 3, 3(1), 2(5-A), 2(13), (18), (21), (33), (35) and (47), 75(2), 140, 140(2) and 147

Appeal No. : Miscellaneous First Appeal No. 2780 of 1997

Appellant : Mohan and Others

Respondent : Thomas K.V. and Another

Advocate for Def. : Sri A. Keshava Bhat and ;Sri H.C. Ramesh, Advs.

Advocate for Pet/Ap. : Sri G. Balakrishna Shastry, Adv.

Judgement :

1. Aggrieved by the denial of liability of the Insurance Company on the quantum of compensation granted by the II Additional Civil Judge and Chief Judicial Magistrate, Mangalore in MVC No. 771 of 1990, the appellants-claimants are before this Court.

2. The point raised in the above appeal preferred by the claimants in MVC No. 771 of 1990 is: Whether the insurance company is liable in respect of the vehicle

involved in the accident that took place on 7-5-1990 at 12-30 noon, namely the vehicle bearing No. CNG 6967, resulting in the injuries to the claimants.

3. The facts disclose that the vehicle was insured with the second respondent and the second respondent denied the liability on the ground that the driver had licence only to drive light motor vehicle and the tempo is not a light motor vehicle and consequently, the Insurance Company is not liable. It is not in dispute that as per Ex. P. 3, the extract of RC Book of the Vehicle No. CNG 6967 that the driver is having licence to drive light motor vehicle.

4. Section 140(2) of the [Motor Vehicles Act, 1988](#) reads as follows:

'(2) The amount of compensation which shall be payable under subsection (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees'.

5. Various decisions were relied upon, namely, 1994 ACJ 2380 (sic), United India Insurance Company Limited v K. Subramaniam and Others; National Insurance Company Limited v Masabi and Others²; S. Sammamma v Syed Kaja Maunuddin; 1996 ACJ 253 and Anjanadevi v Arumugkam and Another.

6. Contra the decision in United India Insurance Company Limited, Bangalore v Smt. Lakshamma and Others , was relied upon to show that this Court has classified light motor vehicle and heavy motor vehicle on the basis of the load. If the unladen weight does not exceed 7,500 Kgs. then it is a lorry and if the unladen weight is less than 7,500 then it is a light motor vehicle. Consequently, it is contended that the Insurance Company is liable. Finally the dictum in Masabi's case, supra, was relied upon to hold that the driver not having valid driving licence to run transport vehicle cannot make the insurance company liable. In fact, it is seen that earlier the matter was taken up at the time of an interlocutory application under Section 140 and this Court in MFA No. 520 of 1991 held that the liability of the insurance company shall be decided at the time of final disposal of the case. Ultimately, the Tribunal held that the insurance company is not liable.

7. I have considered the submissions made by the respective Counsels.

8. In the case of National Insurance Company Limited v Mahadevayya, a Division Bench of the Madras High Court considering the question whether the driver of an autorickshaw did not possess a valid driving licence can drive an autorickshaw as required under Section 3(1) of the Motor Vehicles Act.

9. Considering Sections 2(5-A), 2(13), 2(18), 2(33) and also Section 3(1) of the Motor Vehicles Act, the Division Bench has held as follows:

'The above section prescribes two requirements.--(1) A person should hold an effective driving licence authorising him to drive the vehicle in any public place. (2) No person is permitted to drive a motor vehicle as a paid employee or a transport vehicle unless his driving licence specially entitles him to do so. We have already noted the definition of a transport vehicle which includes a goods vehicle. Admittedly, in this case, the vehicle has been used as a public service vehicle. As a matter of fact, at the time of the accident, the vehicle was found carrying passengers. Therefore, in addition to the usual licence for driving a motor vehicle in a public place, there should be a further authorisation to the driver to drive the autorickshaw which falls admittedly under the definition of light motor vehicle as a public service vehicle of a passenger vehicle. The Tribunal has not referred to the definition of the transport vehicle though it refers to the definition of the light motor vehicle, as also the special requirements under Section 3 for getting authorisation to drive the autorickshaw as a public service vehicle. If we read the definition of transport vehicle in Section 2(33) into Section 3, it will clearly indicate that the mere licence to drive the light motor vehicle, which includes an autorickshaw, will not enable the holder of that licence to drive an autorickshaw as a public earner, for, that requires a special authorisation under the later half of Section 3.

But we are of the view that the expression 'the motor vehicle' can only be construed as the motor vehicle which is used as a passenger vehicle. As a matter of fact the policy itself contemplates user of the vehicle as a contract carriage. Therefore, the expression 'the motor vehicle' should have reference only to the vehicle which is expected to be used as a contract carrier. Unless the driver of the autorickshaw is shown to have had a licence to drive a contract carriage, he

cannot be taken to have a valid licence to drive the vehicle which is insured as a contract carriage'.

10. A Division Bench of Himachal Pradesh High Court, headed by Justice D. Raju, as he then was, in *New India Assurance Company Limited, Shimla v Suraj Parkash and Others*¹, has held to the following effect:

'We find particularly in para 3 of the reply that an objection has been taken that the Insurance Company is not liable in view of the fact that the driver of vehicle, Maruti Van No. HPY 251 did not possess any valid licence to drive the taxi, as a paid driver and as such no liability can be fastened on the insurer. Ex. R. 3, policy of insurance (the schedule) filed disclosed that the insurance was in respect of the vehicle in question which stood registered as a taxi. If that be the factual position, it would answer the description of 'public service vehicle' as defined in Section 2(35) to mean any motor vehicle used or adopted to be used for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage.

Section 3(1) of the [Motor Vehicles Act, 1988](#) stipulates that no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him to drive the vehicle and that 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 Section 75(2) of the Act, unless his driving licence specifically entitled him so to do. Section 2(47) defines transport vehicle, to mean a public service vehicle, a goods carriage, an educational institution's bus or a private service vehicle. Therefore, the vehicle in question answers the description of public service vehicle even on the materials disclosed on record. The conclusion of the Tribunal below to the contra is indicative of non-application of mind to a valid and relevant piece of material on record. Inasmuch as Ex. R. 1-driving licence does not contain any specific endorsement to drive a transport vehicle, the driver who drove the vehicle at the time of accident must be held to be not possessed of a valid and effective driving licence. The mandatory requirement of Section 3(1) having not been satisfied by the driver, in not holding a licence to drive with a specific endorsement to drive the transport vehicle (public service

vehicle) such a conclusion has become inevitable on the facts of the case'.

11. In view of the dicta laid down by the above two decisions, I am of the view that the Insurance Company is not liable to pay the compensation; as the licence of the driver is concerned, does not authorise him to drive the vehicle involved in the accident.

12. Consequently, the appeal is dismissed, confirming the finding of the Tribunal, as no other point was argued.

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