

**The Divisional Manager Vs. Prakash and Another**

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**Court :** Karnataka Dharwad

**Decided On :** Feb-28-2011

**Judge :** D.V. Shylendra Kumar

**Appeal No. :** Misc First Appeal No.25165 of 2010 (MV) A/w Misc Cvl Nos 111094 & 111096 of 2010 In Misc First Appeal No 25165 of 2010 (MV)

**Appellant :** The Divisional Manager

**Respondent :** Prakash and Another

**Advocate for Pet/Ap. :** For the Petitioner: S.K. Kayakamath, Advocate. For the Respondents: -----

**Judgement :**

(Prayer: This Misc First Appeal is filed under Section 173(1) of M.V. Act, 1988, against the judgment and award dated: 14.06.2010, passed in M.V.C.No.544/2006, on the file of the Addl. Senior Civil Judge and AMACT, Ranebennur, Awarding the compensation of Rs.2,06,896/- with interest at the rate of 6% p.a. from the date of petition till its realisation.)

1. Appeal by the insurance company under Section 173(1) of the Motor Vehicles Act, 1988 (for short, the Act), to wriggle out of the joint liability in terms of the order and award dated 14-6-2010 passed in MVC No 544 of 2006, on the file of Addl Civil Judge and AMACT, Ranebennur, on the most frivolous and cantankerous ground of the person who was driving the vehicle - an autocab - permitted to carry

three passengers in addition to the driver, was not duly licenced to drive that vehicle, though such person did hold a valid licence to drive a “transport vehicle” as endorsed on the very licence.

2. It is for making home this contention, Sri S K Kayakmath, learned counsel for the appellant, has very vehemently contended that the condition of the policy was that the driver driving the vehicle covered under the insurance should hold a valid licence; that a defence to the effect that the driver did not hold a valid licence is available to the insurance company even in terms of the provisions of Section 149(2) (a) (ii) of the Act, reading as under:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-

(1) xx

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is give the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

xxx

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

and therefore submits that this provision read with the provisions of Sections 10 and 11 of the Act and the definition of ‘motor cab’ as found in sub-section 25 of

Section 2 of the Act, clearly indicates that the person had not been expressly licensed to drive an autorikshaw/motorcab and the vehicle of this description can be fitted into clause-g of sub-section 2 of Section 10 of the Act, which provides that an endorsement in respect of the motor vehicle of specified description should be mentioned in the licence; that the driver's licence expressly lacking this endorsement viz., that the driver is licenced to drive an autorikshaw/motorcab, it should be concluded that the person was not duly authorized or licenced to drive an autorikshaw and therefore the insurance company is not liable to reimburse the insured and to support this argument also refers to the provisions of Rule 16 of the Central Motor Vehicles Rules, 1989 (for short, the Rules), the issue of a badge and a further endorsement being made on the licence for having issued it and submits that a non-endorsement of the issue of badge on the licence amounts to a defect in the licence and therefore it should be inferred that the person did not have a valid licence to drive even a transport vehicle as per the licence for not containing an endorsement on the licence to the effect that the badge was issued.

3. While the first contention that the driver of the autorikshaw was not expressly licenced to drive a vehicle of the nature in terms of the licence appears to be so, on a cursory glance and to the eyes of a lay person, as the specific mention of the word either 'autorickshaw' or 'autocab' is conspicuously absent on the licence, the argument of Sri S K Kayakamath, learned counsel for the appellant, is that for this reason, though the person is authorized to drive a transport vehicle, is till not authorized to drive an autorikshaw, is an argument that flatters only to deceive, if one were to give a second look or to understand and interpret the relevant statutory provision in a proper perspective and having regard to the purpose of legislation.

4. It is an argument without legal basis and stems out of a desperate attempt on the part of the insurance company to avoid or wriggle out of its liability in terms of the policy.

5. It is not the case of the appellant-insurance company that the driver had obtained a licence to drive transport vehicle by any dubious method or by playing fraud, but the argument is that the driver is not authorized to drive an autorikshaw

or a 'motorcab' as it is allowed to carry three passengers along with the driver.

6. To examine this argument, one has to necessarily look into the definition of 'transport vehicle', as is found in sub-section 47 of Section 2 of the Act reading that it means a public service vehicle and a goods carriage, an educational institution bus or a private service vehicle. A public service vehicle is defined in sub-section 35 of Section 2 of the Act and it means "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage." A contract carriage is defined in sub-section 7 of Section 2 of the Act, which means "a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied for the use of such vehicle as a vehicle for the carriage of number of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf, on a fixed or an agreed rate or sum, and expressly includes a motor cab." A motor cab, in turn, is defined in sub-section 25 of Section 2 of the Act, which means any motor vehicle constructed or adapted for carrying not more than six passengers excluding the driver for hire or reward.

7. However, even according to learned counsel for the appellant, the vehicle is one which is constructed to carry three passengers with driver and therefore it necessarily fits into the definition of 'motorcab'. If a person is authorized to drive a transport vehicle, it inevitably amounts that the license also permits the holder of the license to drive a motorcab like the autocab, that the license is also authorized to drive a motorcab apart from the variety of other vehicle as noticed above.

8. For our purpose, it is suffice to hold that the licence held by the driver of the vehicle involved in the present accident was one which enabled the driver to drive an autorikshaw also, being a motorcab- a vehicle constructed and designed to carry three passengers i.e. less than six passengers. It is therefore, the argument advanced on by the learned counsel for the appellant that the insurance company is not liable to indemnify the insured in terms of the defence it can take under Section 149 of the Act, is an untenable, illogical and frivolous argument.

9. It is rather surprising, nay, shocking that the insurance company which faces such litigation day in and day out, indulges in such frivolous and cantankerous stands, only to avoid the liability resulting in harassment and ordeal to the victims who not only suffer due to accidents involving motor vehicles on public roads, but suffer thereafter also due to such adamant attitude on the part of the Insurance Company.

10. Such a frivolous stand taken by the appellant-insurance company virtually defeats the very purpose and object of the Act, as a just compensation as is determined by a competent tribunal is not made available to the victims even after many years from the date of accident.

11. In the present case, the accident occurred on 13-11-2005 and more than five years have elapsed thereafter. Though the tribunal has quantified the compensation payable at Rs.2,06,896/-, the insurance company has not paid any amount except for depositing the statutory amount before this court in this appeal, which is Rs.25,000/-, but of no avail to the injured claimant.

12. The second argument based on the issue or non-issue of a badge is nothing short of an argument of desperation and to be rejected outright, as the issue or non-issue, or wearing or not wearing of a badge will not in any detract from the authorization granted under a valid licence for driving a class of vehicle mentioned in the licence. While non-display of a badge by a driver which is more importantly for the purpose of identification of the driver and for knowing the particulars of the nature of vehicle that he can drive, is not an aspect which can invalidate a licence, just because either the badge is not obtained or badge is not displayed. The licence is issued in terms of the provisions of the Act and therefore Rules and formats which are procedural, can only be one to enable to drive and not to detract from the licence once it is issued and at any rate the argument to contend that the licence becomes invalidated because of the format in which it is issued is defective or because of some technical infraction of the procedural laws.

13. Either argument has no substance in law and in my considered opinion, nothing short of a frivolous and cantankerous contention and that the appeal is thoroughly meritless and deserves to be dismissed by levying commensurate

costs on the appellant-insurance company to discourage such a tendency and to prevent such ordeal and harassment being meted out to poor victims of accidents involving motor vehicles, being used on public roads.

14. Therefore this appeal is dismissed even without there arising any need for issue of notices on the miscellaneous applications and levying a deterrent cost of Rs.50,000/- (Rupees fifty thousand only) on the appellant-insurance company. Out of the cost awarded, 50% should go to the first respondent, who has suffered the ordeal and has not received a single paisa so far and the other 50% of the cost to be deposited to the credit of the High Court Legal Services Committee, to be utilized for the purpose of providing legal aid to the poor and unaffordable litigants, who seek legal aid and who have their matter brought before the Dharwad circuit Bench of the High Court. The Additional Registrar General is directed to maintain a separate account of this amount at this Bench to ensure that the amount is utilized only for the purpose of providing legal aid to serving litigants approaching for relief before this circuit bench only.

15. The appellant-insurance company to deposit the amount with interest from the date of claim petition up to the date of payment before the tribunal within four weeks from today and the tribunal to disburse the amount in terms of the award and in accordance with law. The cost of Rs.25,000/- should also be deposited by the appellant-insurance company in favour of first respondent and the other sum of Rs.25,000/- is awarded in favour of High Court Legal Services Committee, to be exclusively used by the committee for the purpose of providing legal assistance/aid to poor litigants who have to approach the circuit bench of the High Court at Dharwad for relief in accordance with law but cannot afford the cost of litigation. The sum of Rs.50,000/- to be deposited before this court within four weeks from today, failing which Additional Registrar General of this bench is directed to issue a certificate in favour of 1st respondent enabling him to recover the cost as if it is a decree passed by a Civil Court.

16. Applications in Misc Cvl Nos 111094 and 111096 of 2010 and the appeal are all dismissed.