IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

MACA.No. 315 of 2010 ( )

AGAINST THE AWARD IN OPMV 665/2001 of MACT, NORTH PARAVUR DATED 31-12-2009

APPELLANT(S): FIRST RESPONDENT

N.R.GEETHA, W/O.ARAVINDAN,
MANAPARAMBIL HOUSE, CHERAI P.O.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI
SRI.THUSHAR NIRMAL SARATHY
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA

RESPONDENT(S):PETITIONER AND R2 AND R3

1. JOSE THOMAS, S/O.THOMAS,
AWVA HOUSE, NAYARAMBALAM P.O.

2. JAYAN, S/O.KARTHIKEYAN, PERUMPADAPIL
HOUSE, KUZHUPPILLY VILLAGE.

3. UNITED INDIA INSURANCE BRANCH
OFFICE, MUNICIPAL BUILDING, NORTH PARUR.

R1 BY ADV. SMT.A.SREEKALA
R1 BY ADV. SMT.K.S.SAFNA
R3 BY ADV. SRI.P.JACOB MATHEW
R2 BY ADV. SRI.T.K.ANANDA KRISHNAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 3-2-2015, THE COURT ON 23-03-215 DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.
- -
M.A.C.A.No.315 of 2010
- -
Dated this the 23rd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is at the instance of the registered owner of the vehicle involved in the accident. The apparent challenge is against the direction by the Tribunal to pay the amount of compensation to the injured by the insurance company and recover it back from the appellant and the driver of the vehicle.

2. We heard learned counsel on both sides.

3. The accident occurred on 10.1.2001. The injured was travelling in a motor cycle bearing Reg. No.KL 7-R 903 along the Vypin - Munambam road. At a place called Kuzhuppilly an autorickshaw bearing Reg. No.KL 7Q 9824 hit against the motor cycle, resulting in injury to the rider of the motor cycle. He claimed an amount of Rs.1.25 lakhs as compensation and the Tribunal granted an award giving a total compensation of Rs.41,000/-.

4. The appellant was impleaded as the registered owner of the vehicle, viz. the autorickshaw. It is contended that she was the owner of the said vehicle during 1998-1999 and she sold it to one Shri Joby Lal during 1999 and he sold it to one Shri Jayan who is the second respondent in the appeal. Shri Jayan was impleaded as the driver of the vehicle before the Tribunal. It is contended by the learned counsel for the appellant that the appellant had informed the details about the transfer as per Ext.B3 letter produced before the Tribunal, to the concerned authority and Ext.B4 is the acknowledgment card evidencing receipt of the same. He therefore submitted that the Tribunal should have found that the liability is only on the second respondent.

5. The contentions of the insurance company have been recorded in paragraph 4 of the award. The main contention is that there is violation of the conditions of the policy, since the second respondent was not holding a valid driving licence and badge to drive the vehicle.

6. Learned counsel for the appellant, Shri K.S. Madhusoodanan submitted that since there is real transfer of the vehicle and the vehicle

being movable property, even if the formalities for transfer of registration have not been undertaken, the sale is complete.

7. Learned Senior Counsel appearing for the insurance company Shri Mathews Jacob submitted that there is no document to show that the appellant had filed the necessary forms for transfer of the vehicle, which is the finding by the Tribunal also.

8. We have gone through the evidence in the case. The apparent contention raised is that the appellant sold the vehicle in the year 1999 to one Shri Joby Lal who sold it in 1994 to the second respondent. Ext.B3 is only a letter issued by the appellant to the Sub Regional Transport Officer, North Parur which is dated 5.2.2001 informing about the sale of the autorickshaw to one Shri Joby Lal. As rightly found by the Tribunal, Exts.B3 and B4 cannot be treated as a proper intimation to the registering authority, in the light of the fact that the requirement of Section 50 of the Motor Vehicles Act have not been satisfied. Going by the same, the transferor shall intimate within 14 days of the transfer in such form, with such documents and in such manner as may be prescribed by the Central Government, to the

registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send copy of the said report to the transferee. Since there was no evidence to show the same, the Tribunal found that the appellant remains the owner of the vehicle at the time of the accident. We find no reason to disagree with the same. It is also found by the Tribunal that there is no transfer of the policy also. Thus, the appellant remained the registered owner during the relevant time.

9. The next aspect is whether the contention by the insurance company that the driver is not duly licensed and hence there is violation of the policy conditions, is correct. Ext.B2 is the copy of the driving licence produced, which was held as a valid one by the Tribunal. Absence of badge alone was found by the Tribunal. Going by Ext.B2, the second respondent has a valid licence at the time of accident. The driving licence number is 3264/96/TK which is issued on 4.12.1996. It is clear from the said document that the licence is valid from 4.12.1996 to 3.12.2016. It is also clear that the licence was issued for the following purposes:-

"The holder of this licence is licenced to drive throughout

India vehicle of the following description:

a).........

b)Motor Cycle with gear

c)Light Motor Vehicle

d)Three Wheeler"

As against all the three, the authorities have ticked in favour of the driver. The copy of the policy is produced as Ext.B1 which contains the name of the insured, viz. the appellant. The carrying capacity of the autorickshaw and coverage is for three passengers, as evident from the schedule. As already noted, the Tribunal concluded that Ext.B2 will show that the second respondent was holding valid driving licence, but there was no badge authorising the second respondent to drive a transport vehicle. It was held that since the second respondent was not holding a valid badge and he was entrusted the vehicle to drive, respondents 1 and 2 were jointly and severally liable to pay the compensation amount. But it was also held that the insurance company cannot be exonerated to pay the compensation to the claimant who is a third party and the Tribunal allowed the insurance company to recover the amount after payment, from the appellant and the second respondent herein.

10. Much arguments have been raised by both sides with regard to the sufficiency of the licence issued to the second respondent. The insurance company can avoid the policy only if the conditions under Section 149 of the Motor Vehicles Act are attracted. The situation under Section 149(2)(a)(ii) refers to a condition excluding driving by a person duly licensed. Section 2 (10) of the Act defines "driving licence" as follows:

> "(10) "Driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive; otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or **description."** (emphasis given by us)

"Light Motor Vehicle" is defined under Section 2(21) as follows:

> "(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."

The definition of "maxi cab" in Section 2(22) shows that it means "any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward." Section 2(25) defines "motor cab" which means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward.

11. Section 10 deals with "form and contents of licences to drive" and the form of driving licence is provided in Rule 16 of the Central Motor Vehicles Rules, viz. Form 6.

Sub-section 2 of Section 10 states as follows:

> "10(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;
> © invalid carriage;
> (d) light motor vehicle;
> (e) transport vehicle;
> (f) medium passenger motor vehicle;
> (g) heavy goods vehicle;
> (h) heavy passenger motor vehicle;
> (i) road-roller;
> (j) motor vehicle of a specified description."

Item (j) is relevant for the purpose of this case which is “motor vehicle of a specified description”. Item (d) is “light motor vehicle” and item (e) is “transport vehicle”.

12. We have already found from the driving licence, Ext.B2 that the second respondent has been licenced to drive a light motor vehicle as well as three wheeler. The definition of autorickshaw and three wheeler are available from the Kerala Motor Vehicles Rules. Rule 2(c) defines an “autorickshaw” as the following:

> “2(c) “Autorickshaw” means motor vehicle constructed, adapted or used to carry not more than three passengers excluding the driver for hire or reward and having less than four wheels.”

It can carry not more than three passengers excluding driver and having less than four wheels. Three wheeler is defined in Rule 2(w) which is extracted below:

> “2(w) “Three wheeler” means a motor vehicle having three wheels constructed, adapted or used either to carry not more than four persons excluding the driver otherwise than for hire or reward, or for the transport of goods whether for hire or not.”

It shows that it cannot actually carry not more than four persons excluding the driver. The vehicle herein therefore is an autorickshaw which is clearly a three wheeler.

13. The question is whether Ext.B2 is valid licence. Learned Senior Counsel for the insurance company, Shri Mathews Jacob submitted that the licence is only for driving a light motor vehicle and not for a transport vehicle. In this context, he invited our attention to Section 14 of the Act which provides the period of licence. For a light motor vehicle, the period of currency of a licence will be 20 years, whereas in the case of a transport vehicle it will be effective for a period of three years. The argument raised is that since in this case Ext.B2 will show that it is valid from 4.12.1996 to 3.12.2016, the license can only be treated as one for driving a light motor vehicle and herein the authorickshaw being a transport vehicle, there is a breach of the conditions of the policy.

14. Learned counsel for the appellant, Shri Madhusoodanan relied upon the fact that the licence shows that it authorises to drive a three wheeler and the autorickshaw being a three wheeler he is duly licenced. It is also submitted that in the light of the decision of a Full

Bench of this Court in **National Insurance Co. Ltd. v. Jisha** (2015 (1) KLT 1), the absence of badge cannot exonerate the insurance company from meeting the liability.

15. As far as absence of badge is concerned, the decision of the Full Bench in the above case squarely applies and the Full Bench has held therein that the omission to apply for and obtain a badge is purely technical and cannot be said to be a fundamental breach.

16. The Full Bench in the above judgment, relied upon the decisions of the Apex Court in **National Insurance Co. Ltd. v. Swaran Singh and others** {(2004) 3 SCC 297}, **S. Iyyappan v. M/s. United India Insurance Co. Ltd. and another** {(2013) 7 SCC 62} and **Kulwant Singh and others v. Oriental Insurance Company Ltd.** {(2014 (12) SCALE 356).

17. In **Swaran Singh's case** (supra), various contentions have been considered and answered, some of which may be relevant herein also. The distinction between "effective licence" used in Section 3 and "duly licenced" used in Section 149(2) of the Act have also been noted in paragraph 44 of the judgment. It was held in paragraph48 that "the

insurance company with a view to avoid its liabilities is not only required to show that the conditions laid down under Section 149(2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured." In paragraph 47 it was held as follows:

> "47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately."

Therefore, if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. This question was again considered in paragraphs 88 to 91. After referring to Section 10 which shows that a person having licence, can drive the vehicles falling within the class or description, in paragraph 89, the various types of vehicles, going by the definition clause, have been noticed. Thereafter, their Lordships have held as follows:

> "In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle 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. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the 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."

Therefore, in all cases 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.

Their Lordships, finally in paragraph 110 has given a summary of findings. Sub para (iv) is relevant herein which we extract below:

> "(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cuase of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act."

Therefore, it will be required that even if a breach is there, it should be one which is so fundamental as is found to have contributed to the cause of the accident.

18. Herein, what we find is that the second respondent was having licence to drive a three wheeler. An autorickshaw will come definitely within the definition of "three wheeler", going by its definition. Even if it is treated as a transport vehicle, the absence of

badge will not help the insurance company, going by the decision of the Full Bench above. It was held in paragraph 26 that a mere technical violation like absence of a badge could not lead to such a situation whereby the insurer can avoid liability of the third party.

19. In **Iyyappan's case (supra),** going by paragraph 18 of the judgment, it can be seen that the driver was having a licence to drive light motor vehicle. He drove a Mahindra Maxi Cab. The Apex Court was of the view that merely because the driver could not get any endorsement in the licence, to drive Mahindra Maxi Cab, which is a light motor vehicle, it cannot be held that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle.

20. If we draw an analogy from the said finding also, according to us, it cannot be said that the driver was not having any valid licence since he was entitled to drive a three wheeler like the vehicle herein, being an autorickshaw. Section 10 will show that a licence can be issued for driving "a motor vehicle of a specified description". The said provision will apply herein, since an autorickshaw will be a motor

vehicle of a specified description. But it cannot be said that there is total absence of driving licence herein.

21. In the light of the view taken in **Swaran Singh's case** {(2004) 3 SCC 297} also, the appellant is entitled to succeed, as it cannot be said that there was a fundamental breach enabling the insurance company to avoid its liability.

Hence, the appeal is allowed and we hold that the appellant and the second respondent driver will not be liable to satisfy the award amount and the amount will have to be paid by the insurance company itself.

The parties shall bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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