THE HON'BLE SMT JUSTICE T. RAJANI

MACMA No.449 of 2008

JUDGMENT:

This appeal is preferred by the New India Assurance Company Limited, respondent No.2 in O.P.No.581 of 2004, against the order of the I Additional District Judge, Mahabubnagar passed in O.P.No.581 of 2004 dated 14.12.2006 on the ground that the driver of the offending vehicle did not possess valid driving licence, hence, the tribunal ought to have considered the said fact and treated it as violation of the condition of the policy and dismissed the OP against the second respondent.

2. The driving licence issued to the driver of the crime vehicle is for non-transport vehicle. The vehicle involved in the accident is an auto rickshaw. Hence, the contention of the appellant is that since the driver did not have driving licence to driver the auto rickshaw, which is a transport vehicle, the insurance company cannot be made liable. In that regard, the appellant relied upon the following decisions:

In a decision of the High Court of Karnataka in M/S NATIONAL INSURANCE COMPANY LTD. v. NAGAMMA[1] it was held that the amendment to the Central Motor Vehicle Rules with effect from 28.03.2001 requires a driver, who is granted licence to drive a light motor vehicle, to possess a licence with specific endorsement to drive a transport vehicle.

But the Supreme Court in S. IYYAPAN v. UNITED INDIA INSURANCE CO. LTD.[2] held that insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a

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1 2015 ACJ 2423

2 (2013) 7 SCC 62

light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained on the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. The Supreme Court, however, made the insurance company also liable in that case though there was no such endorsement. The observation of the Supreme Court with regard to granting liberty to the insurer to proceed against insured is in respect of violation, which the Court considers as material. The Supreme Court reminded itself of the theme of the enactment by referring to a two Judge bench judgment of the Supreme Court in *SKANDIA INSURANCE CO. LTD. v. KOKILABEN CHANDRAVADAN* [(1987) 2 SCC 654], wherein it was observed as hereunder:

> "... Learned Judges pointed out that the insistence of the legislature that a motor vehicle can be used in a public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the insurance company but to protect the members of the community who become sufferers on account of accidents arising from the use of motor vehicles. It is pointed out in the decision that such protection would have remained only a paper protection if the compensation awarded by the courts were not recoverable by the victims (or dependants of the victims) of the accident. This is the raison d'être for the legislature making it prohibitory for motor vehicles being used in public places without covering third-party risks by a policy of insurance."

The principle laid down in the aforesaid decision has been following by a three-Judge Bench of this Court in *SOHAN LAL PASSI* *v. P. SESH REDDY* [(1996) 5 SCC 21]. By summing up the position, the Supreme Court observed as follows:

> "The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

The observations of the Supreme Court in *NATIONAL INSURANCE CO. LTD. v. SWARAN SINGH* [(2004) 3 SCC 297] were also reiterated by the Supreme Court in the above decision wherein it observed as under:

> "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."

4. In the light of the above observations, the type of the vehicle and the licence granted, in this case, have to be examined.

The vehicle, as already stated, is a passenger carrying auto rickshaw and the licence granted is for non-transport vehicle. The definition of various vehicles is given under Section 2 of the Motor Vehicles Act, 1988 (for short 'the Act') but non-transport vehicle is not defined under the Act. The transport vehicle is defined to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle is defined to mean 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 private service vehicle means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or rewards but does not include a motor vehicle used for public purposes.

5. Hence, by virtue of the above, the auto rickshaw falls under the category of public service vehicle and in turn transport vehicle. Thus, the understanding that comes out of the combined reading of the above definitions would mean that passenger carrying vehicle, which is like the one involved in this case, requires a driver, who is in possession of a licence to drive a non-transport vehicle, to get a specific endorsement on the driving licence, permitting him to drive a transport vehicle. Hence, it can be considered as a violation, which would entitle the insurer to recover the amount from the insured after satisfying the award.

In the result, the civil miscellaneous appeal is allowed in part holding that the appellant is liable to satisfy the award and is entitled to proceed against the insured for recovery of the amount. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

February 3, 2017
DSK