

(2020) 10 CHH CK 0011

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 786 Of 2014

Krishna Kumar Sahu And Ors

APPELLANT

Vs

Mani Lal And Ors

RESPONDENT

Date of Decision: Oct. 16, 2020

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2(19), 3(1), 149
- Central Motor Vehicles Rules, 1989 - Rule 3

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Sanjay Agrawal, J

Bench: Division Bench

Advocate: Shobhit Koshta, H.S.Patel

Final Decision: Dismissed

Judgement

P.R. Ramachandra Menon, CJ

1. Whether a 'Learnerâ€™s licence' issued as defined under Section 2(19) of the Motor Vehicles Act, 1988 (for short â€˜the Actâ€™) is a substitute

for an effective 'Driving licence' to drive a motor vehicle in a public place as envisaged under Section 3(1) of the Act?

It is not to be read and understood in terms of Section 2(10) defining the term â€˜Driving licenceâ€™ (excluding a learner) read with sub-section (2)

of Section 3 of the Act granting exemption to a person receiving instructions in driving in terms of Rule 3 of the Central Motor Vehicles Rules, 1989

(for short â€˜the Rulesâ€™)?

If it was not in the course of learning/receiving instructions, can the Insured or the person in charge of the motor vehicle who is prohibited by the Act

under Section 5 in causing or permitting any person who does not satisfy the requirement of Section 3 or Section 4 to drive a vehicle, seek to shift the liability to be satisfied by the Insurer of the vehicle, notwithstanding the breach/violation apparent on the face of the record?

These are the important questions of law being considered in this appeal.

2. The instant appeal has been preferred by the Owner and Driver of the transport vehicle (Bus) which was involved in the accident. The grievance is mainly against the award passed by the Tribunal exonerating the Insurer and mulcting the liability upon the Appellants to satisfy the claim in respect of the deceased passenger in the Bus.

3. The sequence of events reveals that the deceased by name Narayan had boarded the Bus bearing Registration No. CG 16 A 1509, from village Telimuda and was proceeding to his workplace at Sonhat on 10.01.2011. As the vehicle reached the place of occurrence, the deceased was alighting from the Bus, when, without any regard to the safety of the passenger, the Bus was taken forward rashly and negligently; under which circumstance, the deceased fell down and the wheels ran over him leading to his death. This was sought to be compensated by filing a claim petition by the widow, two minor daughters and the parents of the deceased.

4. The Appellants, who are the Driver and Owner respectively, disputed the negligence attributed on the Driver. It was contended that the Bus was being driven with care and caution and that when the vehicle was crossing the speed breaker in slow speed, the deceased jumped out of the Bus to alight at the spot and accidentally came under the wheels, because of the negligence on the part of the deceased himself. It was also pointed out that the 1st Appellant was having a 'Learnerâ€™s licence' to drive the Bus and further that the vehicle was covered by a valid insurance policy issued by the 7th Respondent.

5. The 7th Respondent-Insurance Company contended that the Driver of the vehicle was not having valid and effective driving licence at the relevant time and there was a clear breach of the statutory/policy condition in causing the vehicle to be driven by a person without proper licence.

6. Evidence was adduced from both the sides, particularly by the 7th Respondent Insurer in support of their contentions to prove the factual position

and the breach. Based on the pleadings and evidence, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the 1st Appellant-Driver who was driving the vehicle at the relevant time. It was held that the deceased was having a notional income of Rs. 3000/- and based on his age as 25 years, the multiplier of 17 was adopted. 1/3rd of the income was deducted towards personal expenses and the remaining 2/3rd was taken as contribution to the family. Thus, the loss of dependency was worked out as Rs.4,08,000/-. Awarding a further sum of Rs.20,000/- towards funeral expenses, Rs.25,000/- towards loss of love and affection and consortium and a further sum of Rs.10,000/- towards the loss of estate, the total compensation was fixed as Rs.4,63,000/-; which was directed to be satisfied with interest at the rate of 8% per annum from the date of application.

7. Coming to the fixation of liability, the Tribunal held that the undisputed pleadings and evidence brought on record clearly established that the vehicle was being driven by the 1st Appellant only on the strength of a 'Learnerâ€™s licence'. It was also observed with reference to the evidence that the Driver was not driving the vehicle 'in the course of receiving instructions in driving' as envisaged under the relevant provisions of law and nobody was sitting as 'instructor' near his side, by virtue of which, the violation of the statutory/policy conditions was quite evident. It was accordingly, that the 7th Respondent/Insurer was exonerated from the liability and the same was mulcted upon the shoulders of the Appellants, which made them to feel aggrieved. Hence, the appeal.

8. Shri Koshta, the learned counsel for the Appellants submits that the award passed by the Tribunal is per se wrong and unsustainable being contrary to the law declared by the Apex Court in *National Insurance Company Ltd. v. Swaran Singh & Others*; {AIR 2004 SC 1531}. Specific reference is made to paragraphs 88, 89 and 105. The learned counsel submits that as declared by the Apex Court, a person holding the 'Learnerâ€™s licence' is also a person 'duly licensed' to drive the vehicle and as such, the liability ought to have been directed to be satisfied by the Insurer. It is also pointed out that the burden of proof is upon the Insurer to prove the violation/breach which has not been satisfied in the case, and hence, the matter requires

interference. The learned counsel submits that even in the case of violation of the statutory/policy conditions with regard to the absence of driving licence, the settled law is to 'pay and recover' and hence, the Insurance Company should have been ordered to satisfy the liability to the third party (Claimants) at the first instance with liberty to recover from the Appellants, if it is sustainable.

9. The learned counsel for the Insurance Company submits that the Appellants do not dispute the fact that the 1st Appellant was having only a 'Learnerâ€™s licence'. The requirements of law to drive a vehicle on the strength of 'Learnerâ€™s licence' were substantiated before the Tribunal, with reference to the evidence tendered and also the relevant provisions of law, which has been properly analysed by the Tribunal, thus leading to the finding. The learned counsel submits that the award passed by the Tribunal is perfectly within the four walls of law and is not assailable under any circumstance.

10. The terms 'Driving Licence' and the term â€˜Learnerâ€™s licenceâ€™ are defined under Section 2(10) and 2(19) respectively of the Act; which read as follows:

â€œ2(10) â€œdriving licenceâ€ 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;

2(19) â€œlearnerâ€™s licenceâ€ means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive as a learner, a motor vehicle or a motor vehicle of any specified class or description;â€

Section 3 of the Act, insisting the necessity for 'Driving Licence' is as given below:

3. Necessity for driving licence .â€"(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and 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 sub-section (2) of section 75 unless his driving licence specifically entitles him so to do.

2. The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

The definition of the term 'Driving Licence' {Section 2(10)} specifically shows that the provision clearly excludes a person who is

authorized to drive a vehicle otherwise than as a learner. This means, 'Learner's licence' cannot be a substitute for the 'driving licence'

defined under Section 2(10) of the Act. But, an exception is carved out with regard to the necessity for driving licence to drive a motor vehicle in a

public place as envisaged under Section 3 of the Act by virtue of sub-section (2). When Section 3(1) of the Act stipulates that no person shall drive a

motor vehicle in a public place unless he holds an 'effective driving licence' issued, authorizing him to drive a motor vehicle; sub-section (2) of Section

3, by way of exception as aforesaid, stipulates that the conditions subject to which sub-section (1) shall not apply to a person receiving instructions in

driving a motor vehicle shall be such, as may be prescribed by the Central Government. Thus, it is for the Central Government to prescribe the

conditions by invoking the rule making power including under Section 27 of the Act, by way of specific Rules so as to enable a 'person receiving

instructions in driving' also to drive the vehicle in a public place.

11. In this context, it will be worthwhile to take note of some other provisions in the Act including the statutory bar prohibiting any owner or such other

person incharge of the motor vehicle in causing it to be driven without proper licence. Section 4 of the Act reads as follows:

4. Age limit in connection with driving of motor vehicles.(1) No person under the age of eighteen years shall drive a motor vehicle in any

public place:

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen

years.

Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

3. No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless

he is eligible to drive that class of vehicle under this section.â€

Section 5 of the Act reads as follows:

â€œ5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.â€"No owner or person in charge of a motor vehicle shall

cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.â€

Section 6 of the Act reads as follows:

â€œ6. Restrictions on the holding of driving licences.â€"(1) No person shall, while he holds any driving licence for the time being in force, hold any

other driving licence except a learnerâ€™s licence or a driving licence issued in accordance with the provisions of section 18 or a document

authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.

2. No holder of a driving licence or a learnerâ€™s licence shall permit it to be used by any other person.

3. Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 9 from adding to the classes of vehicles which the driving licence authorises the holder to drive.

Section 7 of the Act puts certain restrictions in granting a 'Learnerâ€™s licence', which reads as follows:

â€œ7. Restrictions on the granting of learnerâ€™s licences for certain vehicles.â€"(1) No person shall be granted a learner's licence to drive a

transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year:

Provided that nothing contained in this sub-section shall apply to an e-cart or e-rickshaw.

2. No person under the age of eighteen years shall be granted a learnerâ€™s licence to drive a motor cycle without gear except with the consent in

writing of the person having the care of the person desiring the learnerâ€™s licence.â€

Section 8 of the Act deals with grant of â€˜Learnerâ€™sâ€ licenceâ€™, whereas Section 9 of the Act deals with grant of â€˜Driving

licenceâ€™ (i.e. proper licence in terms as defined under Section 2(10) of the Act). Section 10 of the Act deals with the form andâ€

contents of the licence to drive different class/types of vehicles. By virtue of Section 11, a person who is holding a driving licence to drive any class or description of motor vehicle as specified therein could seek to add on such other vehicles as well, as authorized in the licence, subject to satisfaction of the requirements as mentioned therein.

12. As noted above, invoking the power to frame the Rules provided under the Act, the Central Government has framed and notified the Central

Motor Vehicles Rules, 1989. Rule 3, coming under Chapter II of the Rules reads as follows:

â€œ3. General.â€"The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving

with the object of presenting himself for a test of competence to drive, so long asâ€

(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;

(b) such person is accompanied by an instructor holding an effective driving license to drive the vehicle and such instructor is sitting in such a position

to control or stop the vehicle; and

(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter ""L"" in red on a white

background as under:â€

Note .â€"The painting on the vehicle or on the plate or card shall not be less than 18 centimeters square and the letter ""L"" shall not be less than 10

centimeters high, 2 centimeters thick and 9 centimeters wide at the bottom:

Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry

any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).â€

13. Even a casual reading of the above Rule will give a clear idea that the necessity to have driving licence to drive a motor vehicle in a public place

as stipulated under sub-section (1) of Section 3 of the Act, shall not apply to a person while receiving instructions or gaining experience with the object

for presenting himself for test for competence to drive. Sub-clause (a) of Rule 3 insists that such a person should be the holder of an effective

'Learnerâ€™s licence' issued to him in Form 3 to drive the vehicle, while sub-clause (b) insists that such person is accompanied by an instructor

holding an effective driving licence to drive the vehicle and the instructor is sitting in such a position to control or stop the vehicle. Clause (c) mandates

that â˜Lâ€™ board is displayed in the front and rear of the vehicle, as specified. This clearly reveals that a person having 'Learnerâ€™s licence' can

be held as duly licensed to drive a motor vehicle in a public place, provided it is being done in the course of receiving instructions or to gain experience

so as to present himself for rest as envisaged under the Act/Rules to get proper licence and in the manner specified therein. This is the exception

carved out under sub-section (2) of Section 3 of the Act. When this requirement is not satisfied and the Owner of the vehicle permits a person to drive

a motor vehicle in a public place, merely on the strength of a Learnerâ€™s licence (to commute passengers or otherwise) without any instructor, that

becomes a forbidden act under Section 5 of the Act, taking it outside the scope of receiving instructions or experience as envisaged in the statute to

give effect to the 'Learnerâ€™s licence'.

14. It will be worthwhile to note the pleadings and evidence brought on record as to the violation/breach and the way in which it has been analysed by

the Tribunal, as disclosed from paragraphs 9 and 10 of the award which are reproduced below for easy reference:

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â€™â€™15. From the discussions made by the Tribunal, it is clearly discernible that the 7th Respondent-Insurer has let in evidence in support of their

pleadings as to the absence of a valid driving licence and as to the violation on the part of the Insured. Even otherwise, the Appellants do not have a

case that the 1st Appellant-Driver was having a proper driving licence in terms of Section 3(1) of the Act, but for possessing only a 'Learnerâ€™s

licence'. The Appellants do not have a case that the 1st Appellant-Driver of the vehicle was driving the offending vehicle at the relevant time

receiving instructions from any instructor as envisaged under Rule 3(b) of the Rules or that it was being driven in conformity with the other

requirements as well. It is equally brought on record, by virtue of the admitted or undisputed pleadings raised by the Appellants that the deceased was

travelling as a passenger in the Bus at the relevant time. It was only their case that when the vehicle reached the place of occurrence and was

crossing the speed braker in a slow speed, the deceased jumped out of the bus and sustained fatal injuries leading to his death. This 'admitted pleading'

does not require any proof by virtue of Section 58 of the Evidence Act (the rigor of which is even otherwise not applicable to a proceeding before the

Tribunal). In other words, when the Appellants contend that the 1st Appellant was driving the vehicle only on the strength of a 'Learnerâ€™s licence'

carrying passengers including the deceased and since they have no case that the 1st Appellant was driving the offending Bus only in the course of

getting instructions with a duly licensed instructor sitting on his side as envisaged under Rule 3 of the Rules, the breach/violation is explicit. It is more

so, in view of the mandate under Section 5 of the Act which clearly puts a statutory prohibition that no owner or person in-charge of a motor vehicle

shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle. Thus, the violation of the

statutory/policy conditions on the part of the Insured is clearly established. It is in the said circumstance, that the Insurance Company has been

absolved of the liability and the same has been mulcted upon the Appellants.

16. With regard to the case law cited by the learned counsel for the Appellants i.e. Swaran Singh (supra), it was rendered in respect of a batch of

special leave petitions filed by the Insurer involving the interpretation of Section 149(2)(a)(ii) vis-Ã -vis the provision appended to Sections 3, 4 and 5

of the Act; mainly challenging the 'pay and recover' course even after establishing the defence available to the Insurer under Section 149(2) of the

Act; instead of totally exonerating the Insurer from the liability . The defences raised by the Insurer, as noted in paragraph 3 of the judgment, were as

under:

a) driving licence produced by the driver or owner of the vehicle was a fake one;

b) driver did not have any licence whatsoever,

c) licence, although was granted to the concerned driver but on expiry thereof, the same had not been renewed;

- d) licence granted to the drivers being for one class or description of vehicle; but the vehicle involved in the accident was of different class or description; and
- e) the vehicle in question was driven by a person having a learnerâ€™s licence.

17. The contentions raised on behalf of the Insurer have been noted in paragraph 10, the crux of which is as follows:

- i) The right of an Insurer to raise defence in terms of Section 149(2) of the Act is an absolute right.
- ii) Such right being clear and unequivocal, the Insurer is entitled to show that the vehicle involved in the accident at the material point of time was driven by the person who was not â€˜duly licensedâ€™ or was â€˜disqualified to hold the licenceâ€™.
- iii) A person cannot be said to be duly licensed unless he has been granted a permanent licence for driving a particular vehicle in terms of the provisions of Chapter II of the Act. Hence, the vehicle cannot be held to be driven by a person duly licensed if he:
 - Â· does not hold a licence,
 - Â· holds a fake licence,
 - Â· holds a licence but validity thereof has expired or,
 - Â· does not hold a licence for the type of vehicle which he was driving;
 - Â· or holds merely a Learnerâ€™s licence.
- iv) Once the defence under Section 149(2) of the Act is established by the Insurer, the Tribunal is bound to discharge the Insurer and fix the liability upon the Owner/Driver of the vehicle.
- v) Once the defence is established by the Insurer as above, the Tribunal/Court cannot direct the Insurer to satisfy the award amount to the Claimant in the first instance and to get it recovered from the Driver/Owner, later.

18. The contentions on behalf of the Respondents have been summed up in paragraph 12 of the said verdict which are to the following effect:

- i) The terminology used by the Parliament in Section 3 of the Act (effective licence) is different from the terminology used in Section 149(2) of the Act (duly licensed).

ii) Hence, once a person was duly licensed, the non-renewal would not come within the purview of Section 149 of the Act except in the event of lapse of 5 years.

iii) Once a certificate of insurance is issued in terms of the relevant provisions of the Act, the Insurer has to satisfy the liability of the award.

iv) By virtue of Section 149(1) of the Act, the Insurer should pay first to the third party and can recover the same from the Driver/Owner, if they are absolved on any ground under sub-section (2).

v) The burden to prove the defence under Section 149(2) of the Act and as to the breach of the policy conditions is upon the Insurer.

vi) The breach must be willful

vii) It is not enough to show that the person concerned who was driving the vehicle at the time of the accident was not duly licenced, but it must further be established that there was a breach on the part of the Insured, so as to avoid the liability of the Insurer.

19. The observations made by the Apex Court in paragraph 79 of the said verdict are relevant and hence extracted below:

â€œ79. We have analysed the relevant provisions of the said Act in terms whereof a motor vehicle must be driven by a person having a driving licence. The owner of a motor vehicle in terms of Section 5 of the Act has a responsibility to see that no vehicle is driven except by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in its defence and avoid liability. The matter, however, may be different where a disputed question of fact arises as to whether the driver had a valid licence or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any

person to drive a vehicle who did not have a valid driving licence. In a given case, the driver of the vehicle may not have any hand at all, e.g. a case where an accident takes place owing to a mechanical fault or vis-major. [See Jitendra Kumar (supra)].â€

20. Dealing with the issue as to the 'Learnerâ€™s licence' under paragraph 88, the Apex Court proceeded further to explain the relevant aspects as to

the driving of the vehicle in paragraph 89, the relevant portion of which is extracted below:

â€œ89. â€œ..Learner's licences are granted under the rules framed by the Central Government or the State Governments in exercise of their rule

making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also

come within the purview of ""duly licensed"" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It is

now a well-settled principle of law that rules validly framed become part of the statute. Such rules are, therefore, required to be read as a part of main

enactment. It is also well-settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the

rule. No provision should be considered as surplusageâ€.

It was accordingly that the findings were summed up, as given in paragraph 105. The observation made by the Apex Court in paragraph 79, read with

paragraph 89 clearly provides that in case where the Driver of the vehicle did not hold any valid licence and was allowed consciously to drive the

vehicle, the Insurer is entitled to succeed in his defence and avoid the liability. In paragraph 89, the Apex Court highlights that the 'Learnerâ€™s

licence' are issued under the relevant Rules framed by the Government and such Rules are required to be read as part of the main enactment,

simultaneously observing that as per the settled principles of law of interpretation of statute, attempt must be made to give effect to all the provisions

under the Rules and no provision shall be considered as surplusage. This gives a clear insight as to the circumstance under which a person holding a

'Learnerâ€™s licence' can said to be 'duly licensed' to drive a motor vehicle in a public place so as to attract the exemption carved out under sub-

section (2) of Section 3 of the Act, notwithstanding the definition of the term â€˜Driving licenceâ€™ under Section 2(10) excluding the

â€˜Learnerâ€™s licenceâ€™. This is the situation that is covered by Rule 3 of the Rules.

21. In the instant case, admittedly since the vehicle was not being driven by the 1st Appellant-Driver in conformity with Rule 3 of the Rules and

further since the violation on the part of the 2nd Appellant/Owner is established by raising a specific pleading and adducing evidence as discussed by

Tribunal in paragraphs 9 and 10 as extracted above, we are of the view that there is absolutely no merit in the appeal preferred by the Driver and

Owner of the vehicle seeking to shift the liability to the shoulders of the Insurance Company.

22. The learned counsel for the Appellants lastly made a submission to the effect that, the Insurance Company may be directed to satisfy the liability

at the first instance, based on the 'pay and recover' principle. We do not find any pith or substance in the said submission. This is for the reason that

MV Act is to be regarded as a 'welfare legislation' so far it is related to the 'third parties'. It is to protect the rights of the 'third parties' who are

entitled to be covered in terms of Section 149 of the Act, that statutory insurance coverage is stipulated which, in other words is not a welfare

legislation to extend undue advantage to the wrong doers - the Driver and Owner who have no regard to the rule of law. It is also settled law, that the

law is not to be interpreted in favour of the wrong doer. The Claimants have not come forward by filing any appeal; nor have they made any

submission in this regard before this Court seeking to direct the Insurance Company to satisfy the award at the first instance and to have it recovered

from the Owner and Driver, later. Insofar as the Appellants/(Driver and the Owner of the vehicle) are found liable to satisfy the award, the question

whether it is to be recovered in a proceeding filed by the Claimants or similar proceedings to be filed by the Insurer (after satisfying the liability to the

claimants at the first instance) does not matter much, to tilt the balance in favour of the Appellants.

23. In the said circumstances, the questions raised/issues framed are answered as discussed above. We do not find any merit in the appeal. It is

dismissed accordingly.