

New India Assurance Company Limited Vs Chikkappaiah @ Chikkappa and Others

Court: Karnataka High Court

Date of Decision: July 21, 2008

Acts Referred: Motor Vehicles Act, 1988 " Section 2 (10), 2 (21), 2 (23)

Citation: (2009) ACJ 1283 : (2008) ILR (Kar) 4583 : (2009) 1 KarLJ 634 : (2008) 5 KCCR 662 SN

Hon'ble Judges: Anand Byrareddy, J

Bench: Single Bench

Advocate: R. Jai Prakash, for the Appellant; Lawyers Net, for R1, Sriyuths Bopanna and Giri for R2 and B.C. Seetharama Rao, for R4, for the Respondent

Final Decision: Dismissed

Judgement

Anand Byrareddy, J.

Heard the counsel for the appellant and the counsel for the respondents.

2. The facts of the case are that the first respondent, as on 17.10.2002, while he was driving a goods tempo, which was said to be driven in a rash

and negligent manner, dashed against a bus. The first respondent is said to have suffered injuries and accordingly, he had claimed compensation

before the Tribunal. The Tribunal having awarded compensation against the owner and insurer of the tempo, the insurer is in appeal challenging the

award.

3. It is contended that it was the specific case of the appellant that the vehicle involved in the accident was a goods vehicle and therefore, a

transport vehicle. The driver engaged by the owner of the vehicle was authorised to drive a light motor vehicle and a non transport vehicle. There is

no endorsement in the driving licence authorising the driver to drive a transport vehicle, an extract of the licence has been produced as exhibit R1

and hence, it is contended that the Tribunal was in error in not holding that the policy conditions were violated, as the driver of the insured vehicle

did not have a valid and effective driving licence. Further, to support this contention the counsel for the appellant would draw attention to Sub-

section (10) of Section 2 of the Motor Vehicles Act, 1988 ("the Act", for short) which defines "driving licence", and would point out that a driving

licence means, a licence issued by a competent authority authorising a person to drive a specific motor vehicle of a specific class or description.

Section 3 of the Act would mandate that no person shall drive a motor vehicle unless he holds an effective driving licence and that no person shall

drive a transport vehicle unless his driving licence specifically entitled him to do so.

From a reading of Section 7 of the Act it is pointed out that no person shall be granted a learner's licence to drive a transport vehicle unless he has

a driving licence to drive a light motor vehicle, for at least one year.

Section 10(j) of the Act requires that a learner's licence or a driving licence shall be expressed as entitling the holder to drive a motor vehicle of the

classes specified therein and one of the vehicles is a "transport vehicle" while the list also includes "light motor vehicle".

From a reading of Section 14 of the Act it is pointed out that a licence to drive a "transport vehicle" would be effective for three years whereas in a

case of any other licence it may be effective for a period of 20 years.

4. In the instant case the driving licence extract would indicate that it was issued for a period of 12 years and clearly bore the endorsement that the

holder was authorised to drive a "light motor vehicle (non transport)". The counsel would submit that in the judgment of the Supreme Court

reported in National Insurance Co. Ltd. Vs. Kusum Rai and Others, it is clearly held that the owner of a vehicle cannot contend that he has no

liability to verify the fact as to whether the driver of a vehicle possessed a valid licence or not and hence, it is not possible for the learned Counsel

for the respondent to contend that there was no liability on the owner of the vehicle to verify whether the driver of the goods vehicle held a valid

and effective licence. The Tribunal was completely in error in proceeding to fasten the liability on me insurer notwithstanding that there was a clear

violation of the policy condition, in that, the driver of the vehicle did not possess a valid and effective driving licence.

5. The counsel for the appellant also seeks to place reliance on the judgment of the Supreme Court in the case of New India Assurance Co.

Limited v. Roshanben Rahemansha Fakir and Anr. AIR SCW 4048 to contend that the driver of the offending vehicle in that case was a holder of

a licence of a three-wheeler, i.e. an autorickshaw adapted as a delivery van. The licence was not meant for driving a "transport vehicle" but for a

goods carrying public-carrier and the court held that the insurer was not liable since the licence was granted for twenty years and not three years

and hence the driving licence was clearly not meant for a "transport vehicle". The counsel seeks to draw sustenance from the same to hold that the

Act would require a person driving a transport vehicle to hold a particular licence to the said effect authorising him to drive a transport vehicle,

specifically, and in the absence of which it cannot be held that the insurer was liable to satisfy the claim.

6. Per contra, the learned Counsel for the respondents would point out that the case is clearly covered by the judgment of the Supreme Court in

the case of National Insurance Co. Limited v. Annappa Irappa Nesaria and Ors. AIR 2008 SCW 906 wherein the vehicle involved in an accident

was a Matador van, which had a Goods Carriage Permit. The vehicle had met with an accident on 9.12.1999. The contention raised on behalf of

the insurer was that the driver of the vehicle did not possess a valid and effective licence to drive a transport vehicle. One of the issues framed was,

whether the driver of the offending vehicle was not an authorised person to drive the offending vehicle. The licence held by the driver was in

respect of a light motor vehicle. The Supreme Court while considering the rival arguments and on the specific contention that a "light goods

carriage" not having been defined under the Act, the definition of a "light motor vehicle" clearly indicated that it takes within its umbrage, both a

transport vehicle and a non-transport vehicle and proceeded to hold that the Motor Vehicles Act, 1988 was enacted to consolidate and amend the

law relating to motor vehicles, which is a complete Code and referred to Section 2 of the Act which defines "heavy goods vehicle" to mean any

goods carriage, the gross vehicle weight of which, or a tractor or a road roller, the unladen weight of either of which, exceeds 12,000 kilograms

and referred to Section 2(21) of the Act which defines "light motor vehicle" and Section 2(23) which defines "medium goods vehicle" and also

referred to Section 3 of the Act and drew specific attention to the Central Motor Vehicles Rules 1989 and the Form appended to the Rules to

explain the circumstance that Rule 14 prescribes for filing of an application in Form 4, for a licence to drive motor vehicles, categorizing the same

under 9 types of vehicles and Clause (e) of the form which provides for "transport vehicle", having been substituted with effect from 28.3.2001.

And that before the amendment in 2001, the entries "medium goods motor vehicle" and "heavy goods vehicle", existed which have been substituted

by "transport vehicle". The category of "light motor vehicle" also found place therein. "Light Motor Vehicle" having been defined in Section 2(21)

as it then existed, it included a light transport vehicle. However, "transport vehicle" had been substituted for "medium goods vehicle" and "heavy

goods vehicle". But, a "light motor vehicle" continued, at the relevant point of time, to cover both, a "light passenger carriage vehicle" and a "light

goods carriage vehicle". Therefore, the driver who had a valid licence to drive a light motor vehicle was authorised to drive a light goods vehicle as

well, and accordingly, it was held that the contention of the insurer, as to the driver not being qualified to drive a light transport vehicle, was not

sustainable.

7. The counsel would submit that the said judgment would apply on all fours to the present case, notwithstanding the endeavour on the part of the

counsel for the appellant to point out from the provisions of the Act that the driver was not qualified to drive a transport vehicle when his licence is

specifically not endorsed for driving a transport vehicle.

8. On these contentions, though the counsel for the appellant has pointed out from the very reading of the provisions referred to under the Act, in

which unless the licence authorises a driver to drive a transport vehicle, he would not be entitled to do so, having regard to the judgment of the

Supreme Court in the case of National Insurance Co. Ltd. v. Annappa Irappa Nesaria and Ors. (Supra) which has even been referred to in the

later judgment i.e. Roshanben Rahemansha Fakir and Anr. (Supra), the Supreme court has not taken a different view insofar as the question as to

whether a person holding a light motor vehicle being enabled to drive a transport vehicle as well, since the definition of "light motor vehicle" would

indicate that it takes within its umbrage both a transport vehicle and a non transport vehicle. Hence, the forceful arguments of the counsel for the

appellant to point out the requirement of the licence carrying a specific authorisation to drive a transport vehicle would necessarily have to be

viewed in the light of the judgment of the Supreme Court which does provide the benefit to the respondents.

Accordingly, the appeal is dismissed. The amount in deposit be remitted to the Tribunal for the benefit of the respondents.