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(2013) 3 ACC 847 : (2014) ACJ 290 : (2014) 2 ALLMR 24 : (2013) 2 ILR (Ker) 292 : (2013) 2 KHC 99 : (2013) 2 KLJ 143 : (2013) 2 KLT 175

High Court Of Kerala

Case No: MACA. No. 393 of 2009

A. Gopalakrishnan and Chandran		APPELLANT
	Vs	
Rumugham and The Oriental Insurance Co. Ltd.		RESPONDENT

Date of Decision: March 19, 2013

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 10, 10(2), 10(2)(j), 18, 2(28)

Citation: (2013) 3 ACC 847 : (2014) ACJ 290 : (2014) 2 ALLMR 24 : (2013) 2 ILR (Ker) 292 : (2013) 2 KHC 99 : (2013) 2 KLJ 143 : (2013) 2 KLT 175

Hon'ble Judges: S. Siri Jagan, J; Babu Mathew P. Joseph, J

Bench: Division Bench

Advocate: P.K. Mohanan Palakkad, for the Appellant; George Cherian (Thiruvalla), for R2, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.
The appellants are respondents 1 and 2 in O.P (M.V.).No. 644/2002 before the Motor Accidents Claims Tribunal,

Palakkad. They are the owner and driver of a power tiller, which was involved in a motor accident on 31.3.2000, in a public road causing injuries

to the 1st respondent. The 1st respondent filed the O.P(M.V.). seeking compensation for the injuries suffered by him. The power tiller was insured

with the 2nd respondent herein. The Tribunal entered a finding that the accident occurred because of the negligence of the 2nd appellant and

awarded compensation of Rs. 56,781/- with interest and costs. But it was held that the insurance company is not liable to indemnify the 1st

respondent since the 2nd respondent did not possess a valid driving licence to drive the power tiller on the date of the accident. But the 2nd

respondent was directed to pay the compensation amount to the 1st respondent with liberty to recover the said amount from the appellants herein.

The appellants are challenging that part of the award, whereby the insurance company has been absolved from liability to indemnify the appellants

and was given liberty to recover the compensation amount paid by them to the 1st respondent, from the appellants herein. The contention of the

appellants is that power tiller is not a vehicle in Section 10(2) of the Motor Vehicles Act and, therefore, no licence is required to drive a power

tiller. In support of the said contention, the appellants rely on the decision of a learned Single Judge of this Court in Pattanakkad Panchayat Vs.

Ponnappan, .

2. On the other hand, the learned Standing Counsel for the insurance company would contend that the necessity of obtaining a driving licence to

drive a motor vehicle is not governed by Section 10 at all. Section 3 of the Motor Vehicles Act lays down the necessity for a licence to drive a

motor vehicle. That section specifically prohibits a person from driving a motor vehicle in a public place unless he holds an effective driving licence

issued to him, authorising him to drive the vehicle. Therefore, according the learned Standing Counsel for the insurance company, since power tiller

comes within the definition of ""motor vehicle"" in Section 2(28) of the Motor Vehicles Act, for driving the same, a driving licence issued u/s 3 is

mandatory. Admittedly, in this case, on the date of accident, the 2nd appellant did not possess an effective driving licence to drive power tiller.

Therefore, the 2nd appellant having driven the power tiller without an effective driving licence, the appellants have violated the policy conditions,

consequent to which, the insurance company is entitled to claim exoneration from liability to indemnify the owner of the vehicle in respect of the

compensation payable to third parties on account of the accident caused by driving such vehicle negligently, is the contention of the insurance

company. It is submitted by the learned Standing Counsel for the 2nd respondent that the decision in Ponnappan''s case (supra) does not lay down

the correct law and, therefore, the said decision requires reconsideration. It is submitted that in that decision, the learned Single Judge has

categorically found that power tiller is a motor vehicle and that, therefore, registration under the Motor Vehicles Act is necessary. After having held

so, the learned Single Judge went wrong in holding that because of the absence of power tiller in the categories of vehicles enumerated in Section

10(2), no licence is necessary to drive a power tiller.

3. We have considered the rival contentions in detail.

4. ""motor vehicle"" is defined in Section 2(28) of the Motor Vehicles Act, which reads thus:

2. Definitions. - In this Act, unless the context otherwise requires,-

xxx

(28) ""motor vehicle"" or ""vehicle"" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is

transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not

include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a

vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres.

Section 3 of the Motor Vehicles Act lays down thus:

3. Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to

him authorizing 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.

Going by Section 3, for driving a motor vehicle in any public place, an effective driving licence is mandatory. Therefore, unless power tiller is

proved to be outside the purview of the definition of motor vehicle, for driving a power tiller also, an effective driving licence is mandatory. We are

of opinion that Section 10 does not govern the issue regarding necessity of driving licence in respect of the vehicles enumerated therein. Section 10

reads thus:

10. Form and contents of licence to drive.-(1) Every learner''s licence and driving licence, except a driving licence issued u/s 18, shall be in such

form and shall contain such information as may be prescribed by the Central Government.

(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;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

That Section prescribes only the form and contents of licences to drive to be issued to persons entitled to hold driving licence. Section 10(2) only

directs that the driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the classes mentioned

therein. Clause (j) speaks about ""motor vehicle of a specified description"". That only means that if the motor vehicle, for driving which a licence has

to be issued, does not come within the purview of the other vehicles mentioned in Section 10(2) in the licence, the description of the motor vehicle

for which a driving licence is issued, should be specified in the licence. In other words, as per Section 10(2) all driving licences issued u/s 3 shall

give the description of the vehicle to drive which the licence is issued. That does not mean that if power tiller is not included in the classes of

vehicles mentioned in Section 10(2), no driving licence is necessary to drive a power tiller. As we have already held, the fact relevant to decide the

question as to whether for driving a power tiller, an effective driving licence is necessary, is whether power tiller is a motor vehicle or not. Power

tiller is used for tilling lands. Of course, it has only less than four wheels. But for enabling us to hold that no driving licence is necessary to drive a

power tiller, the appellants should prove not only that the power tiller has less than four wheels, but they should also prove that the same is fitted

with an engine having a capacity of not exceeding 25 cubic centimeters. The appellants have no case that the power tiller is fitted with an engine

having a capacity not exceeding 25 cubic centimeters. In fact, the decision in Ponnappan''s case (supra), categorically holds that the power tiller is

a motor vehicle, which requires registration under the Act. If that be so, in view of the mandatory requirement of Section 3, for driving a power

tiller also, an effective driving licence is mandatory. In fact, it is admitted that long after the accident, on 6.8.2003, the 2nd appellant had obtained a

driving licence to drive power tiller which was produced before the Tribunal also. Therefore, the decision in Ponnappan''s case (supra) does not

lay down the correct law on the subject. Accordingly, the said decision is hereby overruled. We hold that for driving a power tiller also, a driving

licence u/s 3 is mandatory and the driving licence should be issued in the form prescribed u/s 10 specifically authorising the holder of the licence to

drive a power tiller as required u/s 10(2)(j).

In view of our above finding, it is clear that the 2nd appellant having driven the power tiller without an effective driving licence, the appellants have

violated the conditions of the policy issued by the 2nd respondent to the 1st respondent. That being so, we do not find any infirmity in the finding of

the Tribunal that for want of an effective driving licence for the 2nd appellant, whose negligent driving caused the accident resulting in injuries to the

1st respondent, the insurance company is entitled to be absolved from liability to indemnify the 1st appellant in respect of the compensation

awarded to the 1st respondent as per the impugned award and directing the insurance company to pay the compensation with liberty to recover

the same from the appellants. Accordingly, this appeal is dismissed.