New India Assurance Co. Ltd. Vs Ratibai and Others

None

Court: Madhya Pradesh High Court

Date of Decision: Nov. 24, 2005

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 10, 18, 2, 3, 66#Penal Code, 1860 (IPC) â€" Section 304A

Citation: (2007) ACJ 1119

Hon'ble Judges: S.S. Dwivedi, J; Arun Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Arun Mishra, J.
This appeal has been preferred by the insurer aggrieved by an award dated 15.10.1998 passed by the M.A.C.T., Sagar

in Claim Case No. 22 of 1997.

2. Widow and four daughters of the deceased filed claim petition on account of death of Chintaman Kurmi. In an accident dated 26.5.1997 when

deceased was travelling in the jeep, driver Lalgiri drove it in a rash and negligent manner due to which Chintaman fell down, sustained injuries on

his head, leg and hands and died in the government hospital. Report was lodged at P.S. Naryavali. An offence u/s 304A, Indian Penal Code was

registered at Crime No. 126 of 1997 against Lalgiri. Charge-sheet was filed in the competent court. Vehicle was owned by Dashrath Lal Yadav

and insured with New India Assurance Co. Ltd. Deceased was in the grocery business and used to run flour mill. His earnings were claimed to be

Rs. 4,000 per month. Total compensation of Rs. 9,60,000 was claimed. The learned Claims Tribunal has awarded the total compensation of Rs.

2,64,000 along with the interest at the rate of 12 per cent per annum from the date of filing of claim petition on account of death of Chintaman.

3. Dissatisfied with the award, this appeal has been filed by the insurer on two grounds, firstly that there was overloading in the vehicle in question

and secondly that there was no endorsement on the licence which was held by the driver to drive public transport vehicle, though he was holding

the licence to drive light motor vehicle and he was driving light motor vehicle as per unladen weight as defined in Section 2(21) of the Motor

Vehicles Act, 1988.

4. With respect to the overloading, it is clear that there is no evidence on record to come to the conclusion that it has contributed or was the factor

to the accident in question; finding is that driver drove the jeep in a rash and negligent manner; until the overloading itself is the cause of accident, in

our opinion, it does not constitute substantial breach on the part of the owner. Apart from that there is no evidence on record to show that owner

was having the knowledge of such a breach of condition of carrying more humans than permitted under the policy. This question has been

considered by the Apex Court in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , in which the Apex Court has

followed the decision in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411 (SC), in view of the fact that there was ""breach

of carrying humans in a goods vehicle more than the number permitted in terms of the insurance policy, it was laid down that the same cannot be

said to be such fundamental breach so as to afford ground to the insurer to deny indemnification"" unless there were some factors which contributed

to the causing of the accident. The Supreme Court has laid down in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer,

Hassan, , that exclusion term of the insurance policy must be read down to serve the main purpose of it to indemnify the insured. Our conclusion is

fortified by the above decision of the Apex Court in B.V. Nagaraju (supra) and Skandia Insurance Co. Ltd. 1987 ACJ 411 (SC). The Apex

Court in B.V. Nagaraju (supra) has laid down thus:

(7) It is plain from the terms of the insurance policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6

workmen when travelling in the vehicle are assumed not to have increased any risk from the point of view of the insurance company on occurring

of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying.

Here, it is nobody''s case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming

vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the

driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such fundamental breach that the owner should, in all

events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to

the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however,

we find no such contributory factor. In Skandia''s case 1987 ACJ 411 (SC), this court paved the way towards reading down the contractual

clause by observing as follows:

...When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one

hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by it, by way

of business activity, there is hardly any choice. The court cannot but opt for the former view. Even if one were to make a strictly doctrinaire

approach, the very same conclusion would emerge in obeisance to the doctrine of ''reading down'' the exclusion clause in the light of the ''main

purpose'' of the provision so that the ''exclusion clause'' does not cross swords with the ''main purpose'' highlighted earlier. The effort must be to

harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is

supported by Carter''s Breach of Contract vide para 251. To quote:

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually

referred to as the ""main purpose rule"", which may limit the application of wide exclusion clauses defining a promisor''s contractual obligations. For

example, in Glynn v. Margetson & Co. (1893) AC 351, Lord Halsbury, L.C. stated: ''It seems to me that in construing this document, which is a

contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the

whole instrument, and seeing what one must regard...as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent

with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged

when the doctrine was rejected by the House of Lords in Suissee Atlantique Societe d''Armement Maritime S.A. v. N.V. Rotterdamsche Kolen

Centrale (1967) AC 361. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main

purpose or object of the contract.

5. Coming to the question that there was no endorsement of driving the public transport vehicle, taxi, we find that such an endorsement is not

necessary. Division Bench of this court in New India Assurance Company Limited Vs. Smt. Rekha and Others, has considered this question thus:

(14) Section 10 of the Motor Vehicles Act provides that driving licence shall also be expressed as entitling holder to drive a motor vehicle of one

or more of the classes mentioned in Sub-section (2) of Section 10. Section 10 of the Motor Vehicles Act is quoted below:

10. Form and contents of licences 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 specified description.

(15) Light motor vehicle has been defined in Section 2(21) to mean that the weight of a transport vehicle or omnibus does not exceed 7500 kg.

The word transport vehicle has been further defined u/s 2(47) to mean that a public service vehicle, a goods carriage, an educational institution bus

or a private service vehicle.

(16) u/s 10 it is provided that driving licence shall be expressed as entitling holder to drive a motor vehicle of the kind of vehicle mentioned u/s

10(2). The word ''transport vehicle'' itself is included in the definition of light motor vehicle. Coming to the facts of the case it is clear that vehicle in

question was a jeep, which is admittedly a light motor vehicle. It is submitted that it was used as a taxi at the relevant time, hence there should have

been an endorsement to drive public service vehicle, which has been defined u/s 2(35) of the Act. It is conceded that no different tests have been

prescribed for driving a private light motor vehicle or motor vehicle used for carrying passengers. The transport vehicle itself covers private service

vehicle and public service vehicle both in its ambit as defined in Section 2(47) of the Motor Vehicles Act. Hon''ble Supreme Court in Ashok

Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , in the backdrop of the fact that light motor vehicle a Swaraj Mazda truck was insured,

vehicle was damaged in the accident. A plea was taken that driver did not possess the valid driving licence. He possessed the licence to drive the

light motor vehicle but not a transport vehicle. The Apex Court has considered Section 3 and expressed opinion as to interpretation of Section 3

thus:

(5) This section uses two expressions, namely, ''motor vehicle'' and ''effective driving licence''. ''Effective'' would mean a valid licence both as

regards the period and the type of vehicle. We are not considering here otherwise any incapacity of the person holding a driving licence. Terms

''driving licence'', ''motor vehicle'' or ''vehicle'', ''transport vehicle'', ''light motor vehicle'', ''goods carriage'', ''heavy goods vehicle'' and ''medium

goods vehicle'' have been defined in Section 2 of the Act as under:

Driving licence'' (clause 10) 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; ''motor vehicle'' or ''vehicle'' (clause 28) 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; ''transport vehicle'' (clause 47) means a public service vehicle, a goods carriage,

educational institution bus or a private service vehicle; ''light motor vehicle'' (clause 21) means a transport vehicle or an 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; ''goods

carriage'' (clause 14) means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so

constructed or adapted when used for the carriage of goods; ''heavy goods vehicle'' (clause 16) means any goods carriage the gross vehicle weight

of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12000 kilograms; and ''medium goods vehicle'' (clause 23)

means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

(18) The Apex Court in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., , has discussed the meaning to be given to light motor vehicle

thus:

(10) Definition of ''light motor vehicle'' as given in Clause (21) of Section 2 of the Act can apply only to a ''light goods vehicle'' or a ''light transport

vehicle''. A ''light motor vehicle'' otherwise has to be covered by the definition of ''motor vehicle'' or ''vehicle'' as given in Clause (28) of Section 2

of the Act. A light motor vehicle cannot always mean a light goods carriage. Light motor vehicle can be non-transport vehicle as well.

(11) To reiterate, since a vehicle cannot be used as transport vehicle on a public road unless there is a permit issued by the Regional Transport

Authority for that purpose, and since in the instant case there is neither a pleading to that effect by any party nor is there any permit on record, the

vehicle in question, would remain a light motor vehicle. The respondent also does not say that any permit was granted to the appellant for plying the

vehicle as a transport vehicle u/s 66 of the Act. Moreover, on the date of accident, the vehicle was not carrying any goods and though it could be

said to have been designed to be used as a transport vehicle or goods carrier, it cannot be so held on account of the statutory prohibition contained

in Section 66 of the Act.

(12) It was pointed out by the appellant that the legal representative of Jadhav, the driver, had filed a petition for compensation under the Act.

Insurer had resisted the claim taking the stand that the driver of the vehicle did not possess a valid driving licence to drive the vehicle. The plea of

the insurer was rejected by the Claims Tribunal and petition for compensation was allowed and compensation paid to the legal representative of

the driver. No appeal was preferred by the insurer in that case.

(19) The Apex Court in Ashok Gangadhar Maratha (supra) has ultimately held that as the driver possessed the valid driving licence, as such

insurer cannot escape the liability. The Apex Court has held thus:

(14) Now the vehicle in the present case weighed 5920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that,

therefore, the insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong

premise. It is itself the case of the insurer that in the case of a light motor vehicle which is a non-transport vehicle, there was no statutory

requirement to have specific requirement to have specific authorisation on the licence of the driver under Form 6 under the Rules. It has, therefore,

to be held that Jadhav was holding effective valid licence on the date of accident to drive light motor vehicle bearing registration No. KA 28-567.

The Apex Court has laid down that there was no statutory requirement to have specific authorisation on the licence of the driver under Form 6

under the Motor Vehicles Rules.

(20) In view of the Apex Court decision, we find that driver in the instant case was holding valid driving licence to drive the vehicle in question.

Reliance has been placed on a decision of Division Bench of this court in Mahesh Kumar and Another Vs. Hari Shanker Patel and Others, in

which it has been held that driver was driving a Matador, which is a light motor vehicle but the vehicle was being used as a public service vehicle

for carrying passengers. It was held by this court that driver did not possess valid driving licence to drive the vehicle. The decision of the Apex

Court in Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. (supra) has not been noticed as probably the report of the Supreme Court

decision was not made available though earlier in point of time to the decision of Division Bench in Mahesh Kumar v. Hari Shanker Patel (supra).

In view of the decision of the Apex Court in Ashok Gangadhar Maratha (supra), which has not been noticed, considering the definition of light

motor vehicle, rules and requirement of form, decision in the case of Mahesh Kumar v. Hari Shanker Patel (supra) cannot be followed by us.

6. Thus, in view of the aforesaid discussions and also in view of the similar view which has been taken by Full Bench of Himachal Pradesh High

Court in New India Assurance Co. Ltd. Vs. Dharmu and Others, and Full Bench decision of Punjab & Haryana High Court in National Insurance

Co. Ltd. Vs. Parveen Kumar and Others, and also by Supreme Court in the light of the decision of National Insurance Co. Ltd. Vs. Swaran Singh

and Others, , we come to the conclusion that no breach has been established so as to absolve the insurer from making indemnification, thus, we

find that there is no merit in the submission.

7. Resultantly, appeal being devoid of merit, is hereby dismissed.

No costs.