(1999) 09 SC CK 0066

Supreme Court of India

Case No: C.A. No. 4490 of 1996

Ashok Gangadhar Maratha		APPELLANT
	Vs	
Oriental Insurance Co. Ltd.		RESPONDENT

Date of Decision: Sept. 2, 1999

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 16, 3
- Consumer Protection Act, 1986 - Section 14, 2
- Motor Vehicles Act, 1988 - Section 3, 75(2), 77, 78, 79

Citation: (1999) 2 ACC 463 : (2000) ACJ 319 : AIR 1999 SC 3181 : (1999) AIRSCW 3142 : (1999) 4 CompLJ 125 : (1999) 6 JT 423 : (2000) 1 LW 774 : (2000) 1 MLJ 105 : (1999) 123 PLR 523 : (1999) 5 SCALE 346 : (1999) 6 SCC 620 : (1999) 2 SCR 202 Supp : (1999) 9 Supreme

Hon'ble Judges: S. Saghir Ahmad, J; D.P. Wadhwa, J

Bench: Division Bench

Advocate: Rajni K. Prasad, for T.C. Sharma, for the Appellant; Vishnu Mehta, Manish Sharma and K.M.K. Nair, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Wadhwa, J.

Appellant has been non-suited by the National Consumer Disputes Redressal Commission (for short, the ''National Commission'') on appeal by the insurer against the order of the State Consumer Disputes Redressal Commission (for short, the ''State Commission''). Both the National Commission and the State Commission have been constituted under the Consumer Protection Act, 1986. By judgment dated December 30, 1993 the State Commission had allowed the complaint of the appellant and had directed the respondent-insurer to pay to the complainant-appellant a sum of Rs. 2,70,000 with interest @ 18 per cent per annum from the date of the accident till payment for satisfying his claim under the policy

issued by the respondent. The claim was made on account of damage caused to the motor vehicle belonging to the appellant and insured with the respondent.

2. Appellant was the owner of a Swaraj Mazda truck, a light motor vehicle bearing registration No. KA 28 567. The vehicle was insured with the respondent insurance company in the sum of Rs. 2,82,000 as per policy bearing No. MV/ 3440/91 for a period from February 17, 1991 to February 16, 1992. There is no dispute that the vehicle in question is a light motor vehicle weighing less than 6,000 kg. The vehicle met with an accident on November 26, 1991 and was completely damaged. Appellant lodged his claim with the insurer under the insurance policy covering the vehicle. Since the insurer refused to honour its commitment under the insurance policy, the appellant filed complaint with the State Commission claiming Rs. 5,61,000. State Commission allowed the claim of the appellant to the extent of Rs. 2,70,000 and granted him interest @ 18 per cent per annum with effect from the date of accident, i.e., November 26, 1991. The appellant also awarded cost amounting to Rs. 2,500. State Commission negatived the plea of the insurer that the vehicle was not being driven by person having an effective driving licence.

3. Against the judgment of the State Commission, insurer filed appeal before the National Commission which was allowed by the impugned judgment dated May 4, 1995. National Commission accepted the stand of the insurer as spelled out in para 14 of the counter affidavit filed by the insurer before the State Commission. This para 14 we reproduce as under :

This respondent states that the said assessment of the surveyor was subject to the condition that the Insured had not violated the terms and conditions of the policy. This respondent states that on verification of the documents produced by the insured revealed that the vehicle in question was a light goods vehicle and hence a transport vehicle. The driving particulars of the driver, Naga Saheb Jadhav which were produced by the insured disclosed that he had held a driving licence to drive light motor vehicle only which was valid for the period 27.2.90 to 26.2.99. This driving licence, thus revealed that Naga Saheb Jadhav v/as not authorised to drive a transport vehicle. This respondent states that the insured had committed breach of the terms of the policy and violated the provisions of M.V. Act, 1988 in entrusting a transport vehicle to a person who had not held a valid driving licence to drive a transport vehicle and as a consequence thereof, this respondent was not liable to indemnify their insured in respect of the own damage claim lodged vide his claim form dated 10.12.1991.

4. u/s 3 of the Motor Vehicles Act, 1988 (for short, the ''Act''), 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. Section 3 is as under:

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 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.

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 type of vehicle. We are not considering here otherwise any incapacity of the person holding a driving licence. "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, an educational institution bus or a private service vehicle; "light motor vehicle" [Clause (21)] means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unlade 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 unlade weight of either of which, exceeds 12,000 kilograms; and "medium goods vehicle" [Clause (23)] means any goods carriage other than a light motor vehicle or a heavy goods vehicle.

6. Naga Saheb Jadhav, the driver was having the driving licence to drive a light motor vehicle. On the day of the accident, vehicle was not carrying any goods. Contention of the insurer has been that the vehicle was a goods carriage and thus a transport vehicle. Rule 16 of the Central Motor Vehicle Rules, 1989 prescribes the form under which a driving licence is to be issued. It is form No. 6. Jadhav was having a driving licence in form 6 which was for driving a light motor vehicle. There was no endorsement on his driving licence authorising him to drive a transport

vehicle. For a vehicle to be a transport vehicle, it must be a goods carriage which in turn means any motor vehicle constructed or adapted for use solely for the carriage of goods or when not so constructed or adapted used for the carriage of goods. We have the definitions of "heavy goods vehicle" and "medium goods vehicle". There is no definition of "light goods vehicle". Instead the definition is of "light motor vehicle". If we apply the definition of a "light motor vehicle" as given in Clause (21) of Section 2 of the Act to mean a "transport vehicle" which in turn means a "goods carriage" then we have nowhere the definition of a "light motor vehicle" without it being a "goods carriage". Section 2 of the Act begins with the words "unless in this Act the context otherwise requires". We have therefore, to give a meaningful interpretation to "light motor vehicle" as given in Clause (21). Clause (e) of Rule 2 of the Central Motor Vehicle Rules, 1989 defines "non-transport vehicle" to mean a motor vehicle which is not a transport vehicle (Clause (e) renumbered as Clause (h) by 1993 Amendment to Rules). This definition would, therefore, take out of the definition of ''transport vehicle" as given in Clause (21) light motor vehicles which are not goods carriage.

7. Chapter V of the Act contains provisions for Control of Transport Vehicles. u/s 66 of the Act falling under this chapter no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passenger or goods except in accordance with the conditions of permit granted by the prescribed authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Sub-section (1) of Section 66 we quote:

66. Necessity for permits.-(1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage;

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not;

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

8. Section 77 deals with an application for permit to use a motor vehicle for the carriage of goods. Section 78 prescribes relevant considerations for processing such an application. Section 79 provides for grant of goods carriage permit.

9. There is no evidence on record and no claim has either been made by the insurer that the vehicle in question was having a permit for goods carriage. If we accept the contention of the insurer, there can never be any light motor vehicle and there can never be any driving licence for driving a light motor vehicle. We can not put such a construction on Clause (21) of Section 2 of the Act so as to exclude a light motor vehicle from the Act altogether. Light motor vehicle is a motor vehicle to drive for which Jadhav possessed effective driving licence. His driving licence was valid on the date of accident. In allowing the claim of the appellant the State Commission held that "the driver who drove the vehicle at the time of accident, had as a matter of fact, a valid driving licence for driving a light motor vehicle and there is no material on record to show that he was disqualified from holding or obtaining such a licence at the time of accident. In view of these facts and in the circumstances of the case, we are satisfied that the policy does not insist on the driver having a licence to drive, to obtain a specific endorsement to drive a transport vehicle." We, however, do not subscribe to such a view.

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.

13. In the present case, the insurer alleged that the appellant had committed breach of the terms of the insurance policy and had violated the provisions of the Act by entrusting a "transport vehicle" to a person who did not hold a valid licence and the

insurer was, thus, not liable to indemnify appellant. Under the policy firstly light motor vehicle meant the gross weight of which did not exceed 6,000 kilograms and secondly against the column "driver" the policy stated:

Drivers clause: Persons or classes of persons entitled to drive: any person including the insured.

Provided that a person driving holding an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that if a person holding an effective learner''s licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

14. Now the vehicle in the present case weighed 5,920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that, 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 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.

15. Accordingly, the appeal is allowed. Order of the National Consumer Disputes Redressal Commission is set aside and that of the State Consumer Disputes Redressal Commission restored though on different grounds. Appellant would be entitled to costs.