A. Aggarwal

Before M. Jeyapaul, J.

BALBIR SINGH AND ANOTHER—*Appellants*

versus

RALLA SINGH AND OTHERS—*Respondents*

FAO No. 7138 of 2011

January 7, 2013

Motor Vehicles Act 1988 - S. 149(2)-S.2(21) - Driver was not holding valid license at time of accident - Tribunal held driver and owner liable to pay compensation - Driver possessed LMV license-u/s 2(21) authorized to drive tractor-trailer carrying load upto 7500 kgs - No evidence of trailer being loaded - Held, the DL is valid-no violation of insurance policy-insurance company liable to pay compensation-appeal allowed.

Held, that coming to the definition under Section 2(21) of the Motor Vehicles Act, 1988, it is found that the light motor vehicle has been defined as a transport vehicle, the gross vehicle weight of which does not exceed 7500 kgs. A tractor also is a light motor vehicle if it is attached with a trailer and the gross vehicle weight thereof does not exceed 7500 kgs or if it is used a tractor without any trailer, the unladen weight of it does not exceed 7500 kgs.

(Para 10)

Further held, that it is a trite law that the burden lies on the insurance company to establish that the driver did not possess a valid driving licence to drive the offending vehicle. Consequently, the insurance company is liable to establish that the tractor attached with a trailer with gross vehicle

weight exceeding 7500 kgs. was driven by the driver quite against the terms of the licence granted to him and also against the spirit of the terms and conditions of the policy.

(Para 11)

Further held, that as it was established in this case that the driver of the offending vehicle possessed licence to drive light motor vehicle the gross vehicle weight whereof did not exceed 7500 kgs., it is held that the subject driving licence is valid and effective one and therefore, there was no violation of the conditions of the insurance policy. In my view, the Tribunal has wrongly fastened the ultimate liability on the owner and the driver and granted right of recovery to the insurance company.

(Para 17)

Further held, that it is held that the insurance company is ultimately liable to pay compensation stepping into the shoes of the owner of the offending vehicle which was driven by the driver who possessed a valid and effective driving licence to drive the same.

(Para 18)

Gopal Mittal, Advocate, *for the appellants.*

Ashwani Arora, Advocate, for respondent No. 1

Vinod Chaudhari, Advocate for respondent No. 2

M. JEYAPAUL, J.

(1) The owner and the driver of the offending vehicle, namely, tractor-trailer have preferred the present appeal aggrieved by the right of recovery given to the insurance company on the ground that the driver did not possess a valid driving licence to drive the said vehicle.

(2) Claimant who is the father of the deceased Charanjit Singh has contended in the claim petition that his son proceeded on a motor-cycle from Dera Bassi towards village Natwal taking Munish Kumar as pillion-rider. Jagtar Singh @ Jaggas and Baljinder Singh @ Gudda followed them by a separate motor-cycle. When they reached near Chandigarh Apartments on Barwala road, a tractor-trailer bearing registration No. PB-42-6684 came from the opposite direction driven by its driver Balwant Singh in a rash and negligent manner and struck against the motor-cycle of Charanjit

Singh and as a result of which Charanjit Singh and Munish Kumar fell down on the road having received grievous injuries. Charanjit Singh died on the spot whereas Munish Kumar died on the way to Dera Bassi. It has been alleged that the accident took place due to rash and negligent driving of the offending vehicle by the 1st respondent.

(3) The 2nd respondent-insurance company filed written statement alleging that the tractor bearing registration No. PB-42-6684 was used against the terms and conditions of the insurance policy. The driver of the said vehicle was not holding a valid and effective driving licence at the time of the alleged accident. Having further alleged that the involvement of the siad vehicle was emphatically denied and the amount claimed was highly excessive and exaggerated, the insurance company sought for dismissal of the claim petition.

(4) The Tribunal held that the driver of the offending vehicle, namely, tractor-trailer was not holding a valid driving licence. It made an observation that though he possessed a driving licence to drive light motor vehicle, he had not possessed any driving licence to drive tractor-trailer as it fell under the category of heavy motor vehicle. The Tribunal ultimately held the driver and the owner of the offending vehicle liable to pay compensation but directed the insurance company to pay compensation first in point of time, conferring a right of recovery on the insurance company.

(5) The short point that arises for consideration in the present appeal is whether the driver of the tractor-trailer who possessed admittedly a driving licence to drive light motor vehicle, got a valid driving licence to drive the tractor-trailer.

(6) Learned counsel for the appellants, namely, driver and owner of the offending vehicle, would vehemently submit drawing the attention of this Court to the definition found in Section 2(21) of the Motor Vehicles Act, 1988, that the driver of the vehicle who possessed a licence to drive light motor vehicle was authorized to drive a tractor-trailer being a transport vehicle, the gross weight whereof was less than 7500 kgs. It is his further submission that the very fact that the licence was granted only for a period of three years and the same was got renewed further for a period of three years. and the same was got renewed further for a period of three years covering the date of accident, would go to establish that the licence was granted to drive only transport vehicle. Therefore, it is his submission

that the Tribunal wrongly made an observation that the tractor-trailer does not fall under the definition of "light motor vehicle".

(7) Per contra, learned counsel appearing for the respondent-insurance company would submit referring to the very same porvision, namely, Section 2(21) of the Motor Vehicles Act, 1988, that the offending vehicle, namely, tractor-trailer was used as a carriage vehicle and the gross vehicle weight definitely would have exceeded 7500 kgs. and therefore, it would fall under the category of heavy goods vehicle as defined in Section 2(16) of the said ACt. Inasmuch as the driver of the offending vehicle did not have any driving licence to drive any heavy goods vehicle, the licence he possessed was not a valid one to drive such a vehicle. It is further his submission that the driver and the owner of the offending vehicle failed to establish the gross weight of the tractor-trailer at the time when the accident took place. Under such circumstances, a presumption should be drawn that the tractor which was attached with the trailer had a gross weight exceeding 7500 kgs. It is also his submission that the Tribunal has rightly fixed the liability on the driver and owner of the vehicle as there was violation of terms and conditions of the insurance policy.

(8) There is evidence to show that the driver of the offending vehicle drove the tractor-trailer at the time when the accident took place, possessing a valid licence for driving light motor vehicle.

(9) A tractor is a motor vehicle which is not constructed to carry any load. But a tractor becomes a goods carriage or a transport vehicle when it is attached with a trailer which is usually intended to be drawn by a motor vehicle.

(10) Coming to the definition under Section 2(21) of the Motor Vehicles Act, 1988, it is found that the light motor vehicle has been defined as a transport vehicle, the gross vehicle weight of which does not exceed 7500 kgs. A tractor also is a light motor vehicle if it is attached with a trailer and the gross vehicle weight thereof does not exceed 7500 kgs or if it is used a tractor without any trailer, the unladen weight of it does not exceed 7500 kgs.

(11) It is a trite law that the burden lies on the insurance company to establish that the driver did not possess a valid driving licence to drive the offending vehicle. Consequently, the insurance company is liable to

establish that the tractor attached with a trailer with gross vehicle weight exceeding 7500 kgs. was driven by the driver quite against the terms of the licence granted to him and also against the spirit of the terms and conditions of the policy.

(12) In the instant case, there is virtually no evidence that the trailer was loaded with any goods. The unladen weight of the tractor was found to be 1880 kgs, as per RC book, Exhibit R-3, issued to the owner of the vehicle. In the absence of any evidence to indicate the gross vehicle weight of the tractor-trailer, the Court will have to presume in the facts and circumstances of this case that the gross vehicle weight of the tractor-trailer was less than 7500 kgs.

(13) A goods carriage becomes a heavy goods vehicle only when the gross vehicle weight exceeds 12000 kgs. In my considered view, the Tribunal has not properly adverted to the definition in Section 2(16) of the Motor Vehicles Act, 1988, dealing with heavy goods vehicle and Section 2(21) dealing with light motor vehicle. Inasmuch as the evidence on record would indicate unerringly that the gross vehicle weight of the tractor-trailer driven by the driver of the said vehicle did not exceed 7500 kgs, it can be safely concluded that the tractor-trailer driven by the driver was only a light motor vehicle and as such, the licence granted and renewed covering the date of accident, to drive light motor vehicle is a valid and effective driving licence.

(14) A Full Bench of this Court in ***National Insurance Company Limited*** versus ***Parveen Kumar and others (1)*** has held as follows :—

> "10. The issue being more res-integra, needs no further elcaboration. We may, however, hasten to add that the Insurance Company cannot be absolved of its liability to pay the compensation by simply pleading that the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of the different class of description, unless it is proved that the cause of accident was the licence granted to the driver being for one class or description of vehicle but the vehicle involved in the accident was of different class or description. The observations made by the Supreme Court presuppose that if the driver was driving a vehicle of which he might not be holding licence as such, but was holding a driving licence of a

(1) 2005 (1) RCR (Civil) 485

different description of vehicle, and the driving method of both the vehicles, for which licence was obtained and the one which was being driven, was the same and when even the mechanism of the vehicle is also same, the defence projected by the Insurance Company with regard to the driver not possessing requisite type of licence could be of no avail to it.

(11) We thus overrule the view taken by the Division Bench in National Insurance Company Ltd. (supra) and hold that if on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence. The defence projected by the Insurance Company in the context of Section 149(2)(a)(ii) and proviso appended to sub-section (4) and (5) of the Motor Vehicles Act, 1988 can succeed only if it is proved that the accident had taken place only because the driver was not possessing requisite type of licence."

(15) Even assuming for the sake of arguments that the driver of the offending vehicle possessed a driving licence to drive different description of vehicle insamuch a s thee is no evidence to show that the accident took place on account of the fact that the driver did not possess requisite type of vehicle, the insurance company cannot be absolved of its liability to pay compensation as per the above decision of the Full Bench of this Court in ***Parveen Kumar's case*** (supra).

(16) Learned counsel appearing for the respondent-insurance company cited a decision of the Bombay High Court in ***National Insurance Company Limited*** versus ***Sushila and others (2)*** wherein it has been held as follows :—

"29. Considering the case-law discussed above and the facts of this case it is clear that the accident had occurred due to rash and negligent driving of the tractor which was drawing trolley and it was fully loaded with manure and was being driven in a high speed on slope without giving necessary attention to the attending circumstances. So, it is not proved that accident was due to mechanical defect. Assuming

(2) 2010 ACJ 2671

for a moment that there was breakage of the tiepin, still it was not something which could not have been easily detected by the owner or the driver. No evidence is led to prove that there was any latent defect which caused the accident. In absence of any evidence, it cannot be said that accident had taken place due to mechanical defect. The driving licence of respondent No. 6, the copy of which is produced by respondent No. 7, clearly indicates that respondent No. 6 was authorised to drive light motor vehicle but as tractor-trolley was used as goods carriage vehicle, so, there is breach of terms and conditions of policy. Respondent No. 6 driver was not authorised to drive the tractor-trailer used to transport manure though he was authorised to drive only tractor. There is also breach of condition inasmuch as persons were carried on the heap of manure in the trolley which was goods carriage vehicle. So, there was breach of policy and so the appellant is not liable to pay compensation. As such, this appeal deserves to be allowed."

Theat was a case where the tractor-trailer was used to transport manure. There is no reference in the above decision s to the gross vehicle weight of the goods carriage or unladen weight of the tractor, to exclude the applicability of the definition "light motor vehicle" found in Section 2(21) of the Motor Vehicles Act. In view of the above, in my considered view, the above decision would not strictly apply to the facts of the present case.

(17) As it was established in this case that the driver of the offending vehicle possessed licence to drive light motor vehicle the gross vehicle weight whereof did not exceed 7500 kgs., it is held that the subject driving licence is valid and effective one and therefore, there was no violation of the conditions of the insurance policy. In my view, the Tribunal has wrongly astened the ultimate liability on the owner and the driver and granted right of recovery to the insurance company.

(18) It is held that the insurance company is ultimately liable to pay compensation stepping into the shoes of the owner of the offending vehicle which was driven the driver who possessed a valid and effective driving licence to drive the same.

(19) In veiw of the above, directing the insurance company to pay the compensation awarded by the Tribunal without any right of recovery, the appeal stands allowed.

A. Aggarwal