

New India Assurance Co. Ltd vs Mandar Madhav Tambe & Ors on 14 December, 1995

Equivalent citations: 1996 AIR 1150, 1996 SCC (2) 328, AIR 1996 SUPREME COURT 1150, 1996 (2) SCC 328, 1996 AIR SCW 702, 1996 () UJ (SC) 302, 1996 (2) BOM CJ 147, 1996 SCC(CRI) 307, 1996 (112) PUN LR 644, (1996) 1 PUN LR 644, 1996 BOMCJ 2 147, (1996) 2 KER LT 53, (1996) 1 MAH LJ 935, (1996) 2 GUJ LR 614, (1996) 1 TAC 506, (1996) 1 ACC 392, (1996) ACJ 253, (1996) 2 CIVLJ 210, (1996) 86 COMCAS 199

Author: S.P Bharucha

Bench: S.P Bharucha, B.N Kirpal

PETITIONER:
NEW INDIA ASSURANCE CO. LTD.

Vs.

RESPONDENT:
MANDAR MADHAV TAMBE & ORS.

DATE OF JUDGMENT 14/12/1995

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
KIRPAL B.N. (J)

CITATION:
1996 AIR 1150 1996 SCC (2) 328
1996 SCALE (1) 400

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This is an appeal by special leave against the judgment of the Bombay High Court upholding the liability of the appellant Insurance Company to pay the amount of the appellant

Insurance Company to pay the amount of compensation awarded to respondent No.1 who had suffered some injuries as a result of an accident.

On 4th July, 1979, an accident occurred involving two scooters. One scooter No.(MTM 6327) was being driven by respondent No.1 (the claimant) and the other (BYZ 5348) was being driven by respondent No.3. As a result of this accident respondent No.1 suffered some injuries and he filed an application before the Motor Accident Claims Tribunal for compensation.

The appellant contested the said application. It was contended on its behalf that on 22nd July, 1977, respondent No.3 had obtained a learner's licence, which enabled him to drive for the purpose of learning to drive. The validity of this learner's licence had expired on 21st November, 1977. When the accident took place on 4th July, 1979, respondent No. 3 was neither holding a driving licence as contemplated by the Motor Vehicles Act, 1939, nor was he holding a learner's licence. It appears that soon after the accident respondent No. 3 obtained a fresh learner's licence on 7th July, 1979 and thereafter, on 9th July, 1979, obtained a driving licence.

The Motor Accident Claims Tribunal, vide its award dated 2nd June, 1984, came to the conclusion that the accident had occurred due to the negligence of respondent No.3. It found that respondent No.1 was entitled to compensation of Rs. 2,60,000/-. An award was accordingly passed directing respondents 1 to 3 therein, including the appellant Insurance company, to jointly or separately pay the said amount together with interest at the rate of 6% per annum.

The appellant filed an appeal against the said award. The main contention which was not duly licensed to drive a scooter, and therefore, in view of the provisions of the Motor Vehicles Act and clause which had been inserted in the Insurance Policy, the insurance company was absolved of all liability. This exclusion clause in the policy which the appellant company relied upon, is as follows:

"Provided that the person driving holds a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner's licence) and is not disqualified from holding such a licence."

The High Court came to the conclusion that the Act did not contemplate the grant of a permanent driving licence. It then proceeded to hold that the term 'duly licensed' in section 96(2)(b)(ii) of the Act would include the holder of a learner's licence if he had once held such a licence then the aforesaid exclusion clause would not be applicable. While granting leave to appeal this Court made it clear that the leave was being granted on the condition that the appellant herein would pay the amount awarded to the claimant, irrespective of the result of the case.

On behalf of the appellant it has been contended by Mr. Suri that at the time when the accident occurred respondent No.3 did not hold any licence. This being so the aforesaid provisions in the insurance policy and also Section 96(2)(b)(ii) of the Act absolved the appellant of any liability.

Learned counsel for the respondent relied upon the observations of the judgment under appeal and also on a similar view taken in the decision of the High Court of Himachal Pradesh in United

Insurance Company Ltd. Vs. Tilak Ram & Ors. 1985 ACJ 481 and submitted observations of the judgment under appeal and also on a similar view taken in the decision of the High Court of Himachal Pradesh in United India insurance Company Ltd. vs. Tilak Ram and others 1985 ACJ 481 and submitted that inasmuch as respondent no.3. had held a learner's licence at one point of time the insurance company was liable to pay the amount of compensation which had been awarded.

The two questions which arise for consideration in this appeal are, firstly, whether the appellant company is entitled to invoke the provisions of Section 96(2)(b)(ii) of the said Act, secondly whether the above quoted exclusion clause in the insurance policy absolves the appellant company of any liability in the present case.

In order to appreciate the first contention, it is necessary to refer to appreciate the first contention, it is necessary to appreciate the first to the relevant provisions of the said Act. Section 96(2)(b)(ii), on which reliance is placed by the appellant, reads as under:

"(2) No sum shall be payable by an insurer under sub-section (I) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is made or the bringing of the proceedings, or in respect so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a)-----

(b) That there has been breach of a specified condition of the policy, being one of the following conditions, namely: (1)-----

(ii) a condition excluding driving by a named person or persons or by a person who is not duly licenced or by any person who had been driving licence during the period of disqualification:

of"

This clause, inter alia, uses the expression "driving licence" which term has been defined in Section 2(5A) of the Act as follows:

"Driving Licence" means the document issued by a competent authority under Chapter II authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description."

Section 3 inter alia provides that no person shall drive motor vehicle unless he is licensed. Section 7 provides for the grant of a driving licence and sub-section (6) thereof states that no driving licence shall be issued to any applicant unless he passes, to the satisfaction of the licensing authority, the test of competence to drive as specified in the 3rd Schedule. It is clear, therefore, that a valid driving

licence as contemplated by the said Act would be one id issued in accordance with the provisions of chapter II of the Motor Vehicles Act, 1939, after a driving test has been held. A person who holds only a learner's licence is one who has not taken the driving test successfully. Chapter II of the Acts does not made any mention of a learner's licence, except in Section 21(2)(c) which enables the State Government to frame rules, inter alia, for the issue of temporary licences to persons receiving instruction in driving. It is in view of this that in the Bombay Motor Vehicles Rules a permission (Rule 16) has been made, the relevant portion of which is as under:

"16.Learner's driving licence-

(i) . Sub-Section (I) of Section 3 shall not apply to any person driving a motors vehicle in a public place during the course of receiving instruction or gaining experience in driving with the object of presenting himself for the test required by sub-section (6) of Section 7 so long as -

(i) the driver is the holder of a learner's driving licence in Eorn L Lt.

to those rules entitling him to drive the vehicle.

(ii) + + + +

(iii) there is besides the driver in the vehicle as instructor a person duly licenced to drive the vehicle and sitting in such a position as to be able readily to stop the vehicle."

From the aforesaid it is clear that what was obtained by respondent No.3 from the authorities under the Act was not a licence within the meaning of Section 2(5A) of the said Act. He had obtained a learner's licence allowed him to be on the road subject to his fulfilling the conditions contained therein. One of the important conditions was that if he was driving a motor vehicle then there must be besides him in the vehicle as an instructor a person duly licenced to drive the vehicle and sitting insuch a position as to be able readily to stop the vehicle." It is clear from this that two learners by themselves cannot be in one car which is which is being driven by one of them. If the learner having a learner's licence under the rules is to drive a car then he must have sitting besides in a person who is duly licensed. This clearly shows that a "driving licence" as defined in the Act is different from a learner's licence issued under Rule 96. In other words, a person would be regarded as being duly licensed only if he has obtained a licence under Chapter II of the Motor Vehicles Act and a person who has obtained a temporary licence which enables him to leant driving cannot be regarded as having been duly licensed. The decision of the single judge of the Himachal Pradesh High Court in United India insurance Company's case (supra) to which he hes taken a contrary view must be held to have been incorrectly decided.

Apart from the fact that a learner having such a licence would not be regarded as duly licensed, the aforesaid clause in the insurance policy makes it abundantly cleat that the insurance company, in the event of an accident, would be liable only if the vehicle was being by a person holding a valid driving licence or a permanent driving licence "other than a learner's licence". This clause

specifically provides that even if respondent No.3 had held a current learner's licence at the time of the accident, the appellant would not be liable. In the present case it is clear that the respondent No.3 did not have a permanent learner's licence before the date of the accident and he had held only a learner's licence and it lapsed nearly two years before the accident. The High Court observed that the Act did not contemplate a "permanent driving licence" because a driving licence is valid only for a certain period after which it has to be renewed. This may be so, but the use of the words "permanent driving licence"

licence" in the insurance policy was to emphasize that a temporary or a learner's licence holder would not be covered by the insurance policy. The intention and meaning of the policy clearly is that the person driving the Vehicle at the time of the accident must be one who holds a 'driving licence' within the meaning of Section 2(5A) of the Act. This being so, we are unable to with the conclusions of the High that the appellant was liable to pay the amount which had been awarded in favour of respondent No.1. For the aforesaid reasons, the appeal is allowed but with no order as to costs. Having regard to the condition imposed at the time of the grant of special leave that irrespective of the outcome of this appeal, the amount awarded will be paid by the appellant to the claimants, no other relief can be granted to the appellant.