Kaushalpati Pandey vs New India Ass. Co. Ltd. & Ors on 9 November, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ MAC.APP. 185/2020, CM APPL. 22793/2020 & CM APPL. 22794/2020
KAUSHALPATI PANDEY ..
Through: Mr. Somnath Parashar

versus

NEW INDIA ASS. CO. LTD. & ORS. ..... Respond
Through: Mr. Dinesh Sharma, Advocate f
1.

+ MAC.APP. 186/2020, CM APPL. 22797/2020, 22799/2020 & CM APPL. 22800/2020
KAUSHALPATI PANDEY ..
Through: Mr. Somnath Parashar

versus

NEW INDIA ASS. CO. LTD. & ORS. ..... Respond
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1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 09.11.2020 The hearing was conducted through video conferencing.

1. These appeals impugn the award of compensation dated 17.01.2019 passed by the learned MACT in Suit Nos. 111/17 & 236/17, insofar as the right to recover the paid compensation amount has been granted to the insurer. The fitness certificate of the insured vehicle lapsed on 05.01.2017. The accident occurred on 22.01.2017, on which date there was no fitness certificate nor had an application been made for its renewal prior to the accident. The fitness certificate was subsequently revalidated/renewed only on 08.02.2017, i.e., more than a month after its lapse. The insurance policy clearly stipulated that the vehicle must always be plied with a valid fitness certificate. That condition not being met, the insurer was right in seeking to repudiate the claim. However, under the policy of pay and recover, the insurer was asked to first pay and then recover the said monies from the vehicle owner.

2. The learned counsel for the appellant submits that non-possession of a fitness certificate is not a ground of defence under Section 149(2) of the Motor Vehicles Act, 1988.

3. The Court is of the view that the issue concerns a fundamental breach of the insurance contract. An insurer issues a policy in the strict terms stipulated therein. Its undertaking to indemnify possible losses, is linked to the premium charged, which in turn is based on complex actuarial expertise. The conditions imposed in the policy are rooted in constant prudent measures to be observed to minimise losses. Fitness Certificate for a motor vehicle is one such prudent measure. For a policy holder to say that the policy will cover the insurer de hors the specific conditions imposed therein, would be to negate the fundamentals of the contract.

4. Furthermore, a Full Bench of the High Court of Kerala in Ramankutty v. Pareed Pillai, 2018 SCC OnLine Ker 3542, MACA. No. 1414 of 2013, has held that non-possession of a fitness certificate was a foundational breach of the contract as well as a breach of statutory provisions. Therefore, the policy would not extend to a compensation claim where the fitness certificate of the insured vehicle was not available. It held inter alia as under:

> " 1. Does the law declared by a Full Bench of this Court in Augustine V.M. v. Ayyappankutty @ Mani, [2015 (2) KLT 139] stand correct in declaring that, the absence of „Permit or „Fitness Certificate to the transport vehicle is only a „technical breach and not a „fundamental breach , in so far as it stands contrary to the law declared by the Apex Court in National Insurance Company v. Challa Bharathamma, [2004 (3) KLT 454] [name of the case has been subsequently corrected as per the Official Corrigendum No. F.3/Ed.B.J./96/2004 dated 01.12.2004 as National Insurance Company v. Challa Upendra Rao [(2004) 8 SCC 517)]. For having not made even a reference to the decision of the Apex Court, is not the above verdict liable to be declared as „per incurium ? Has the Full Bench considered all the relevant provisions under the Motor Vehicles Act, 1998, [referred to as the „Act for short], as to the necessity for having a „Fitness Certificate to the vehicle (in view of public safety), the necessity to have valid „Permit, necessity to have „Certificate of Registration to ply the vehicle and „deemed absence of Registration , if the vehicle is not having a valid Permit/Fitness Certificate as envisaged under Section 56 of the M.V. Act?"

------These were the questions raised and referred by a Division Bench of this Court as per the reference order dated 23.12.2015, pointing out the necessity to have the matter considered by a Bench of appropriate strength. ....

14. Fitness of the vehicle to be plied on the road as a „transport vehicle is very important, especially in relation to the lives and limbs of the persons travelling in the vehicle, the pedestrians, other vehicles and properties of persons who are also using the road. It is with this intent, that a specific provision has been incorporated under the Statute as Section 84, prescribing the general, conditions attached to all permits. Clause (a) of Section 84 reads as follows:

> 84. General conditions attaching to all permits-The following shall be conditions of every permit--
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> (a) that the vehicle to which the permit relates carries valid certificate of fitness issued under section 56 and is at all times so maintaind as to comply with the requirements of this Act and the rules made thereunder;

15. It is pertinent to note, that power is conferred upon the Transport Authority who has granted the „Permit to cancel the Permit or suspend the same on the grounds specified under Section 86; among which Clause (a) is in respect of the breach involving any conditions specified in Section 84 or any condition contained in the Permit. Section 86(1)(a) and (c), to the extent, it is relevant here, is extracted below:

> 86. Cancellation and suspension of permits--
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> (1) The Transport Authority which granted a permit may cancel the permit or may suspend it for such period as it thinks fit--
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> (a) on the breach of any condition specified in section 84 or of any condition contained in the permit, or
>
> (b) xxxxx
>
> (c) if the holder of the permit ceases to own the vehicle covered by the permit, or

16. As mentioned above, fitness of a vehicle, to be used as a transport vehicle, is of paramount importance. The necessity to have „Fitness Certificate is prescribed under Section 56 of the Act. Sub-section (1) of Section 56 clearly stipulates that, a transport vehicle [subject to the provisions of Section 59 (power to fix the age limit of motor vehicle) and Section 60 (registration of the vehicles belonging to the Central Government)] shall not be deemed to be validly registered for the purpose of Section 39, unless it carries a „Certificate of Fitness as prescribed. By virtue of Section 84(a), as mentioned already, it is a mandatory requirement of every Permit, that the vehicle to which the Permit relates, shall carry valid „Certificate of Fitness issued under Section 56 at all time, absence of which will automatically lead to a situation that the vehicle will not be deemed as having a Permit [if it is not having a „Fitness Certificate on a given date]. Using a motor vehicle in an unsafe condition in any public place itself is an offence under Section 190 of the Act. Separate penalty is prescribed under Section 192 for driving or using the motor vehicle in contravention of Section 39 of the Act [i.e. without registration]; which at the first instance by fine upto Rs. 5000/- [not less than Rs. 2000/-] and for the second or subsequent offences, it may be with imprisonment, which may extend to one year or fine upto Rs. 10,000/- [not less than Rs. 5000/-] or with both; of course, conferring power upon the Court to impose a lesser punishment, for reasons to be recorded. Similarly, separate punishment is provided for using vehicles without „Permit as provided under Section 192A [first offence with fine upto Rs. 5000/- which shall not be less than Rs. 2000/- and for any subsequent offence with imprisonment upto one year [which shall not be less than 3 months or

with fine upto Rs. 10,000/- which shall not be less than Rs. 5000/-] or with both; here again conferring power on the Court to impose lesser punishment, for reasons to be recorded. Reference is made to the above provisions only to illustrate the utmost requirement to have a valid „Registration, Permit and Fitness Certificate ....

18. The stipulations under the above provisions clearly substantiate the importance and necessity to have a valid Fitness Certificate to the transport vehicle at all times. The above prescription converges on the point that Certificate of Registration, existence of valid Permit and availability of Fitness Certificate, all throughout, are closely Interlinked In the case of a transport vehicle and one requirement cannot be segregated from the other. The transport vehicle should be completely fit and road worthy, to be plied on the road, which otherwise may cause threat to the lives and limbs of passengers and the general public, apart from damage to property. Only If the transport vehicle is having valid Fitness Certificate, would the necessary Permit be issued In terms of Section 66 of the Act and by virtue of the mandate under Section 56 of the Act, no transport vehicle without Fitness Certificate will be deemed as a validly registered vehicle for the purpose of Section 39 of the Act, which stipulates that nobody shall drive or cause the motor vehicle to be driven without valid registration in public place or such other place, as the case may be. These requirements are quite „fundamental in nature; unlike a case where a transport vehicle carrying more passengers than the permitted capacity or a goods carriage carrying excess quantity of goods than the permitted extent or a case where a transport vehicle was plying through a deviated route than the one shown in the route permit which instances could rather be branded as „technical violations . In other words, when a transport vehicle is not having a Fitness Certificate, it will be deemed as having no Certificate of Registration and when such vehicle is not having Permit or Fitness Certificate, nobody can drive such vehicle and no owner can permit the use of any such vehicle compromising with the lives. limbs, properties of the passengers/general public. Obviously, since the safety of passengers and general public was of serious concern and consideration for the law makers, appropriate and adequate measures were taken by incorporating relevant provisions in the Statute, also pointing out the circumstances which would constitute offence; providing adequate penalty. This being the position, such lapse, if any, can only be regarded as a fundamental breach and not a technical breach and any interpretation to the contrary, will only negate the intention of the law makers.

....

22. The question whether absence of valid Permit to a transport vehicle at the time of accident is a „fundamental breach or a „technical breach had come up for consideration again before the Apex Court recently in Amrit paul Singh v. TATA AIG General Insurance Co. Ltd., [2018 (3) KHC 197]. The factual matrix in the said case is that, the rider of the motor cycle was knocked down to death by the offending truck on 19.02.2013, which led to the claim petition preferred by the legal heirs. The claim was resisted by the insurer, mainly contending that there was violation of policy conditions in so far as the offending truck was not having a valid Permit and the driver was not having a valid driving licence. Based on the materials on record and placing reliance on the verdict passed by the Apex Court in Challa Upendra Rao's case [cited supra], the Tribunal, after fixing the quantum of compensation, directed the insurer to satisf the same, with liberty to have it recovered from the insured. The said finding and reasoning came to be affirmed by the High Court, in turn leading to

the proceedings before the Apex Court. After exhaustive discussion on the relevant provisions of law including Section 2(28), 2(31), 2(47), 66, 149 and 166 of the M.V. Act 1988 and the various judgments rendered by the Apex Court at different points of time, including in National Insurance Co. Ltd. v. Swaran Singh [(2004) 3 SCC 297] and Challa Upendra Rao's case [cited supra], the Apex Court held that the offending truck was not having a valid Permit on the date of accident; which was not a technical breach to attract the dictum in Swaran Singhs' case [cited supra] [where also right of recovery was held as conferred on the insurer, once the breach was established by the insurer]. It was also observed that, it was not a case where any of the exceptions under sub-section (3) of Section 66 was attracted and further that, existence of a Permit of any nature was matter of documentary evidence. The Bench held that the exceptions carved out under Section 66(3) of the Act are to be pleaded and proved by the insured/owner and this burden cannot be shifted to the shoulders of the insurer. It has accordingly been declared that, the use of a transport vehicle in a public place without Permit is a fundamental/statutory infraction and the principles laid down in Swaran Singh's case [cited supra] and Lakshmi Chand v. Reliance General Insurance [(2016) 3 SCC 100] cannot be applicable in this regard. The Apex Court held, in such circumstances, that the verdict passed by the High Court affirming the stand of the Tribunal directing the insurer to satisfy the liability and to have it recovered from the owner/insured was in consonance with the principles stated in Swaran Singh's case [cited supra] and other cases pertaining to „pay and recover principle . From the above, it is quite evident that the law stands settled by the Apex Court as per the decision Challa Upendra Rao' case [cited supra] and the latest ruling in Amrit paul's case [cited supra]. This being the position, the dictum laid down by the Full Bench of this Court in Augustine V.M. v. Ayyappankutty @ Mani [cited supra] holding that the absence of valid Permit or Fitness Certificate is not a fundamental breach, but a technical breach and that no right of recovery can be given to the insurer is not at all correct. It accordingly stands overruled. Consequently, the dictum in Tharas case [cited supra] is restored and the contrary view expressed in Sethunaths case [cited supra] stands declared as incorrect."

5. The obvious rationale for a valid fitness certificate is the proof that the vehicle is working properly apropos all vital aspects i.e., its brakes, indicator lights, wipers, seat-belts, etc. are working optimally, so that the vehicle can be manoeuvred on a public street without causing damage to anybody. If there is default in any of these requisite conditions, then the vehicle itself would be a danger to public safety and would impose a traffic hazard. This has been discussed in para 18 of Ramankutty supra.

6. Reliance of the appellant upon the decision of the High Court of Allahabad in Smt. Uma Tripathi And Ors. vs lshampal And Another, decided on 19.07.2019, is entirely misplaced. It had held that before a permit is cancelled by the State Transport Authority, the vehicle owner should be heard. The Court is unable to see how the said case is of any assistance to the appellant.

7. The preceding discussions shows that the appellant has no arguable case. Accordingly, the appeals, along with pending applications, are dismissed.

8. The statutory amount, along with interest accrued thereon, be deposited by the appellant in the 'AASRA Fund' created by this Court for the amelioration of the condition of the victims of burns

injuries.

9. The order be uploaded on the website forthwith.

NAJMI WAZIRI, J NOVEMBER 09, 2020/AB