

Nagashetty vs United India Insurance Co. Ltd. & Ors on 17 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3356, 2001 (8) SCC 56, 2001 AIR SCW 3099, 2001 AIR - KANT. H. C. R. 2891, 2002 (1) ALL CJ 460, 2002 ALL CJ 1 460, (2001) 4 ALLMR 877 (SC), 2001 (4) ALL MR 877, 2001 (5) SCALE 322, 2001 SCC(CRI) 1408, (2001) 6 JT 482 (SC), 2001 (6) JT 482, 2001 (8) SRJ 203, (2001) ILR (KANT) (3) 4169, (2001) 106 COMCAS 732, (2001) 2 UC 393, (2001) 3 TAC 511, (2002) SC CR R 313, (2002) 1 MAD LW 73, (2001) 4 PAT LJR 176, (2001) 4 SCJ 380, (2001) 6 ANDHLD 60, (2001) 6 SUPREME 171, (2001) 4 RECCIVR 597, (2001) 5 SCALE 322, (2001) WLC(SC)CVL 718, (2001) 2 ACC 303, (2001) 3 ACJ 1441, (2001) 44 ALL LR 816, (2001) 4 ALL WC 2512, (2001) 2 ANDHWR 492, (2002) 1 BLJ 399, (2001) 4 CIVLJ 536, (2002) 1 CURLJ(CCR) 257

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Bench: K.T. Thomas, S.N. Variava

CASE NO.:

Appeal (civil) 5380-5381 of 2001

PETITIONER:

NAGASHETTY

Vs.

RESPONDENT:

UNITED INDIA INSURANCE CO. LTD. & ORS.

DATE OF JUDGMENT: 17/08/2001

BENCH:

K.T. Thomas & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

These Appeals are against a Judgment dated 17th September, 1999 passed by the High Court of Karnataka and a Judgment dated 22nd August, 2000 by which a Review Petition was dismissed.

Briefly stated the facts are as follows:

On 4th December, 1995 at about 2.30 p.m. one Chand Pasha and Moinuddin were returning to the village Halbarga from village Ashtoor. While they were walking on the road a tractor bearing No.KA-39/M-3 came from the direction of Bidar. On seeing the tractor Chand Pasha raised his hand to stop it as there was a ditch. However the driver could not control the tractor and it dashed against these two persons. As a result of this Chand Pasha died on the spot.

The legal representatives of deceased Chand Pasha lodged a claim Petition No.12 of 1996 before the Additional MACT, Principal Civil Judge (Sr. Division), Bidar. They claimed a sum of Rs.4,50,000/-. By its Award dated 12th August 1998 MACT held that the accident was due to a rash and negligent driving of the driver. It awarded compensation in favour of the claimants in a sum of Rs.2,07,000/- with interest at 12% per annum. The Insurance Company, (the Respondent herein) was directed to pay the amount.

The Insurance Company filed an Appeal before the High Court. Before the High Court it was contended that the driver had a valid licence to drive a tractor only. It was contended that the tractor had a trailer attached to it, which was filled with stones. It was contended that therefore the tractor was used as a goods vehicle. It was contended that the driver of the tractor had no licence to drive a goods vehicle and therefore it must be held that the driver had no valid driving licence. These contentions found favour with the High Court, who, in the impugned Judgment, held that as a trailer was attached to the tractor it became a transport vehicle. It was held that the driver, who had a licence to drive a tractor, could not be said to have a valid driving licence to drive a transport vehicle. The High Court on this reasoning absolved the Insurance Company. The High Court held that the owner was liable to pay the entire amount, awarded by the Tribunal, to the Claimants. As mentioned above, the High Court also dismissed the Review Petition. Hence this Appeal by the owner.

During the pendency of this Appeal, pursuant to Orders of this Court, the Appellant has paid the amounts awarded to the Claimants. The Appellant however seeks to have the question of law decided and to get reimbursement from the Insurance Company.

Mr. S.C. Sharda, appearing for the Respondent Insurance Company drew attention of this Court to the definitions of the terms "goods carriage", "tractor", "trailer" and "transport vehicle" on Sections 2(14), 2(44), 2(46) and 2(47) of the Motor Vehicles Act, 1988, which read as follows :

"2(14) "goods carriage" 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;

2(44) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

2(46) "trailer" means any vehicle, other than a semi- trailer and a side-car, drawn or intended to be drawn by a motor vehicle;

2(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

Relying on these definitions Mr. S.C. Sharda submitted that admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted that therefore it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Company could not be made liable. He submitted that the High Court was right in so holding.

We are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10 a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a

trailer is added to that vehicle.

In this case we find that the Insurance Company, when issuing the Insurance Policy, had also so understood. The Insurance Policy has been issued for a tractor. In this Insurance Policy an additional premium of Rs.12/- has been taken for a trailer. Therefore the Insurance Policy covers not just the tractor but also a trailer attached to the tractor. The Insurance Policy provides as follows for the "persons or classes of persons entitled to drive" :-

"Persons or classes of persons entitled to drive -

Any person including insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that the 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, limitations as to use"

The policy is for a tractor. The "effective driving licence" is thus for a tractor. The restriction on a learner driving the tractor when used for transporting goods shows that the policy itself contemplates that the tractor could be used for carriage of goods. The tractor by itself could not carry goods. The goods would be carried in a trailer attached to it. That is why the extra premium for trailer. The restriction placed on a person holding a learner's licence i.e. not to drive when goods are being carried is not there for a permanent licence holder. Thus a permanent licence holder having a effective/valid licence to drive a tractor can drive even when the tractor is used for carrying goods. When the policy itself so permits, the High Court was wrong in coming to the conclusion that a person having a valid driving licence to drive a tractor would become disqualified to drive the tractor if a trailer was attached to it.

In our view, for the above reasons, the Judgment of the High Court cannot be sustained and is hereby set aside. The Judgment of MACT, holding the Insurance Company liable is restored. As the Appellants have already made payment to the legal representatives of the deceased (Chand Pasha) they will now be entitled to be reimbursed by the Respondent Company.

The Appeals stand disposed of accordingly. There shall be no Order as to costs.

J. (K. T. THOMAS) J. (S. N. VARIAVA) August 17, 2001.