Kerala High Court
Sulochana vs Chandran on 20 March, 2003
Equivalent citations: III (2003) ACC 116, 2004 ACJ 2118, 2003 (2) KLT 551
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Bench: K A Gafoor, K Thankappan
JUDGMENT K.A. Abdul Gafoor, J.

1. Claimant and the insurer have come up with these appeals challenging the award in O.P. (MV) No. 1732/92 on the file of the Motor Accidents Claims Tribunal, Thalassery. The appellants in M.F.A. No. 288/97 seek enhancement of compensation. The appellant in M.F. A. No. 1518/96, insurer, attempts to avoid the liability contending that the driver did not have an effective driving licence on the date of the accident namely, 26.5.1992. Therefore, this is violation of policy condition as contained in Section 149(2)(a)(iii) of the Motor Vehicles Act, 1988. First of all we will consider the appeal by the Claimants.

2. The accident resulted in death of the husband of the 1st appellant in M.F.A. No. 288/97. He was a carpenter. According to PW. 1, wife of the deceased, he had a daily wage of Rs. 70/- and was getting altogether a monthly remuneration of Rs. 1,800/-. He had worked on all days except on Sundays. There was no centra-evidence refuting this, Inspite of that the Tribunal had adopted only Rs. 750/- as the dependency portion to compute compensation. This is too low, counsel contends.

3. The evidence of Pw. 1 indicates that the deceased earned Rs. 1,800/- per month. Being a carpenter, it is probable that one should get at least Rs. 60/- per day of work during the relevant period. In such circumstances, when 25 days work per month is assumed, the monthly earning of the worker will be Rs. 1,500 towards wages. Being a manual labour, necessarily, 1/3rd of the same should have been set apart for his personal expenditure. Consequently, the dependency portion shall be Rs. 1,000/-. On the basis of the evidence on record, instead of Rs. 750/-, the Tribunal ought to have taken that much as the dependency portion.

4. The Tribunal had applied a multiplier of 15 only. It is contended that going by Second Schedule it shall be 16. But, it had been introduced only with effect from 14.11.1994, whereas the accident had occurred on 26.5.1992. In such circumstances, adoption of 15 as the multiplier cannot be said to be faulty to interfere.

5. Therefore, we are of the view that the compensation worked out in the impugned award shall be recomputed as, Rs. 1,000/- x 12 x 15 = Rs. 1,80,000/-, instead of Rs. 1,35,000/- awarded on account of loss of dependency. Thus, the claimants will be entitled for an additional amount of Rs. 45,000/-. This shall carry interest at 6% p.a. from the date of the claim petition to the date of payment. In every other respects the award is confirmed as regards compensation awarded and M.F.A. No. 288/97 is allowed in part.

6. There was no dispute with regard to the accident. There is no quarrel on the negligence found by the Tribunal on the part of the driver. Consequently, the owner will be vicariously liable. Policy coverage is also admitted. Can the insurer avoid the liability to indemnify the owner on the ground

that the driver did not have a "badge" on the date of the accident is the issue next to be considered to dispose of M.F.A. No. 1518/96.

7. The Tribunal found that the driver did have a valid driving licence to drive a light motor vehicle. The vehicle involved is a jeep. It is a light motor vehicle. But at the same time it was a taxi jeep. Therefore, it was a transport vehicle. The Tribunal, on the strength of the driving licence, found that though there was no badge, the driver had an effective driving licence to drive a light motor vehicle. It also found that there was no violation of condition of policy which provides that the driver should have an "effective driving licence". So, the insurer was liable. This finding of the Tribunal is assailed by the insurer/appellant in M.F.A. No. 1518/96 contending that to drive a transport vehicle a badge and consequent authorisation are essential requirements. A Division Bench decision of this Court reported in Govindankutty Nair v. Gopalakrishnan (2000 (1) KLT 224) is relied on by the counsel for the appellant.

8. It is further contended that as per Section 3 of the Kerala Motor Vehicles Act, 1988, driving licence is essential to drive a motor vehicle which includes several category of vehicles. Badge is also an essential requirement. It is contended that a person possessing a valid driving licence to drive a light motor vehicle shall also have a specific authorisation, before he starts to drive a transport vehicle.

9. Section 3 provides that "no person shall so drive a transport vehicle other than a motor cab or motorcycle 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". So apart from a driving licence, it shall contain a specific entitlement to drive a transport vehicle. Because there is a prohibition that without such authorisation no person shall so drive a transport vehicle inspite of possession of a driving licence. The rules contained in Chap.II of the Kerala Motor Vehicles Rules, 1961 have to be referred to in this regard. Rule 6 thereof provides that there shall be an authorisation to drive transport vehicles in the form 'LTA'. Not only that before issuing the same the applicant, for such authorisation, shall satisfy the authority concerned that he shall have a driving licence and First Aid Certificate obtained in the prescribed manner and that he had passed Standard IV as his minimum educational qualification. The second proviso to Rule 6 is very relevant. It provides that "if the applicant is the holder of adriving licence authorising him to drive only a light motor vehicle, no such authorisation shall be granted unless he satisfies the licensing authority that he has had one year's experience in driving light motor vehicles". Nowhere a contention had been raised that on the date of the accident, to be eligible for an authorisation in terms of Rule 6, the driver did have that much experience to entitle him for an authorisation for driving. Mere possession of licence for one year is not sufficient to gain experience: There must be actual experience by driving a vehicle. Such experience can be dispensed with only in the case of authorisation to drive an autorickshaw or a motor cycle as per the third proviso to the said rule. But, the vehicle in question is a taxi jeep. There arises no question of dispensation.

10. Moreover in order to grant such authorisation there shall be oral test of the applicant concerned to ascertain whether he is conversant with the duties, responsibilities etc. of the driving of transport vehicles. Thus, the duties and responsibilities required to drive any vehicle and a transport vehicle

are different. That is why such an oral test is conducted. There is no case before the Tribunal or before us that the driver had underwent such an oral test to satisfy that he did have the requirement to drive a transport vehicle. In appropriate case as per the proviso to the said Rules a test shall also be held. There is a requirement of an enquiry in terms of Rule 10 of the Kerala Motor Vehicles Rules, 1989 as well. After satisfying all these, if the authorities concerned are convinced, he can be issued an authorisation to drive transport vehicle. Such authorisation can be issued in terms of Rule 11. It reads as follows:-

"11. Issue of authorisation to drive transport vehicles:- The Licensing Authority granting an authorisation shall;

a) issue a driver's badge to the applicant on payment of the prescribed fee, endorse

b) send intimation in Form "LTI" to the Authority by which the driving licence was is

11. We have perused the driving licence produced in this case. That does not contain the endorsement as required under Rule 11 (a) that the driver had undergone the test and satisfied the requirement for being issued an authorisation which shall be in the form of a badge to drive a transport vehicle. The mandatory nature of these Rules makes it clear that over and above requirement of possession of a driving licence, in order to be an effective one to drive a transport vehicle, the incumbent should also have the authorisation and consequent badge as set out in the said Rules, so that he can claim that he did have an "effective driving licence" to drive a transport vehicle. The policy of insurance, Ext.B1, indicates a condition therein that "the person driving holds as effective driving licence at the time of the accident". Therefore, an effective driving licence referred to in the policy is a condition to indemnify the insurer. Thus, going by the provisions contained in Rules 6 to 11 and also Section 3 of the Act a person without an authorisation and consequent drivers badge cannot be said to have "an effective driving licence" to drive a transport vehicle. The mandatory nature of Section 5 is that "no owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle". The prohibitory wordings of Section 3 is that "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 unless his driving licence specifically entitles him so to do". The licence produced does not show that the incumbent was entitled to drive a transport vehicle, as rightly pointed out by the counsel for the appellant/insurer.

12. It is contended by the counsel for the 7th respondent that once a driving licence is issued and so long as it is in force and until its expiry, it shall have to be treated as "an effective driving licence". The licence in question is one enabling him to drive a light motor vehicle. The requirement of the badge is not mandatory and it is only for the purpose of identifying the driver. When the licensing authority had issued a driving licence in the relevant form the competency of the driver to drive a vehicle has already been certified. When it is so certified a requirement of a badge is only an empty formality. Therefore, such a requirement cannot be harped upon by the insurer to avoid a liability

that it had undertaken in terms of a valid policy issued. So, even if the driver did not possess the badge as he had a valid driving licence, the insurer is liable to honour the contract. The contract only stipulates possession of an "effective driving licence". It does not indicate a badge. So there was no violation of policy condition to enable the insurer to recover the amount to be payable to the claimants from the owner.

13. In support of this contention he relied on several decisions. The first among them is the decision of the Bombay High Court in Canara Motor and General Insurance Co. Ltd. v. Abdul Hamid Khan Saheb and Anr. (1984 ACJ 467). In that case it is held that 'expression 'held a licence to drive the motor vehicle' appearing in the policy refers more to the type of vehicle rather than the mode of its user". It also held that "so far as the driving abilities are concerned, it matters little whether a driver has adequate knowledge of Hindi or Marathi or about the topography of the city where he is driving the vehicle. It no doubt assumes importance when a taxi driver is plying for hire and makes for better facilities for the passenger". Relying on this decision it is contended that there was no violation of policy condition. There the Court after verifying the policy found that the expression used in the policy concerned was "held a licence to drive the motor vehicle". But in the policy issued by the appellant insurer the expression used is that "the person driving holds an effecting driving licence at the time of the accident". These expressions have different meaning. The conditions of policy has to be understood based on the meaning of the words employed in the contract of insurance. In the policy in question the insurer had made it a condition that the driver holds an effective driving licence. It should be effective as the statute enjoins as per Section 3 of the Motor Vehicles Act and Rr. 6 to 11 of the Kerala Motor Vehicles Rules. Necessarily the said decision based on a particular wording in the policy cannot have any application in the case on hand where the policy insists for an effective driving licence. The next decision relied on is one reported in Dhanaraj and Anr. v. Rubia and Anr. (1992 ACJ 84). The words in the policy examined were that the driver "holds a driving licence at the time of accident". Necessarily, as mentioned above, because of the difference of the words used in the condition of the policy, that decision also has no application. The word 'effective' is absent there. The counsel also relies on the decision reported in Mumtajbi and Ors. v. Noor Mohammad and Ors. (1999 ACJ 1547). That was a case where the driver concerned was issued with a licence from Ujjain to drive light motor vehicle with an endorsement for heavy motor vehicle from Jhansi. It was in the above circumstances, the High Court of Madhya Pradesh held that "in consequence thereof this can also be not accepted that he had no licence for driving heavy motor vehicle". Moreover, the vehicle in question was an eicher truck which had been treated as a light motor vehicle. Therefore, the facts and the question decided there also were not one like that arising for our consideration in this case with reference to the requirement of possession of badge, on the basis of the rules, which mandates, therefor. The decision in B.V. Nagaraju v. Oriental Insurance Company Ltd., Divisional Office, Hassan (AIR 1996 SC 2054) relied on is with respect to the violation of a condition of policy regarding overloading of the vehicle. Necessarily it cannot have any bearing except to the extent that a violation of condition of policy cannot enable the insurer to recover the amount from the owner. B ut the overloading is not a condition in the policy, but is a condition in the permit.

14. It is further contended by the counsel for the 7th respondent-owner that the decision of the Division Bench of this Court in Govindankutty's case cannot be taken as a precedent as it was

rendered on a concession by the parties that the badge is an essential requirement for a driver to drive a transport vehicle. We have perused the said judgment. We do not find any concession in the said judgment. The Division Bench noted that "it is not disputed before us that the requirement of proper licence for the driver of the vehicle is a condition of the policy Ext.B3". That was the submission of the counsel on either side after verifying Ext.B3. It does not act as a concession. That also is with reference to a policy condition. But the finding contained in paragraph 3 is that "in order to drive such a transport vehicle the 2nd respondent must be having an authorisation evidenced by the badge". It is not the result of the alleged concession nor the undisputed condition contained in the policy. The Division Bench has also found, after appreciating the contention, that to drive a transport vehicle an authorisation is an essential one. Necessarily we have to follow that decision. When we follow that decision the necessary conclusion is that in order to get indemnification based on the policy, the driver employed should have "an effective driving licence" which includes an authorisation to drive a particular type of vehicle, in this case the transport vehicle. The possession of badge has never been proved in this case. The driver was ex parte. Owner also did not have a contention that he had verified his badge when he had employed the driver as his employee. In such circumstances, following the decision reported in Govindankutty Nair v. Gopalakrishnan (2000 (1) KLT 224) we are of the view that possession of badge is an essential requirement to drive a motor transport vehicle.

15. As already mentioned above, Ext.B 1 policy clearly stipulates a condition that driver holds an effective driving licence. In such circumstances, a badge is an essential requirement as already held by us there arises no question of indemnification by the insurer as there was violation of policy condition. But, at the same time, in the light of the decision reported in New India Assurance Co., Shimla v. Kamala and Ors. ((2001) 4 SCC 342) the insurer has to first meet the liability in terms of the award paying the compensation to the injured or the dependents, as the case may be, and shall have to recover the amount so paid from the owner concerned. Therefore, the compensation awarded shall be paid by the appellant insurer in M.F. A. No. 1518/96 to the appellants in M.F.A. No. 288/96 and the entire amount so paid shall be recovered from the owner, the 7th respondent in M.F.A. No. 1518/96. M.F.A. No. 1518/96 is allowed to the above extent.