A NATIONAL INSURANCE COMPANY LTD.

v.

ANNAPPA IRAPPA NESARIA AND ORS.

(Civil Appeal No. 574 of 2008)

JANUARY 22, 2008

B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Central Motor Vehicles Rules, 1989 — r.14 — Form 4 — Driving licence — Validity of — Matador Van having 'goods C *carriage' permit met with accident in 1999 resulting in death of a person — Contention raised by insurance company that driver of the offending vehicle did not possess effective driving licence since he only had a licence to drive a light motor vehicle — Tenability of – Held: Not tenable – Prior to* D *amendment carried out in Form 4 w.e.f. 23-8-2001, a "light motor vehicle" covered both 'light passenger carriage vehicle' and 'light goods carriage vehicle', hence, person holding licence to drive a light motor vehicle was authorised to drive a light goods vehicle as well – Since the said amendment had* E *prospective operation, licence held by driver of the vehicle in question cannot be said to be invalid in law – Motor Vehicles Act, 1988 – ss.2(21), 2(16) and 2(23).*

A Matador Van having a 'Goods Carriage' permit met with an accident resulting in death of the wife of F **Respondent No.1. The incident occurred in 1999.**

Appellant-insurance company raised contention that the driver of the offending vehicle did not possess an effective licence to drive the same since he only had a valid licence to drive a light motor vehicle. It is the G **contention of Appellant that for the purpose of grant of licence for driving a vehicle, an application has to be filed in Form No.4, whereafter only a licence is granted in Form No.6; that the said Forms have been prescribed in terms of Rules 14 and 16 of the Central Motor Vehicles Rules,**

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1989 and that in view thereof, a 'light motor vehicle' does not answer the description of a 'transport vehicle'.

Dismissing the appeal, the Court

HELD: 1.1. The word 'Form' has been defined in Rule 2(e) of the Central Motor Vehicles Rules, 1989 to mean a Form appended to the rules. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles. Clause (e) in Form 4 provides for 'Transport vehicle' which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. [Paras 13, 14] [1066-H; 1067-E]

1.2. Before the said amendment in 2001, the entries 'medium goods vehicle' and 'heavy goods vehicle' existed which have been substituted by 'transport vehicle'. 'Light Motor Vehicles' also found place therein. 'Light Motor Vehicle' is defined in Section 2(21) of the Motor Vehicles Act, 1988 and, therefore, in view of the provision, as then existed, it included a light transport vehicle. The "light motor vehicle" thus continued, at the relevant point of time, to cover both, 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law. [Paras 14, 15, 16, 17] [1067-E-G; 1068-D-E]

Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd. **(1999) (6) SCC 620- referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 574 of 2008.

From the final Judgment and Order dated 14.7.2003 of the High Court of Karnataka at Bangalore in M.F.A. No. 7788/ 2002 (MV)

A Atul Nanda, Rameeza Hakeem, Rajesh Kumar, P.N. Puri, Parmanand Gaur, Neha Gaur, Vishnu Mehra and B.K. Satija for the Appellant.

J.P. Dhanda, Raj Rani Dhanda, Dr. Sushil Balwada, S.N. Bhat, Neeraj Kumar Jain, Bharat Singh, Sanjay Singh, Sandeep B Chaturvedi, Ugra Shankar Prasad, Rajesh Tyagi, Dr. Aparna Bhardwaj, Atishi Dipankar and Ashwani Kumar for the Respondents.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** 1. Leave granted.

2. Appellant – National Insurance Company is before us, aggrieved by and dissatisfied with the judgment and order dated 14th July, 2003, passed by a learned Single Judge of the D Karnaraka High Court in M.F.A. No. 7788/2002 dismissing the appeal preferred against an award dated 17.9.2002 passed by the Motor Accident Claims Tribunal ("Tribunal" for short) in M.V.C No.124/2000.

3. The fact of the matter relevant for the purpose of disposal E of this appeal is as under :

The vehicle involved in the accident was a Matador Van bearing registration No. KA-23/2890. It had a 'Goods Carriage' permit granted in terms of Form No.7 of the Motor Vehicles Act. It was insured with the appellant. The said vehicle met with an F accident on 9.12.1999 causing death of one Gangawwa wife of the respondent No.1 herein. A contention was raised on behalf of the appellant that the driver of the said vehicle did not possess an effective licence to drive a transport vehicle.

G 4. An issue (being Issue No.3), inter alia, was framed in that behalf before the Tribunal, which reads as under:

"Whether the R-3 proves that driver of offending vehicle was not an authorised person to drive the same?"

H 5. The learned Tribunal in support of its award on Issue

No.3, held:

"DW-1 in this cross examination admitted that offending vehicle is authorised to transport 3500 kgs. goods. Further, in this cross-examination stated that LMV means transport vehicle which unladen weight does not exceed 7500 kgs. Ex.D-2 at Column No.12 clearly shows that the unladen weight of the offending vehicle is 3500 kgs. Thereby it is very much clear that said unladen weight of the offending vehicle is much less than 7500 kgs. as admitted by DW-1 in his cross-examination which is also the effect as defined in the MV Act. So when the unladen weight of the offending vehicle is less than 7500 kgs. the RW-1 driver who is having DL as per Ex.D-3 is certainly authorised to drive the offending vehicle. The decision relied upon by Adv. for petitioners at serial No.2 ruling reported in 2000(5) KLJ 473 (DB) or own Hon'ble High Court had clearly held that where offending vehicle is weighing 4960 kgs. driven by a person having DL to drive the LMV, there is breach of issuance policy, as statute classifies vehicle weighing below 7500 kgs. as LMVs and Insurer is liable to satisfy award in respect of accident that occurred when the vehicle was being driven by driver holding such licence. So in view of the decision of Division Bench of our own Hon'ble High Court and also the decision of Supreme Court referred at Sl. No.1 Adv. for petitioners it is very much clear that RW1 is having valid DL as per Exh.D3 and the offending vehicle unladen weight is 3500 kgs. is certainly was having effective and valid DL and so R3 has failed to prove the issue No.3 and accordingly I answer the same in the negative."

6. The High Court on an appeal preferred by the appellant herein opined :

"Counsel for the appellant-Insurance Company, questioning the liability, contended that the driver did not possess a valid licence to drive LMV. According to the

A respondents, the driver had driving licence to drive LMV, a transport vehicle. According to the appellant, the vehicle in question involved in the accident is a transport vehicle. The said contention cannot be accepted by this Court, in view of the fact that claimants are third parties even on the B ground that there is violation of terms and conditions of policy, the insurance company cannot be permitted to contend that it has no liability. Accordingly, I do not see any merit in this appeal."

7. Mr. Vishnu Mehra, learned counsel appearing on behalf C of the appellant would submit that the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that a 'light motor vehicle' cannot be a 'transport vehicle' within the meaning of the provisions of the Act. It was submitted that for the purpose of grant of licence D for driving a vehicle, an application has to be filed in Form No.4, whereafter only a licence is granted in Form No.6. Learned counsel contended that the said forms have been prescribed in terms of Rules 14 and 16 of the Central Motor Vehicles Rules, 1989, and on a perusal thereof as also the aforementioned E Forms, it would be clear that a 'light motor vehicle' does not answer the description of a 'transport vehicle'.

8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before F the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the "light motor vehicle" as contained in Section 2(21) of the Motor vehicles Act, 1988 ("Act" for short), a light goods carriage would come within the purview thereof.

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A 'light goods carriage' having not been defined in the Act, the definition of the "light motor vehicle" clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

H Strong reliance has been placed in this behalf by the

learned counsel in Ashok Gangadhar Maratha vs. Oriental Insurance Company Ltd., [1999 (6) SCC 620]. A

9. The Motor Vehicles Act, 1988, which was enacted to consolidate and amend the law relating to motor vehicles, is a complete code.

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10. Section 2 of the Act provides for interpretation of the terms contained herein. It employs the words "unless the context otherwise requires". Section 2(16) of the Act defines "heavy goods vehicle" to mean any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms. C

11. Section 2(21) defines "light motor vehicle" and Section 2(23) defines "medium goods vehicle" as under:

> "Light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms." D
>
> "Medium goods vehicle means any goods carriage other than a light motor vehicle or a heavy goods vehicle." E

Section 3 of the Act is in the following terms:

> "3. Necessity for driving licence.- (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to F drive the vehicle; and no person shall so drive a transport vehicle other than a motorcab or motor cycle 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." G

12. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

13. The word "Form" has been defined in Rule 2(e) to mean a Form appended to the rules. H

A "I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

(e) Medium goods vehicle

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(g) Heavy goods vehicle

(j) Motor vehicles of the following description:...."

After amendment the relevant portion of Form 4 reads as under:

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"I Apply for a licence to enable me to drive vehicles of the following description:

(d) Light motor vehicle

D

(e) Transport vehicle

(j) Motor vehicles of the following description:...."

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

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Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium good vehicle" and "heavy goods vehicle" existed which have been substituted by F "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

15. "Light Motor Vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which G the licence is to be granted, the relevant portion whereof read as under:

"Authorisation to drive transport vehicle

Number..... Date.....

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Authorised to drive transport vehicle with effect from..... Badge number .....

Signature.....

.....

Designation of the licensing authority

Name and designation of their authority who conducted the driving test."

16. From what has been noticed hereinbefore, it is evident that 'transport vehicle' has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continued, at the relevant point of time, to cover both, 'light passenger carriage vehicle' and 'light goods carriage vehicle'.

A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.

17. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.

18. For the reasons aforementioned there is no merit in this appeal and it is dismissed with costs which we quantify at Rs.25,000/-(Rupees Twenty Five Thousand only).

B.B.B. Appeal dismissed.