

the post were taken. It is just a coincidence that when the time came for appointment, a change in the policy to the extent mentioned above has been brought about. We are of the view that this change cannot come to the disadvantage of the petitioner. In so far as relaxation in age is concerned, it is admitted position that number of persons who were selected pursuant to policy Annexures P-1 and P-2 were overage but were given the benefit of relaxation in age. Obviously, if the effort of the respondent is to deny to the petitioner the job that he seeks in the present case on the ground that he is overage, action of the respondents cannot but be termed as discriminatory.

(9) In view of what we have said above, we allow this petition and direct the respondent-Board to offer the appointment of the post of Homoeopathic Physician to the petitioner as early as possible and preferably within a month from today.

R.N.R.

Before Jawahar Lal Gupta & N. K. Agrawal, JJ

UNITED INDIA INSURANCE CO. LTD.,—Appellant

versus

KAMAL @ KAMLA DEVI @ KAMLA WATI & OTHERS,—Respondents

F.A.O. 2462 of 1998

20th March, 1999

Motor Vehicles Act, 1988—Ss. 2(16), 2(17) & 10—Driving licence—‘Heavy goods vehicle’ and ‘heavy passenger motor vehicle’—Defined, distinction—Parameters for both categories laid down unladen weight should exceed 12,000 Kgs.—There is no real or substantial difference between the two categories of vehicles so as to result in disqualifying a driver holding a licence to drive a ‘heavy motor vehicle’ from driving a bus—Insurer’s appeal liable to be dismissed.

Held that in Section 2(16) and (17) ‘heavy goods vehicle’ and heavy passenger motor vehicle have been separately defined. However, a perusal of these definitions shows that the parameters have been clearly laid down. The basic requirement is that the unladen weight should exceed 12,000 Kilograms. Once this requirement is fulfilled, it cannot be said that there is any real and substantial qualitative difference between the two categories of vehicles so as to result in disqualifying

the driver, having a licence for a heavy motor vehicle, from driving a bus.

(Para 4)

Further held, that the driver was entitled to drive a heavy motor vehicle. In the very nature of things it has reference to a vehicle other than a 'light motor vehicle'. Still further the provisions of section 10(2) of the Act clearly contemplate the issue of driving licence for a "motor vehicle of a specified description." While a separate provision in respect of 'light motor vehicle' has been made, no distinction between a 'heavy motor vehicle' and a 'heavy passenger motor vehicle' has been made in sub-section (2) of section 10.

(Para 4)

Further held, that we find no ground to hold that the petitioner did not have a valid driving licence or to differ with the view taken by the Tribunal.

(Para 4)

Mr. V. Ramswaroop, Advocate for the Appellant

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) On 24th February, 1996 Brij Nath Ram was going on a scooter. He was hit by a bus. He died on the spot. His legal representatives, *viz.* widow and children, filed a claim petition. The Motor Accident claims Tribunal has found that the accident had occurred on account of the rash and negligent driving by the bus driver. The deceased was 47 years of age. He was contributing Rs. 44,656 per annum to the family. Applying a multiplier of '11', the Tribunal assessed the compensation at Rs. 4,91,216. Rs 7,000 were awarded on account of loss of consortium and funeral expenses etc. Thus, a total compensation of Rs. 4,98,300 was awarded along with interest at the rate of 12 per cent per annum. It was also held that the driver was having a valid driving licence.

(2) Aggrieved by the award, the insurer has filed the present appeal.

(3) Mr. V. Ramswaroop, learned counsel for the appellant, has contended that the Insurance Company could not have been burdened with the responsibility to pay the compensation. Learned counsel urges that the driver had licence for 'Heavy Motor Vehicle'. Thus, he was

not entitled to drive a 'Heavy Passenger Motor Vehicle'. This contention is based on the provisions of sections 2 and 10 of the Motor Vehicles Act, 1988. Learned counsel submits that a 'heavy motor vehicle' is unknown to the Act. It is only when a person has a licence for driving a 'heavy passenger motor vehicle' that he can drive a bus. Is it so ?

(4) It is undoubtedly correct that the Act defines different types of vehicles. It is also true that in section 2(16) and (17) 'heavy goods vehicle' and 'heavy passenger motor vehicle' have been separately defined. However, a perusal of these definitions shows that the parameters have been clearly laid down. The basic requirement is that the unladen weight should exceed 12,000 kilograms. Once this requirement is fulfilled, it cannot be said that there is any real and substantial qualitative difference between the two categories of vehicles so as to result in disqualifying the driver having a licence for a heavy motor vehicle, from driving a bus. It is not the case of the appellant that this condition was not satisfied. Still further, it is true that the Act uses the expression 'heavy passenger motor vehicle'. It is also true that the Act does not talk of 'heavy motor vehicles'. While the 'light motor vehicle' have been specifically defined in clause (21), no separate definition of a 'heavy motor vehicle' has been given. Despite this, it is not disputed that a competent Licensing Authority had issued the driving licence, which has been produced on record as Ex. R 1. According to this licence the driver was entitled to drive a heavy motor vehicle. In the very nature of things it has reference to a vehicle other than a 'light motor vehicle'. Still further the provisions of section 10(2) of the Act clearly contemplate the issue of driving licence for a "motor vehicle of a specified description." While a separate provision in respect of 'light motor vehicle' has been made, no distinction between a 'heavy motor vehicle' and a 'heavy passenger motor vehicle' has been made in subsection (2) of section 10. Moreover, learned counsel has not referred to any evidence which may indicate that a person, who has a licence to drive a heavy motor vehicle is not competent to drive a bus. In this situation we find no ground to hold that the petitioner did not have a valid driving licence or to differ with the view taken by the Tribunal.

(5) Mr. Ramswaroop has referred to the Division Bench judgment in *National Insurance Co. Ltd. v. Shinder Kaur and others*, (1). This was a case where a person was licensed to drive a motor-car. He was

(1) A.I.R. 1998 Pb. and Haryana 184.

driving a truck. It was held that he was not licensed to drive a truck. Such is not the situation in the present case.

(6) No other point has been raised.

(7) In view of the above, we find no merit in this appeal, It is, consequently, dismissed in limine. No costs.

R.N.R.

Before V. S. Aggarwal, J.

M/S ASHISH ENTERPRISES & ANOTHER,—*Petitioners*

versus

M/S KOCHHAR INDUSTRIES & ANOTHER,—*Respondents*

C.R. No. 890 of 1998

23rd April, 1999

Haryana Urban (Control of Rent and Eviction) Act, 1973—Subletting—Third person in possession—Such person asserting independent title—Original tenant denying continuation of tenancy—Inferences of subletting.

Held that the property was let to respondent No. 2 M/s Piyush Art Printers. Admittedly, M/s Piyush Art Printers do not claim any tenancy rights in the suit property. It is the petitioners who are claiming tenancy rights therein. It has been found that the petitioners are not the tenants of the landlord. No such tenancy was created in their favour. Once a third person asserts independent title and the tenant does not claim any right, inferences of subletting or parting with possession are obvious. This is based on well recognised principle that the landlord would be a stranger to any agreement between tenant and the third person. The third person is setting up independent title to the exclusion of the said tenant M/s Piyush Art Printers. Once it is so, it was rightly held that the ground of eviction that the suit property has been sublet is clearly established. There is no ground to take a different view from the learned trial Court and that of the learned Appellate Authority.

(Para 21)

I.K. Mehta, Senior Advocate, with M.S. Kohli, Advocate for the petitioners

L.K. Sinhal, Advocate for the Respondents