

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

Dated this the 31<sup>st</sup> day of October 2017

Before

**THE HON'BLE MR. JUSTICE B.A. PATIL**

Miscellaneous First Appeal No.24050/2013 (MV)  
C/w M.F.A. Nos.24051/2013, 102980/2014  
and 102981/2014 (MV)

In MFA No.24050/2013

Between:

Krishna  
S/o Shetteppa Hosakoti @ Waddar,  
Age: 31 years,  
Occ: Mason (now nil),  
R/o: Bhanatanur,  
Tq: Mudhol & Dist: Bagalkot. ...Appellant

(By Sri Siddappa Sajjan, Advocate)

A n d :

1. Holabasayya,  
S/o Dundayya Sambalad,  
Age: 71 years, Occ: owner of the  
Tractor, Lokapur,  
Tq: Mudhol.
2. Bhimanagouda,  
S/o Pandappagouda Patil,  
Age: 71 years, Occ: owner of the  
Trailers, Laxanatti,  
Tq: Mudhol.

3. The Divisional Manager,  
United India Insurance Co. Ltd.,  
In front of Siddeswar Temple,  
Bijapur.

...Respondents

(By Sri Laxman B.Mannoddar, Advocate for R3)  
(R1 and R2 – served)

This MFA is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dated 16.08.2013 passed in M.V.C. No.113/2012 on the file of the Member, MACT-IX, Mudhol, partly allowing the claim petition for compensation and seeking enhancement of compensation.

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In MFA No.24051/2013

Between:

Laxman,  
S/o Hanamant Hosakoti @ Waddar,  
Age: 43 years,  
Occ: Goundi (mason) now nil,  
R/o: Bhanatanur,  
Tq: Mudhol & Dist: Bagalkot.

...Appellant

(By Sri Siddappa Sajjan, Advocate)

A n d :

1. Holabasayya,  
S/o Dundayya Sambalad,  
Age: 71 years, Occ: owner of the  
Tractor, Lokapur, Tq: Mudhol.
2. Bhimanagouda,  
S/o Pandappagouda Patil,  
Age: 71 years, Occ: owner of the  
Trailers, Laxanatti, Tq: Mudhol.

3. The Divisional Manager,  
United India Insurance Co. Ltd.,  
In front of Siddeswar Temple,  
Bijapur.

...Respondents

(By Sri Laxman B.Mannoddar, Advocate for R3)  
(R1 and R2 – served)

This MFA is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dated 16.08.2013 passed in M.V.C. No.114/2012 on the file of the Member, MACT-IX, Mudhol, partly allowing the claim petition for compensation and seeking enhancement of compensation.

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In MFA No.102980/2014

Between:

1. Sri Holabasayya,  
S/o Dundayya Sambalad,  
Aged about 72 years,  
Occ: owner of the Tractor,  
r/at Lokapur, Tq: Mudhol,  
Dist: Bagalkote.
2. Sri Bhimanagouda,  
S/o Pandappagouda Patil,  
Aged about 62 years,  
Occ: owner of the Trailer,  
r/at Laxanatti, Tq: Mudhol,  
Dist: Bagalkote.

...Appellants

(By Sri Mrutyunjay Tata Bangi, Advocate)

A n d :

1. Sri Krishna,  
S/o Shettappa Hosakoti @ Waddar,  
Aged about 32 years,  
Occ: Goundi/mason (now nil),  
r/at Bhantanur, Tq: Mudhol,  
Dist: Bagalkote.
2. The Divisional Manager,  
United India Insurance Company Ltd.,  
In front of Siddeshwar Temple,  
Bijapur.

...Respondents

(By Sri Siddappa S. Sajjan, Advocate for R1  
Sri Laxman B.Mannoddar, Advocate for R2)

This MFA is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dated 16.08.2013 passed in M.V.C. No.113/2012 on the file of the Member, Additional Motor Accident Claim Tribunal IX, Mudhol, awarding the compensation of Rs.1,82,000/- with interest at the rate of 9% P.A. on Rs.1,72,000/- from the date 03.12.2012 of petition till the date of deposit.

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In MFA No.102981/2014Between:

1. Sri Holabasayya,  
S/o Dundayya Sambalad,  
Aged about 72 years,  
Occ: owner of the Tractor,  
r/at Lokapur, Tq: Mudhol,  
Dist: Bagalkote.

2. Sri Bhimanagouda,  
S/o Pandappagouda Patil,  
Aged about 62 years,  
Occ: owner of the Trailer,  
r/at Laxanatti, Tq: Mudhol,  
Dist: Bagalkote.

...Appellants

(By Sri Mrutyunjay Tata Bangi, Advocate)

A n d :

1. Sri Laxman,  
S/o Hanamant Hosakoti @ Waddar,  
Aged about 44 years,  
Occ: Gounda/mason (now nil),  
r/at Bantanur, Tq: Mudhol,  
Dist: Bagalkote.

2. The Divisional Manager,  
United India Insurance Company Ltd.,  
in front of Siddeshwar Temple,  
Bijapur.

...Respondents

(By Sri Siddappa S. Sajjan, Advocate for R1  
Sri Laxman B.Mannoddar, Advocate for R2)

This MFA is filed under Section 173(1) of the Motor Vehicles Act against the judgment and award dated 16.08.2013 passed in M.V.C. No.114/2012 on the file of the Member, Additional Motor Accident Claim Tribunal IX, Mudhol, awarding the compensation of Rs.2,19,000/- with interest at the rate of 9% P.A. on Rs.2,09,000/- from 03.12.2012 to till the date of depositing the compensation amount in the court.

These MFAs coming on for Admission this day, the Court, delivered the following:

**JUDGMENT**

M.F.A.No.24050 of 2013 and M.F.A.No.24051 of 2013 have been filed by the appellant/claimants and M.F.A. No.102980 of 2014 and M.F.A.No.102981 of 2014 have been filed by the appellant, the owners of the tractor and the trailers, assailing the judgment and award passed by the Motor Vehicle Accident Claims Tribunal-IX, Mudhol, in M.V.C. No.113/2012 and 114/2012 dated 16.08.2013.

2. Though the appeals are listed for Admission, with the consent of the learned counsel appearing for the parties, they are taken up for final hearing and disposed of by this judgment.

3. For the sake of convenience, the parties are referred to as per their rankings before the Tribunal.

4. Brief facts of the case are that, on 05.10.2011 at about 7.35 p.m. petitioners were proceeding on a motor cycle bearing new Engine No.JA05/EA99507315, Chassi No.Mb1JA05EF99j07230 and the said motor bike was being driven by Krishna along with pillion rider Laxman. When

they came near canal, a T.T. unit bearing registration No. KA-48/T-4471 and Tractor bearing Nos. KA-48/T-1164 and KA-48/T-1165 came rashly and negligently from the agricultural land and immediately crossed the highway without following the traffic rules and as a result of the said impact the petitioners fell down and sustained grievous injuries. Immediately they were shifted to Doctor Kerudi hospital at Bagalkot and there they were treated as inpatients. For having sustained the injuries and incurred the expenses for the treatment, claim petitions came to be filed.

5. In pursuance of the notice respondent Nos. 1 and 2 appeared, but they did not file any written statement. Respondent No.3 insurer appeared and filed its written statement, by denying the contents of the petition, it is further contended that the insurance policy issued in respect of T.T. unit No. KA-48/T-4771 and trailers No. KA-48/T-1164 & KA-48/T-1165 was subject to the terms and conditions of policy. Insurer further contended that the T.T. unit was not at all involved in the alleged accident and the petitioners, in

collusion with respondent Nos.1 and 2, have filed a false case as against the insurer so as to claim compensation. Insurer further contended that the owner of the motor cycle has not been impleaded as a party and the driver of the tractor and trailers was not having a valid and effective driving licence as on the date of the accident and as such, there was breach of conditions of the policy and therefore, it is not liable to pay the compensation.

On the basis of the above pleadings, the Tribunal has framed issues in both the claim petitions.

#### ISSUES IN MVC NO.113/2012

1. Whether the petitioner proves that on 05.10.2011 at about 07.35 p.m. he was driving Motor Cycle bearing Engine No.JA05/EA99507315, Chassi No.Mb1JA05EF99j07230 along with pillion rider Laxman and one year child Pradeep by following traffic rules from Huligeri to Lokapur & thereafter to Bhantanur. When they came near canal at that time driver of Tractor Engine No.KA-48/T-4471 and Trailer No.KA-48/T-1164 & 65 came in rash and negligent manner from agricultural land crossed highway and dashed to the petitioner's Motor Cycle. As a result the petitioner & pillion riders fell down and petitioner sustained fractural and grievous injuries all over the body as stated in the petition ?
2. Whether the petitioner proves his age and income as stated in the petition ?
3. Whether petitioner is entitle for the compensation as claimed ? If, so to what extent and from whom ?



4. What order or award ?

ISSUES IN MVC NO.114/2012

1. Whether the petitioner proves that on 05.10.2011 at about 07.35 p.m. Krishna Hosakoti @ Wadder was driving Motor Cycle bearing Engine No.JA05/EA99507315, Chessi No.Mb1JA05EF99j07230 along with pillion rider as petitioner Laxman Hosakoti @ Wadder and one year child Pradeep following traffic rules from Huligeri to Lokapur & thereafter to Bhantanur. When they came near canal at that time driver of Tractor Engine No.KA-48/T-4471 & Trailer No.KA-48/1164 & 65 came in rash and negligent manner from agricultural land crossed highway and dashed to the petitioner's Motor Cycle. As a result the petitioner & motorcyclist fell down and petitioner sustained fractural and grievous injuries all over the body as stated in the petition?
2. Whether the petitioner proves his age and income as stated in the petition ?
3. Whether petitioner is entitle for the compensation as claimed ? If, so to what extent and from whom?
4. What order or award ?

In order to prove their case, the petitioners got examined themselves as P.Ws.1 and 2 and got marked Exs.P.1 to P.72, and also got examined a doctor, who issued the disability certificate, as P.W.3 and got marked the documents as Exs.P.73 to P.76. On respondents' side, respondent Nos.1 and 2 did not lead any evidence. However,

respondent No.3 got examined a witness as R.W.1 and closed its side. After hearing the parties to the lis, the impugned judgment and award came to be passed by the Tribunal. Assailing the said judgment and award, the petitioners and respondent Nos.1 and 2, the owners of the tractor and the trailers respectively, are before this Court.

6. The main grounds urged by learned counsel for the appellants/claimants are that the compensation awarded under the head 'loss of future earnings', 'pain and suffering' and 'loss of amenities' and on other heads is on the lower side. He further contended that though the doctor has assessed the disability to the extent of 25% and 45% respectively in respect of each of the petitioners, the Tribunal has taken the disability as 8% and 15% respectively and has awarded the compensation under various heads, which is on the lower side. On these grounds, he prayed for allowing the appeals filed by the appellants/claimants and to enhance the compensation.

7. Learned counsel appearing on behalf of the appellants/insured vehemently argued and contended that

the Tribunal has lost sight of the fact that the driver of the tractor and trailer was holding a driving licence to drive the light motor vehicle, but he was not having a driving licence to drive the LMV (transport) and as such, the Tribunal has come to a wrong conclusion and has wrongly fastened the liability on the appellants/insured without proper appreciation of the evidence. He further contended that the tractor and trailer comes within the purview of definition of 'light motor vehicle' and the driver was having a driving licence to drive the light motor vehicle and, under such circumstances, the liability ought to have been fastened on the insurer and it may be directed to pay the compensation. On these grounds, learned counsel prayed for allowing the appeal by setting aside the impugned order to the extent of liability fixed on them.

8. Per contra, the learned counsel appearing for the respondent No.3-insurer vehemently argued and contended that though the insurer has not preferred any appeal against the impugned judgment and award of the Tribunal, criminal records reveal that actually it is the trailer which came in

contact with the motor cycle; the trailers, which were attached to the tractor, were not insured and as such the liability cannot be fixed on the insurer. In order to substantiate the said contention, learned counsel has relied upon the decision of this Court in the case of **Branch Manager, United India Insurance Co. Ltd. V. Shekarappa and others** reported in **2008 ACJ 243** and a Division Bench decision of this Court in the case of **The Oriental Insurance Co. Ltd., vs. D.Laxman and Others** reported in **ILR 2006 KAR 4355**. He further contended that the owner/appellant has not at all filed any objection and now, he cannot prefer appeal and contend that the fastening of the liability on him is not correct and seek to shift the liability on the insurance company. He also contended that the compensation which has been awarded in both the cases is just and proper. On the said grounds, learned counsel prayed for dismissal of the appeals

9. The accident in question, so also the involvement of the vehicle in question in the accident and it being insured with the insurer are not in dispute.

10. The first contention of the learned counsel for the appellants/claimants are that the compensation awarded under the various heads in both the cases is on the lower side and even the percentage of disability taken by the Tribunal is on the lower side and as such, he has prayed for enhancement of the compensation.

11. In MFA No.24050/2013 (MVC No.113/2012)

As could be seen from the judgment and award, the petitioner in M.V.C. No.113/2012 has sustained the following injuries:

- 1) Lacerated wound over left mandible region 5 x 2 cm.
- 2) Abrasion fracture iliac jossa,
- 3) Lacerated wound over left temporal region 1 x 3 cm
- 4) 4) swelling, tendering and deformity in lower middle forearm left side, and
- 5) Bleeding from right ear.

The injury certificate-Ex.P.4 also shows that the petitioner sustained fracture of shaft of radius M/Crd left side and styloid process of ulna and the fracture of left angle mandible. The records also indicates that the petitioner was hospitalized for a period of 1½ month and he has taken

treatment. At that time, the doctor has operated the petitioner. The doctor, in his evidence, has deposed that injured complained of pain in left forearm and stiffness in it. The X-ray report shows that left forearm ap Lat fracture united with implant in situ and the doctor has assessed the disability to the extent of 25% to the left upper limb. The Tribunal, after considering the over all disability which has been assessed by P.W.3 it has come to the conclusion that it is on the higher side and after taking the disability to the extent of 8%, it has assessed the compensation on various heads. Insofar as the percentage of disability which has been taken by the tribunal, it appears to be justifiable, but insofar as the income of the petitioners are concerned, the petitioners have contended that they were working as masons and were earning Rs.9,000/- per month. However, in order to substantiate the said fact, petitioners have not produced any documents. In the absence of documents, the Tribunal, after taking the notional income at the rate of Rs.4,500/- and has awarded compensation under various heads.

Though under the normal circumstances, the notional income taken by the Tribunal appears to be justified, while assessing the notional income, the Tribunal has to keep in view the avocation and the period of the accident and the wages prevailing at that particular point of time. Admittedly, in the instant case, the accident has taken place during the year 2011 and at that time, the notional income of a coolie was Rs.6,000/- per month, which is also the yardstick that is being adopted in settlement of the case in the Lok Adalat. If the income is taken at Rs.6,000/-, taking the disability to the extent of 8% as taken by the Tribunal and applying the multiplier '17', the appellant/claimant will be entitled to a sum of Rs.97,920/- towards loss of future income

Insofar as the medical expenses is concerned, the Tribunal, based on the medical receipts produced by the petitioner, has awarded Rs.54,000/- which appears to be justifiable. The Tribunal has awarded a sum of Rs.3,000/- toward for three injuries and Rs.10,000/- toward future medical expenses and the same is not disturbed.

Insofar as the compensation awarded under the head 'pain and sufferings', 'loss of amenities' and attendant charges and the 'loss of income during the laid-up period' is concerned, it is on the lower side. In that light if an amount of Rs.40,000/- towards 'pain and sufferings'; Rs.30,000/- towards 'loss of amenities'; Rs.10,000/- towards 'attendant charges, food, nourishment and other incidental charges'; and Rs.18,000/- towards 'loss of income during laid-up period' is awarded to the appellant/claimant, it would meet the ends of justice.

Keeping in view the above said facts and circumstances of the case, the appellant/claimant (in M.F.A. No.24050/2013) is entitled to a total compensation of Rs.2,62,920/- and after deducting the compensation awarded by the Tribunal to the extent of Rs.1,82,000/-, the appellant/claimant is entitled to an additional compensation of Rs.80,920/- with interest as awarded by the Tribunal i.e. at the rate of 9% per annum.



12. In MFA No.24051/2013 (M.V.C. No.114/2012)

As could be seen from the judgment and award, the petitioner in M.V.C. No.114/2012 has sustained the following injuries:

- 1) Lacerated wound 7 x 2 cm and 2 x 3 cm over right frontal and temporal region,
- 2) Lacerated wound over left temporal region 3 x 2 cm and
- 3) Swelling, tendering and deformity in right thigh DPA fracture.

The petitioner has also got examined P.W.3-doctor. The doctor who has examined this petitioner has assessed the permanent physical disability to the extent of 45% to the right lower limb. The Tribunal considering the whole body disability to the extent of 15%, taking the notional income of Rs.4,500/- has awarded compensation under various heads which is as under:

1) Towards loss of future income	Rs.1,13,400=00
2) Towards Medical Expenses	Rs. 52,000=00
3) Towards Pain and suffering	Rs. 20,000=00
4) Towards loss of Amenities	Rs. 10,000=00
5) Towards Attendant Charges	Rs. 1,200=00
6) Loss of income during bedridden Period	Rs. 10,000=00
7) For two simple injuries	Rs. 2,000=00
8) For future medical expenses	Rs. 10,000=00
Total	Rs.2,18,600=00

Though under the normal circumstances, the notional income taken by the Tribunal appears to be justified, while assessing the notional income, the Tribunal has to keep in view the avocation and the period of the accident and the wages prevailing at that particular point of time. Admittedly, in the instant case, the accident has taken place during the year 2011 and at that time, the notional income of a coolie was Rs.6,000/- per month, which is also the yardstick that is being adopted in settlement of the case in the Lok Adalat. If the income is taken at Rs.6,000/-, taking the disability to the extent of 15% as taken by the Tribunal and applying the multiplier '14', the appellant/petitioner will be entitled to a sum of Rs.1,51,200/- towards 'loss of future income'

Insofar as the medical expenses is concerned, the Tribunal, based on the medical receipts produced by the petitioner, has awarded Rs.52,000/- which appears to be justifiable. The Tribunal has awarded a sum of Rs.2,000/- toward for two simple injuries and Rs.10,000/- toward future medical expenses, the same is not disturbed.

Insofar as the compensation awarded under the head 'pain and sufferings', 'loss of amenities' and attendant

charges and the 'loss of income during the laid-up period' is concerned, it is on the lower side. In that light if an amount of Rs.40,000/- towards 'pain and sufferings'; Rs.30,000/- towards 'loss of amenities'; Rs.10,000/- towards 'attendant charges, food, nourishment and other incidental charges'; and Rs.18,000/- towards 'loss of income during laid-up period, it would meet the ends of justice.

Keeping in view the above said facts and circumstances of the case, the appellant/claimant (in M.F.A. No.24051/2013 is entitled to a total compensation of Rs.3,13,200/- and after deducting the compensation awarded by the Tribunal to the extent of Rs.2,19,000/-, the appellant/claimant is entitled to an additional compensation of Rs.94,200/- with interest as awarded by the Tribunal i.e. at the rate of 9% per annum.

13. The second contention taken up by the learned counsel for the appellant-insured, the owner of the tractor and the trailers, is that the driver of tractor was holding a driving licence to drive the light motor vehicle (non-transport) as on the date of the accident and the said driving

licence is valid till 16.08.2024, but only because the driver was not having an endorsement in the driving licence to drive the transport vehicle, the Tribunal has come to the wrong conclusion and has fastened the liability the appellant-insured. However, it is the contention of the respondent No.3-insurer that respondent Nos.1 and 2 had not filed any objection before the Tribunal and as such, the appeals filed by them is not maintainable before this Court. Admittedly, the present appeals are the appeals in law. If we see the provision of Section 96 of the Code of Civil Procedure, it enables a party to the proceedings or a party who has got an interest in the subject matter of the suit or a party, who has been prejudicially affected by the decree, then if it is not challenged by him, then under such circumstances, he will get a right to prefer an appeal against the judgment and decree which has been passed. This proposition of law has also been laid down by this Court in the case of Shivaraya Vs. Siddamma AIR 1963 Mysore 127. Keeping in view the above said facts and circumstances and the ratio laid down in the said decision, it is clear that if a party to the proceedings or if a party whose interest/right has been

affected by a decree passed against him, he can prefer an appeal though he had not filed any objection. Under the said facts and circumstances, the contention taken up by the insurer that no appeal lies when the insured had not filed any objection, does not appear to be sustainable in law and hence, the same is rejected.

14. As could be seen from the judgment and award of the Tribunal, it is the specific contention of respondent No.3 that respondent No.1 was not having a valid and effective driving licence that too, to drive a transport vehicle. The Tribunal after coming to the conclusion that the TT unit was involved in the accident, and as the driver of the offending vehicle was not having a valid and effective driving licence to drive the TT unit, as on the date of the accident, there was violation of terms and conditions of the policy and as such, the Tribunal fixed the liability on respondent Nos.1 and 2 and respondent no.3-insurance company was exonerated from the liability. Though the said observation of the Tribunal, on the face of it, appears to be correct, but in view of the decision of the Hon'ble Apex Court in the case of

**Mukund Dewangan vs. Oriental Insurance Company Limited**

reported in **AIR 2017 SC 3668**, wherein at paragraphs 45 and 46 it has been observed as under:

“45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a 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. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a

private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h)

and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.



(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

15. On going through the facts and circumstances, the Hon’ble, Apex Court has clarified the fact that, if a person has been given licence for a particular type of vehicle, he cannot be said to have no licence for driving another type of vehicle, which is of the same category but of a different type. Keeping in view the said facts and circumstances and considering that the driver was holding a driving licence to drive light motor vehicle (non-transport) and it is valid and was in currency from 10.07.1996 to 16.08.2024. When a person holds a valid licence to drive a non-transport vehicle, then under such circumstances, it cannot be held that he is incompetent to drive tractor with trailer or transport vehicle the said type of vehicle. Keeping in view the decision of the Mukund Dewangan’s case (supra), the finding given by the

Tribunal is not justifiable and the same is liable to be set aside. The learned counsel for the insurer has brought to the notice of this Court the decision in the case of *Branch Manager, United India Insurance Co. Ltd. V. Shekarappa and others* reported in 2008 ACJ 243 and the Division Bench decision of this Court in the case of *The Oriental Insurance Co. Ltd., vs. D.Laxman and Others* reported in ILR 2006 KAR 4355 and has contended that, as per the criminal records, the motor cycle had hit the trailer and the trailers having not been insured at the time of the accident, the insurer cannot be made liable to pay the compensation. I have gone through the decisions quoted by the learned counsel for respondent No.3-insurance company, carefully and cautiously. In the above said cases, the claimants were traveling in the trailer, at that time, the accident has taken place and during that particular period, the trailer was not insured under the said facts and circumstances, this Court has come to the conclusion that when the trailer has not been insured, the insurer cannot be made liable. But, in the instant case, the claimants are the third parties and the tractor and trailers were going together and at that time the accident has taken place. Without the

tractor, the trailers cannot move. When, all of a sudden, the tractor, along with the trailers, came on to the main road, at that time, the accident has taken place. Admittedly, the tractor is insured with respondent No.3, then under such circumstances, the decisions quoted by the learned counsel for the respondent-insurer is not applicable to the facts of the present case and as such the same is not accepted.

16. Keeping in view the above said facts and circumstances, all the appeals are allowed. The impugned judgment and award passed by the Tribunal in M.V.C. Nos.113/2012 and 114/2012 are modified as indicated above. The liability is fixed on the insurance company, which is respondent No.3 before the Tribunal, and the insurer is directed to deposit the compensation awarded by the Tribunal and the additional compensation awarded by this Court, with up-to-date interest, within a period of six weeks from the date receipt of certified copy of this judgment.

Registry is directed to draw the award accordingly and to send back the lower court records forthwith.

Registry is directed to return the statutory amount in deposit, if any, to the appellant-insured on proper identification and acknowledgment.

**Sd/-  
JUDGE**

Kms