

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

940 FIRST APPEAL NO.2629 OF 2013

1. Bhagwan S/o Bajirao Tandale,
Age 40 years, Occupation : Agri.
R/o. Naygaon, Tq. Paithan,
Dist. Aurangabad.
 2. Bhagchand S/o Bhaurao Veer,
Age 35 years, Occu. Driver,
R/o Narala, Paithan,
Dist. Aurangabad.
- ... Appellants
(Orig. Resp. Nos. 1 & 3)

VERSUS

1. Bharat S/o Bhiwaji Kamble
Age 32 years, Occupation: Driver,
R/o. Z.P. High School Paithan,
Dist. Aurangabad.
 2. Bajaj Allianz Genral Insurance
Co. Ltd., Through its office
at 22n Floor, Rajendra Bhavan,
Near, LIC Building, Adalat Road,
Aurangabad.
- ... Respondent No.1
(Orig. Claimant)
- ... Respondent No.2
(Orig. Respondent No.2)

....

Mr. Avinash S. Deshpande, Advocate for Applicants :
Mr. K.D. Bade Patil, Advocate for Respondent No.1
Mr. S.S.Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for
Respondent No.2

....

CORAM : V.L. ACHLIYA, J.

DATED : 29th MARCH, 2019

Judgment :

. Being aggrieved by judgment and order dated 06.12.2012 in M.A.C.P. No.361/2008 passed by Member, M.A.C.T. & Dist. Judge-3, Aurangabad, the appellants – original respondents no.1 and 3 have preferred this appeal. By the impugned judgment, the claims tribunal has partly allowed the claim application and ordered the appellants to jointly and severally pay the compensation of Rs.3,00,000/- to respondent no.1 inclusive of no fault liability along with interest at the rate of 7% p.a. from the date of filing of claim application till its realisation. The tribunal has dismissed the claim as against the respondent no.2 – insurance company. Being aggrieved, the appellants who are the owner and driver of the vehicle have preferred this appeal.

2. In view of the challenge raised in the appeal confines to dismissal of the claim application against the respondent no.2 – insurance company, it is not required to discuss the facts of case in detail. The respondent no.1 – original claimant had filed an application U/s.166 of M.V. Act seeking compensation of Rs.10,00,000/-. Respondent no.1 had approached with the case that on 16.01.2008, at about 11.30 p.m., he was proceeding Aurangabad towards Paithan on motor cycle bearing registration MH-20/AP-5785. He was accompanied with his friend. When he was passing in front of Saint Eknath Sahakari Sakhar Karkhana

at Paithan, the offending vehicle i.e. tractor bearing registration No. MH-20/AB-4286 attached with trolley and loaded with sugarcane gave dash to motor cycle. Due to the dash given to motor cycle, he fell down on the road and sustained serious injury to his leg. Initially he was taken to GHATI Hospital at Aurangabad. Later on he was shifted to M.G.M. Hosptial at Aurangabad. On account of injury sustained in the accident, he was required to be operated. His leg was amputated from knee. He sustained permanent disability.

3. On account of the accidental injury, the respondent no.1 has claimed compensation of Rs.10,00,000/- from the owner, driver and insurance company making them liable to pay the compensation jointly and severally. The claimant has claimed that at the time of the accident, the respondent no.3 – driver of tractor and trolley was driving the tractor and trolley in a rash and negligent manner. The accident was resulted due to rash and negligent driving on the part of driver of the tractor, which was owned by the appellant no.1 - original respondent no.1 and insured with the respondent no.2 – insurance company.

4. The appellants/original respondent no.1 and 3 appeared and resisted the claim with contention that the accident was occurred due to sole negligence and rash and negligent driving on the part of claimant. They have approached with the case that

at the time of the accident, the tractor loaded with sugarcane was standing at the gate of sugar factory. The claimant and his friend who were riding on motor cycle were heavily drunk. The claimant gave dash to tractor, which was lying standing at the gate of sugar factory. There was ample space available for claimant to pass by the side of tractor and trolley. Due to his own act of negligence the claimant fell down and sustained injury. On the basis of false case, police have registered offences against the driver of the tractor. In brief, the appellants have approached with the case that accident and consequential injuries were resulted due to own fault on the part of claimant

5. The Respondent No.2- insurance company resisted the claim with contention that accident was resulted due to rash and negligent driving and fault on the part of claimant. The Respondent No.2 has denied its liability to pay compensation with contention that the driver of the tractor was not holding effective driving licence i.e. light motor vehicle (transport) to drive the vehicle involved in the accident and there was breach of policy condition on the part of insured - appellant no.1. In short, the respondent no.2 has denied the liability to pay compensation on the ground of breach of policy condition on the part of appellant - i.e. owner and insured of said tractor.

6. In order to prove his case, the claimant has examined

himself and further produced the documents such as FIR, spot panchanama, driving licence, registration certificate of offending vehicle, insurance cover note, accident form, disability certificate, discharge card and medical bills. On behalf of the appellant no.1 i.e. the owner of the vehicle examined one official working in the office of RTO to prove the driving licence of appellant no.2 i.e. the original respondent no.3 (driver of the tractor). On behalf of the respondent no.2, the insurance company has examined one witness to prove the breach of policy condition.

7. On due consideration of the submissions advanced in the light of oral and documentary evidence adduced in the case, the tribunal has reached to the conclusion that claimant has proved his case and the accident occurred solely due to rash and negligent driving on the part of driver of the tractor i.e. appellant no.2. It is further held that in the accident, the respondent no.1 – original claimant has sustained serious injury and suffered permanent disablement. The tribunal has dismissed the claim as against the respondent no.2 i.e. original respondent no.2 – insurance company by holding that the driver of the tractor i.e. the appellant no.2 (original respondent no.3) not holding effective driving licence to drive the tractor and thereby the appellant – insured committed breach of policy condition. While dismissing the claim against the respondent no.2 – insurance

company, the tribunal has observed that the tractor was attached with the trolley and the same was used for carriage of goods, and the driver of the tractor ought to have a licence to drive light motor vehicle (transport). Since the driver had licence to drive the light motor vehicle only, he was not duly authorised to drive the tractor and trolley used for the purpose of transport of goods. Being aggrieved by the judgment and order passed by the tribunal to exonerate the insurance company, the appellants i.e. the owner and the driver of the vehicle have preferred this appeal.

8. I have heard the submission advanced by Mr. A.S. Deshpande, learned counsel for the appellant, Shri K.D. Bade Patil, the learned counsel representing Respondent No.1 and Mr. S.G. Chapalgaonkar, the learned counsel representing the respondent no.2 – insurance company.

9. Mr. Deshpande, learned counsel for the appellants submits that the Tribunal has grossly erred in holding that there was a breach of policy condition on the part of the appellant no.1 i.e. owner of the vehicle. It is submitted that there is no dispute as fact that at the relevant time of accident, the driver of the tractor i.e. respondent no.3 (appellant no.2 herein) was holding driving licence to drive light motor vehicle, which include the tractor involved in the accident as same being covered by definition of

"Light Motor Vehicle" as provided U/s. 2(21) of the Motor Vehicle Act, 1988. The form and contents of licences to be issued to drive the vehicle U/s. 10(2)(d) of the Motor Vehicle Act 1988 provides for class of vehicles, and "light motor vehicle" is one of such class of vehicles for which licence to be issued. It nowhere provides for category such as "light motor vehicle (non transport)" or "light motor vehicle (transport)". It is further submitted that trolley attached to the tractor very much concerned with the purpose and use of tractor. At the time of accident, the sugarcane of the appellant no.1 was loaded in the trolley attached to the tractor for transporting the same to sugar factory. Therefore, the purpose for which the tractor was used cannot be said to be used for commercial purpose and there was breach of policy condition on the part of insured. It is further submitted that the issue involved in appeal remains no more *res integra* in view of decision rendered by the Apex Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Ltd. (2017) 14 SCC 663**, wherein the Apex Court has held that light motor vehicle includes a transport vehicle with unladen weight of which not exceed 7500 kg. and licence to drive such class of light motor vehicle requires no separate endorsement to drive a transport vehicle. It is further held that if a driver is holding licence to drive "light motor vehicle", he can drive even transport vehicle of such class without any endorsement to that effect.

10. On the other hand, learned counsel representing the respondent no.2 – insurance company has fairly conceded that in the case of ***Mukund Dewangan*** (supra), the Apex Court has ruled that, no separate endorsement required for the driver holding driving licence to drive the light motor vehicle, if the vehicle is light motor vehicle with unladen weight 7500 kg. However, the learned counsel submits that in the case of ***M/s. Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi and Ors.***, the Division Bench of the Apex Court vide order dated 03.05.2018 passed in the matter directed the Registry to place the matter before the Hon'ble Chief Justice for passing appropriate order in view of prayer made for reconsideration of decision in the case of ***Mukund Dewangan*** (supra),

11. I have carefully considered the submissions advanced in the light of challenge raised in appeal as to decision of Tribunal to exonerate the respondent no.2 – insurance company and decision in the case of ***Mukund Dewangan*** (supra). Perusal of the judgment and order passed by the tribunal reflect that the Tribunal has exonerated the respondent no.2 – insurance company only for the reason that the driver of the tractor i.e. appellant no.2 was holding licence to drive the light motor vehicle and he was not authorised to drive light motor vehicle used for

transport i.e. tractor attached with trailer/trolley. The tribunal was of the view that in order to drive the tractor with trolley/trailer, the appellant no.2 – the driver of offending vehicle ought to have driving licence with endorsement to drive light motor vehicle (transport).

12. In my view, the reasons and findings recorded by the tribunal to exonerate the insurance company are not sustainable in the light of decision in the case of *Mudund dewangan* (supra). The Hon'ble three Judges Bench of the Apex Court while deciding the reference has considered the conflicting decisions and formulated the following questions for its consideration :-

"1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?

2. Whether '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 roadroller, "unladen weight" of which does not exceed 7500 kg. and holder of a licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the "gross vehicle weight" of which does not exceed 7500 kgs. or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kgs. ?

3. What is the effect of the amendment made by virtue of Act No. 54 of 1994 w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression 'transport

vehicle' Under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of Amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "Light Motor Vehicle" has been changed ?"

13. The specific issue involved in the reference made for consideration was, whether a driver who is having licence to drive "light motor vehicle" and driving "transport vehicle" of that class is required additionally to obtain an endorsement to drive the transport vehicle? On due examination of the relevant provisions of the M.V. Act and considering the position prior to the amendment made in the M.V. Act in 1994, the Hon'ble Apex Court has ruled that Section 10 of the M.V. Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. It is further observed that in one class of vehicles, there may be different categories of vehicles. If the category of vehicle is covered by such class of vehicles, then no separate endorsement is required to drive such vehicles. It is observed that as light motor vehicle includes transport vehicle and, a holder of licence to drive light motor vehicle can drive all the vehicles of such class including transport vehicles no separate endorsement required on driving licence to drive transport vehicle. It is held that possessing the licence to drive light motor

vehicle is sufficient to any such class of vehicles. The Apex Court has answered above quoted question referred for its consideration under reference as under:

“60.1. ‘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.

60.2. 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.

60.3. 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.

60.4. 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.”

13. In my view, the decision in the case of ***Mukund Dewangan*** (supra) squarely applicable to the facts of the case and issue involved in appeal. In the case in hand, there is no dispute that appellant no.2 i.e. driver of the tractor was holding licence to drive light motor vehicle i.e. tractor. The fact is also not in dispute that the claim petition was dismissed as against respondent no.2 – insurance company only for the reason that the driver of the tractor i.e. appellant no.2 was holding licence to drive light motor vehicle without endorsement “transport”. Since the issue has been set at rest and concluded by the judgment of Hon’ble three Judges Bench in the case of ***Mukund Dewangan*** (supra), holding that there is no requirement to obtain separate endorsement to drive the transport vehicle for the driver holding the licence to drive light vehicle, the reason and findings recorded by tribunal to exonerate the respondent no.2 deserves to be set aside and the appeal deserves to be partly allowed. The contention of learned counsel for the respondent no.2 that vide order dated 03.05.2018 passed in the case of ***M/s. Bajaj Alliance General Insurance Co.*** in Civil Appeal No.841/2018, the Division Bench of the Hon’ble Apex Court has directed the registry to place the papers before the Hon’ble Chief Justice for

appropriate orders pursuant to the prayer made for reconsideration of decision in the case of *Mukund Dewangan* (supra), deserves no consideration by this Court in deciding the present appeal.

14. In the result, the appeal deserves to be partly allowed to the extent to set aside the judgment and order passed by the tribunal to dismiss the claim petition and exonerate respondent no.2 from payment of compensation awarded in favour of claimant. In view of conclusion arrived at that the Respondent no.2 – insurance company is liable to pay compensation to claimant along with the appellants i.e. original respondent nos. 1 and 3, the appeal deserves to be partly allowed. Accordingly the following order is passed:

ORDER

[i] The claim petition is partly allowed..

[ii] The judgment and order passed by tribunal to dismiss the claim petition against respondent no.2 – insurance company is set aside. Respondent no.1 to 3 in claim petition are jointly and severally liable to pay the compensation awarded by the tribunal to the claimant – petitioner.

[iii] The respondents no.1 to 3 are directed to jointly and severally pay the sum of Rs.3,00,000/- inclusive of no fault

liability along with interest at the rate of 7% from the date of filing the claim application till its realization to the claimant.

[iv] Award/Decree be drawn accordingly.

(V.L. ACHLIYA)
JUDGE

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