

* **HIGH COURT OF DELHI : NEW DELHI**

MAC App. No.419 of 2008

% Judgment reserved on: 31st July, 2008

Judgment delivered on: 7th August, 2008

The New India Assurance Co.Ltd.
CDV C-2, Mahavir Bhawan,
4th Floor, Karampura Comm. Complex,
New Delhi. Appellant

Through: Mr.Mohan Babu Aggarwal, Adv.

Versus

1.Brijesh Maji @ Viresh
S/o Sh.Baij Nath
R/o Jhuggi No.A-700,
Ambedkar Basti,
New Delhi.

2.Mustkim
S/o Sh.Nasir Ahmed,
R/o B-49, Kusumpur Pahari,
Basant Kunj,
New Delhi.

3.Ashok Kumar Chawla,
S/o Sh.S.C.Chawla
R/o B-77, Raghubir Nagar,
New Delhi. ...Respondents.

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The present appeal under section 173 of the Motor Vehicles Act, 1988 (for short as the “Act”) has been filed by the Appellant/Insurance Company against the impugned award dated 16.05.08 passed by Ms. Neena Bansal Krishna, Judge, Motor Accident Claims Tribunal (for short as the “Tribunal”).

2. The necessary facts for the disposal of this appeal are that on 19.10.05, Brijesh Maji @ Viresh, Respondent No.1 herein, was going on his bicycle to his house. At about 10.30 p.m., when he reached at Sector-I, R.K.Puram red light, a Tata Sumo No. DL-1 VB-2332 which was being driven by Respondent No.2 herein in a rash and negligent manner hit into the Respondent No.1’s cycle due to which he fell and

sustained grievous injuries. He was taken to Safderjung Hospital for treatment.

3. The Respondent No.1 filed the claim petition claiming Rs.1,00,000/- against the Respondent No.2 being the driver of the offending vehicle, Respondent No.3 being the owner of the offending vehicle and Appellant, as the offending vehicle was insured with them.

4. Respondent No.2 in his written statement took the preliminary that he has been falsely implicated in this case.

5. Respondent No.3 in his written statement took the preliminary objection that he is not aware of any accident having been caused by his vehicle though FIR was registered against his vehicle and his vehicle was impounded in the criminal case. On merits, all the allegations made in the petition are denied.

6. Appellant in its written statement took the preliminary objection that it is not liable to pay

compensation if it is found that the driver of the offending vehicle was not holding a valid license or was disqualified from holding the same. On merits, all the averments made in the petition were denied, though it is admitted that the vehicle was insured with it.

7. Vide impugned judgment, the Tribunal awarded compensation of Rs. 71,000/- (rounded off) along with the interest @ 7.5% from the date of institution till the date of payment.

8. It has been contended by the Ld. Counsel for the Appellant that the Tribunal has not considered the fact that as per the investigating report and evidence produced before the Tribunal, the offending vehicle is a Tata Sumo and the same was also insured as Passenger Carrying Commercial Vehicle and also the Registration Certificate of Vehicle is for Passenger Carrying Commercial Vehicle and as per MLO record proved before the Court, the Driving licence is valid for

light motor vehicle (Non-Transport Vehicle) and not for commercial transport vehicle or for commercial plying etc. The driver of the offending vehicle was not in possession of a valid driving licence. Thus, there is clear violation of insurance policy by the driver and owner of the vehicle and so, the Insurance Company has no liability of any kind for payment to the claimant.

9. Though Respondent No.2 and Respondent No.3 in their written statement denied the accident but in the cross examination of the Respondent No.1, had given a suggestion that accident occurred since the Respondent No.1 abruptly came in front of the vehicle while crossing the road.

10. Thus, the Respondents No.2 & 3 have admitted the factum of accident and also the fact, that the Respondent No. 1 was hit by the vehicle which was being driven by Respondent No.2.

11. The Respondent no.2 who was also eye witness to the accident being the driver of the offending vehicle,

has failed to step into the witness box to show that he was not negligent in driving his vehicle.

12. It was well established before the Tribunal by the testimony of the Respondent No.1 coupled with the medical and criminal record, that he sustained grievous injuries in a road accident caused due to rash and negligent driving of Tata Sumo by Respondent No.2.

13. As per the findings of the Tribunal, the copy of the RC of the vehicle, Ex. PW1/7 shows that it was a Light Passenger Vehicle.

14. Section 2(28) of the Act defines the term of 'Motor Vehicle' as under;

““motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any, other enclosed

premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding ["twenty-five cubic centimetres"];

15. Section 2 (26) of the Act defines the term of 'Motor Car' as under;

"motor car" means any motor other than a transport vehicle/omnibus, road-roller, tractor, motor cycle or invalid carriage;

16. 'Light Motor Vehicle' is defined under Section 2 (21) of the Act 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;’

17. Section 2(17) of the Act defines 'Heavy Passenger Motor Vehicle' as under;

“heavy passenger motor vehicle” means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms;’

18. Section 2(24) of the Act defines 'Medium Passenger Motor Vehicle' defines as under;

“medium passenger motor vehicle” means any public service vehicle or private service vehicle, or educational institution bus other than a motor cycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle;’

19. A plain reading of various clauses of Section 2, would demonstrate that 'Light Passenger Vehicle' has nowhere been defined in the Act.

20. The case of the Appellant is that the driver of the offending vehicle was not in possession of a valid driving licence. The driving licence issued to the driver was only for light motor vehicle and non-transport vehicle and not for transport vehicle or for commercial plying etc.

21. As per statement of R3W1, Devender Singh, LDC, South West Zone, Janak Puri, he has proved the verification report in respect of the driving licence in the name of Mustkim i.e. Respondent No.2 herein.

As per the Report, the Respondent No.2 was holding a driving licence for light motor vehicle (non-transport) valid from 28.03.05 to 27.03.25.

22. The Tribunal in the impugned judgment held that;

“The Tata Sumo which is the offending vehicle, is, therefore, a motor vehicle (non transport) for which, the Respondent No.1 was holding a valid driving licence. The Respondent No.3 has not been able to show that the Respondent No.1 was not holding a valid driving licence for driving the offending vehicle and is, therefore, liable to indemnify the Respondent No.2. the liability of all the Respondents is held to be joint and several to pay the compensation.”

23. In ***National Insurance Co. Ltd. v. Swaran Singh & Ors., (2004) 3 SCC 297***, a three Judges’

Bench of the Apex Court has categorically held that;

“Chapter XL of Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all

vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.”

The Apex Court also observed as under;

“In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.”

24. Here, in the present case, the driver was admittedly holding a valid driving licence for light motor vehicle (non-transport). Thus, in the light of the above discussion, I do not find any infirmity or ambiguity in the impugned judgment of the Tribunal.

26. Accordingly, there is no merit in this appeal.

27. Hence, the present appeal is, hereby, dismissed.

August 7, 2008
Bisht

V.B.GUPTA, J.