

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC.APP. 697/2010 and CM No.18837/2010**

NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Sonia Sharma, Advocate

versus

MAYA & ORS Respondents ,
Through: Nemo

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

ORDER
% **25.10.2010**
: REVA KHETRAPAL, J. (ORAL)

1. This appeal under Section 173 of the Motor Vehicle Act, 1988 has been preferred by the appellant against the award dated 06.07.2010 passed by the learned Motor Accident Claims Tribunal in the sum of ` 9,72,000/- with the direction to the appellant Company to pay the

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2. aforesaid amount to the respondents No.1 to 4.

2. The respondents No.1 to 4 are the legal representatives of the

deceased Dil Bahadur, who met with a fatal accident on 19.04.2009 while crossing the road under Metro Line near Apsra Border Red Light, Delhi, where he was hit by a maruti van bearing No.DL-1LE-6634 being driven by the respondent No.5 and owned by the respondent No.6 herein. An FIR in respect of the aforesaid accident under Sections 239/304A IPC was registered at Police Station Secma Puri, Delhi on the same date. His post-mortem was conducted and the cause of his death was opined to be 'shock as a result of ante-mortem injuries to the head produced by blunt force impact'. The Motor Accident Claims Tribunal having proceeded to pass the aforementioned award in favour of the legal representatives of the deceased, the present appeal has been filed by the Insurance Company on the sole ground that the Tribunal was not justified in not granting recovery rights to the appellant Company, despite the fact that there was a violation of the condition of the insurance policy with respect to the category of vehicle being driven by the respondent No.5 at the time of the accident.

3. Ms. Sonia Sharma, the learned counsel for the Insurance Company contends that the impugned award is liable to be set aside as the Tribunal completely ignored the fact that the vehicle driven by the driver (the respondent No.5 herein) was a LMV transport vehicle and the insurance policy had been issued by the appellant Company for a commercial vehicle whereas the licence possessed by the driver (the respondent No.5 herein) was for LMV (NT) and was not valid for the

said vehicle. Her submission is that the vehicle could have been driven only by a person holding a valid and effective licence to drive the particular class of vehicles and that in the instant case there was a clear violation of the terms and conditions of the policy. Consequently, the award was liable to be set aside.

4. The relevant portion of the award, which is impugned, reads as under:

"28. So far as this issue is concerned, respondent no.3 examined one Sh. Dinesh Kumar, LDC, North East Zone Transport Deptt. He deposed that he has brought the attested record of driving licence of Sh. Hem Singh vide DL No.P-05112007352810 for the period from 21.11.07 to 20.11.2027 for the category Motorcycle and LMV (NT) only. The same is Ex.R3W1/1. During cross-examination he admitted that it is not specifically mentioned anywhere in Ex.R3W1/1 that DL was issued for private or commercial vehicle. He further in his cross examination admitted that it is correct that any person who can drive a maruti van can drive similar type of maruti van of same category. R3W2 Sh. Jaspal Singh testified that vehicle no.DL-1LE-6634 is registered in the name of Sh. Rakesh Vats for the period 22.12.08 to 21.12.09 for omnibus/cargo/commercial vehicle. R2W1 Sh. Rakesh Vats clearly made a statement that before the grant of employment to respondent no.1 his driving test was taken and he verified the DL of the driver. Significant to mention here that he has not been cross examined on this aspect and nothing has been brought on record that the statement made by the owner has been rebutted by insurance company by any cogent evidence.

29. Section 2(21) defines 'light Motor Vehicle' as under:-

LMV means a transport vehicle or omnibus the gross weight of either of which or a motor car or a tractor or road roller the unladen weight of

any, which, does not exceed 7,500 kg.

30. Section 3 of the Act provides for the necessity of driving licence.

Necessity of driving licence:- 1. No person shall drive a motor vehicle in any public place unless he holds the effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motorcab or motorcycle 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.

31. In the case of **National Insurance Company Vs. Annappa Irappa Nesaria and Others**, it was observed by the Hon'ble Supreme Court in para 16 that:-

"it is evident that transport vehicle has now been substituted for 'medium goods vehicle' and 'heavy goods vehicle'. The light motor vehicle continues, 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 authorized to drive a light goods vehicle as well."

32. In view of the settled proposition of law, as discussed above and the fact that at the time of accident respondent no.1 was having a valid and effective driving licence, the insurance company cannot be absolved from its liability if the driving licence is valid and it makes no difference whether the licence is commercial or not....."

5. It would be appropriate at this juncture to refer to the case of **National Insurance Company Ltd. vs. Annappa Irappa Nesaria and Others (2008) 3 SCC 464**, relied upon by the learned Tribunal. In the said case, it was submitted on behalf of the National Insurance Company Ltd. 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. The learned counsel for the Insurance Company contended that the said Forms have been prescribed in terms of Rules 14 and 16 of the Central Motor Vehicle Rules, 1989 and on perusal thereof as also the aforesaid mentioned Forms, it would be clear that a 'light motor vehicle' does not answer the description of a 'transport vehicle'. Per contra, it was contended that keeping in view the definition of 'light motor vehicle' as contained in Section 2(21) of the Motor Vehicles Act, 1988, a light goods carriage would come within the purview thereof. Strong reliance was placed in this regard on the case of *Ashok Gangadhar Maratha vs. Oriental Insurance Co. Ltd., AIR 1999 SC 3181*. The Supreme Court after reproducing the definition of 'light motor vehicle' and the definition of 'medium goods vehicle' as defined in Section 2(21) and Section 2(23) of the Act and dwelling upon the relevant Central Motor Vehicle Rules, 1989, observed as under:

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

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

- (d) Light motor vehicle*
- (e) Medium goods vehicle*
- (g) Heavy goods vehicle*
- (j) Motor vehicles of the following description:....*

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

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

- (d) Light motor vehicle*
- (e) Transport vehicle*

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

13. 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) 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 "transport vehicle". As noticed hereinbefore, "Light Motor Vehicles" also found place therein.

14. "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 the licence is to be granted, the relevant portion whereof read as under:

Authorisation to drive transport vehicle	
Number....	Date....
Authorised to drive transport vehicle	
with effect from....	Badge number....

Signature....

...
Designation of the
licensing authority

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

15. 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."

6. In view of the above law laid down by the Supreme Court, there is no substance in the present appeal. The same is accordingly dismissed, being without merit. CM No.18837/2010 also stands disposed of accordingly.


REVA KHETRAPAL
(JUDGE)

October 25, 2010
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