

UNREPORTED

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

+ MAC. APP. 234/2007

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Ram Ashray, Advocate

versus

POONAM AND ORS. Respondents
Through: Mr. O.P. Mannie, Advocate for
the respondents No.1 to 3

% Date of Decision : August 10, 2011

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?

J U D G M E N T (ORAL)

: REVA KHETRAPAL, J.

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award of the Motor Accidents Claims Tribunal, Delhi dated 29.01.2007.

2. At the outset, the learned counsel for the appellant submits that though the prayer made in the appeal is that the appellant-Insurance Company be absolved of its liability and in the alternative, the multiplier adopted by the learned Tribunal for the purpose of augmenting the multiplicand constituting the average annual loss of dependency of the respondents No.1 to 3 be reduced, he, however, confines his prayer to the grant of recovery rights to the Insurance Company in respect of the compensation paid by the Insurance Company to the respondents No.1 to 3.

3. The facts relevant for the decision of the present appeal are that on 02.10.2003, one Mangal Singh travelling in a three-wheeler scooter bearing No.HR-69-2369 received fatal injuries, when the said TSR turned turtle on account of the high speed, rash and negligent driving of its driver. The respondents No.1 to 3, being the legal representatives of the deceased Mangal Singh, filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation from the driver, the owner and the insurer of the offending TSR for the untimely demise of their bread-earner. The

Motor Accidents Claims Tribunal after conducting an enquiry awarded a sum of ₹ 4 lakhs, including the amount of interim compensation, in favour of the respondents No.1 to 3 and against the appellant with interest at the rate of 7.5% per annum from the date of the institution of the petition till the date of the award.

4. Aggrieved therefrom, the present appeal has been preferred by the appellant-Insurance Company on the ground that the driving licence of the respondent No.5–driver was not a valid and effective one, inasmuch as the said driving licence authorised him to drive a scooter, motorcycle, car and jeep only and this licence was not issued for the driving of a three-wheeler.

5. The learned counsel for the appellant in the aforesaid context strongly relies upon the testimony of R3W1, an official from the SDO Civil, Gannaur, Distt. Sonapat, Haryana, who deposed that according to the record brought by him, original whereof was Ex.R3W1/X, the driving licence of the driver, Jai Bhagwan (the respondent No.5 herein) was issued from their office. He further deposed that the said licence had been issued for the driving of a motorcycle, scooter, car

and jeep, and had not been issued for the driving of a three-wheeler. The learned counsel contends that in view of the fact that the testimony of this witness remained unshaken after cross-examination, the learned Tribunal erred in holding that the Insurance Company could not be absolved of its liability to pay the compensation by simply pleading that the licence granted to the driver was of a different class or description and the offending vehicle belonged to a different class. It is contended that the Tribunal further erred in holding that the absence of an endorsement by the licensing authority could not make the license invalid or ineffective, more so, when the driving method of the vehicle/s mentioned in the licence, i.e., the vehicle/s for which the licence was obtained and the one which was being driven, was the same and the mechanism of the vehicles was also the same.

6. In order to buttress his above contention, reliance is placed by the learned counsel for the appellant on the judgment of the Supreme Court rendered in the case of *National Insurance Co. Ltd. v. Kusum*

Rai & Ors., 2006 4 SCC 250. The relevant portion of the said judgment reads as under:

“11. It has not been disputed before us that the vehicle was being used as a taxi. It was, therefore, a commercial vehicle. The driver of the said vehicle, thus, was required to hold an appropriate licence therefor. Ram Lal who allegedly was driving the said vehicle at the relevant time, as noticed hereinbefore, was holder of a licence to drive a Light Motor Vehicle only. He did not possess any licence to drive a commercial vehicle. Evidently, therefore, there was a breach of condition of the contract of insurance. The Appellant, therefore, could raise the said defence.”

7. Mr. O.P. Mannie, the learned counsel for the respondents No.1 to 3, on the other hand, seeks to support the award by relying upon the judgment of a Division Bench of the Madhya Pradesh High Court in the case of ***Mannulal vs. Chhagan Lal Chauhan and Others, 2005 ACJ 438*** and a Full Bench decision of the Punjab and Haryana High Court in the case of ***National Insurance Co. Ltd. vs. Parveen Kumar and Others, 2005 ACJ 1178***. It may be mentioned that both the aforesaid decisions were also referred to and relied upon by the learned Tribunal in coming to the conclusion that the Insurance

Company could not be absolved of its liability to pay the compensation to the petitioners.

8. Mr. Mannie also relies upon the decision of the Supreme Court rendered in the case of *National Insurance Company Ltd. vs. Annappa Irappa Nesaria & Others*, (2008) 3 SCC 464. In the said case, the vehicle involved in the accident was a Matador van. It had a goods carriage permit in terms of Form No.7 of the Motor Vehicles Act. The said vehicle met with an accident causing a fatality. An issue arose as to whether the driver of the offending vehicle was not authorized to drive the same. The learned Tribunal held that it had emerged from the evidence that the unladen weight of the offending vehicle was much less than 7,500 kilograms and, as such, the driver of the vehicle who was having a driving licence to drive a 'light motor vehicle' had a valid driving licence to drive a light goods vehicle as well and was not in breach of the insurance policy. The High Court, on an appeal preferred by the Insurance Company, held that in view of the fact that the claimants were third parties, even on the ground that there was violation of the terms and conditions of the

policy, the Insurance Company could not be permitted to contend that it had no liability. On a further appeal to the Supreme Court, the Supreme Court held that the driver who had a valid licence to drive a 'light motor vehicle' was authorised to drive a 'light goods vehicle' as well, and that "a light motor vehicle takes within its umbrage both transport and non-transport vehicles."

9. On the basis of the aforesaid decision rendered by the Supreme Court, the learned counsel for the respondents No.1 to 3/claimants contends that the distinction between a "light motor vehicle" and a "transport vehicle" had been obliterated and, as such, in the present case the respondent No.5, who was holding a licence to drive a 'light motor vehicle', must also be held to be duly authorised to drive a transport vehicle, which was a three-wheeler scooter in the instant case.

10. I am not inclined to agree with the aforesaid contention of Mr. Mannie for the reason that a bare glance at the licence Ex.R3W1/X shows that the said licence merely authorized the respondent No.5, Jai Bhagwan to drive a scooter, motor cycle, car and jeep and was not

granted for driving a light motor vehicle. Furthermore, in the present case, no endorsement is contained in the driving licence in question for the driving of a transport-vehicle, and, as such, it cannot be held that the respondent No.5 had an effective driving licence on the date of the accident.

11. I am fortified in coming to the aforesaid conclusion from the decision of the Supreme Court rendered in the case of *New India Assurance Co. Ltd. vs. Roshanben Rahemansha Fakir and Anr., (2008) 8 SCC 253*. In the said case, the vehicle insured was a commercial vehicle (autorickshaw delivery van). Certificate of insurance showed that the vehicle was a goods carrying public carrier. The plea of the appellant-Insurance Company that the driver did not have a valid licence, inasmuch as he was a holder of licence of three-wheeler and the licence was not meant to be used to drive a transport vehicle was rejected by the Tribunal. The High Court after coming to the conclusion that an autorickshaw may be a transport vehicle if it is used for transport of passengers or goods; or it may be a non-transport vehicle if it is used for personal use, dismissed the appeal of the

Insurance Company by holding that there was nothing on record to show that the licence in question was for a three-wheeler vehicle for personal use and that it was not for an autorickshaw for carrying passengers or for carrying goods. The Supreme Court, however, held that the fact that the licence was granted for a period of 20 years clearly showed that the driver of the offending vehicle was not granted a valid driving licence for driving a transport vehicle and after referring to its earlier decisions rendered in the cases of *National Insurance Co. Ltd. vs. Swaran Singh, (2004) 3 SCC 297* and *Annappa Irappa Nesaria (supra)*, set aside the judgment of the High Court.

12. In the case of *Oriental Insurance Co. Ltd. vs. Angad Kol and Ors., (2009) 11 SCC 356*, the offending vehicle was a goods carriage, being a mini door auto and was being driven by the person holding a license for motor cycle and light motor vehicle. Before the Tribunal, a contention was raised that the driver of the vehicle did not possess a valid and effective driving licence. The Tribunal, however, overruled the said contention and made an award against the Insurance

Company. The claimants preferred an appeal thereagainst for enhancement and the Insurance Company also filed cross-objections on the ground that the driving licence of the driver was not meant for driving a goods carriage vehicle. The argument of the appellant-Insurance Company was that at the time of the accident, the driver did not have a valid and effective driving licence to drive a transport vehicle. The Supreme Court held that it was not in dispute that the driver was having a licence to drive a light motor vehicle, however, since the licence was not endorsed, as required, to drive a mini door auto, in the absence of the requisite endorsement, the Insurance Company could not be held liable. The relevant portion of the judgment of the Hon'ble Supreme Court is reproduced hereunder:

“9. Motor Vehicles Act, 1988 (hereinafter called as ‘the Act’) was enacted to consolidate and amend the law relating to motor vehicles.

10. ‘Driving licence’ has been defined in Section 2(10) to mean the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description.

11. “Goods carriage” has been defined in Section 2(14) to mean any 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.

12. The said Act also defines ‘heavy goods vehicle’, ‘heavy passenger motor vehicle’, ‘medium goods vehicle’ and ‘medium passenger motor vehicle’ as well as a ‘light motor vehicle’ in Section 2(21) of the Act to mean:

“‘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.”

13. Although the definition of the ‘light motor vehicle’ brings within its umbrage both ‘transport vehicle’ or ‘omnibus’, indisputably, as would be noticed *infra*, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists.

14. Section 3 provides for the necessity of driving licence, stating:

“3. Necessity for driving licence.— (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor car or motor

cycle 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. (2)”

15. Section 9 provides for grant of driving licence. Section 10 prescribes the form and contents of licences to drive which is to the following effect:

“10. Form and contents of licences to drive.—

(1) Every learner's licence and driving licence, except a driving licence issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

(a) to (c)

(d) light motor vehicle;

(e) transport vehicle;

(i) road Roller;

(j) motor vehicle of a specified description.”

16. The distinction between a ‘light motor vehicle’ and a ‘transport vehicle’ is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be

*obtained. The distinction between a 'transport vehicle' and a 'passenger vehicle' can also be noticed from Section 14 of the Act. **Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a 'transport vehicle' whereas in case of any other licence, it may remain effective for a period of 20 years.***

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20. *The Central Government had framed Rules known as 'Central Motor Vehicle Rules'. Form 4 prescribed therein provides for different columns for grant of a licence of light motor vehicle, medium goods vehicle or heavy goods vehicle. Rule 14 prescribes for filing of an application in Form 4 for a licence to drive a motor vehicle. An amendment was carried out on or about 28.3.2001 being GSR No. 221(E) in terms whereof, inter alia, licence which is to be granted in Form 6 requires a specific authorization to drive a 'transport vehicle'. The licence was granted to Respondent No. 6, Umesh, in 2003, i.e., after the said amendment came into force. The accident, as noticed hereinbefore, took place on 31.10.2004.*

21. *Licence having been granted for a period of 20 years, a presumption, therefore, arises that it was meant for the purpose of a vehicle other than a transport vehicle. Had the driving*

licence had been granted for transport vehicle, the tenure thereof could not have exceeded to three years.

22. In *National Insurance Co. Ltd. v. Annappa Irappa Nesaria* AIR 2008 SC 1418, this Court noticed the aforementioned development in the matter of grant of licence to a transport vehicle stating that the same became effective from 28.3.2001 in the following terms:

“20. 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.

21. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law.”

23. The effect of the different terms of licences granted in terms of the provisions of Section 2(14) and 2(47) has also been noticed by this Court in *New India Assurance Co. Ltd. v. Prabhu Lal* AIR 2008 SC 614, stated:

“30. Now, it is the case of the Insurance Company that the vehicle of the complainant which met with an accident

was a "transport vehicle". It was submitted that the insured vehicle was a "goods carriage" and was thus a "transport vehicle". The vehicle was driven by Ram Narain, who was authorised to drive light motor vehicle and not a transport vehicle. Since the driver had no licence to drive transport vehicle in absence of necessary endorsement in his licence to that effect, he could not have driven Tata 709 and when that vehicle met with an accident, the Insurance Company could not be made liable to pay compensation.

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37. The argument of the Insurance Company is that at the time of accident, Ram Narain had no valid and effective licence to drive Tata 709. Indisputably, Ram Narain was having a licence to drive light motor vehicle. The learned Counsel for the Insurance Company, referring to various provisions of the Act submitted that if a person is having licence to drive light motor vehicle, he cannot drive a transport vehicle unless his driving licence specifically entitles him so to do (Section 3). Clauses (14), (21), (28) and (47) of Section 2 make it clear that if a vehicle is "light motor vehicle", but falls under the category of transport vehicle, the driving licence has to be duly endorsed under Section 3 of the Act. If it is not done, a person holding driving licence to ply light motor vehicle cannot ply transport vehicle. It is not in

dispute that in the instant case, Ram Narain was having licence to drive light motor vehicle. The licence was not endorsed as required and hence, he could not have driven Tata 709 in absence of requisite endorsement and the Insurance Company could not be held liable.

38. We find considerable force in the submission of the learned Counsel for the Insurance Company. We also find that the District Forum considered the question in its proper perspective and held that the vehicle driven by Ram Narain was covered by the category of transport vehicle under Clause (47) of Section 2 of the Act. Section 3, therefore, required the driver to have an endorsement which would entitle him to ply such vehicle. It is not even the case of the complainant that there was such endorsement and Ram Narain was allowed to ply transport vehicle. On the contrary, the case of the complainant was that it was Mohd. Julfikar who was driving the vehicle. To us, therefore, the District Forum was right in holding that Ram Narain could not have driven the vehicle in question.

*24. The Court distinguished its earlier judgment in **Ashok Gangadhar Maratha v. Oriental Insurance AIR 1999 SC 3181**, stating:*

41. In our judgment, Ashok Gangadhar did not lay down that the driver holding licence to drive a light

motor vehicle need not have an endorsement to drive transport vehicle and yet he can drive such vehicle. It was on the peculiar facts of the case, as the Insurance Company neither pleaded nor proved that the vehicle was transport vehicle by placing on record the permit issued by the Transport Authority that the Insurance Company was held liable.

25. However, in this case, the finding of fact arrived at that the vehicle in question was not proved to be a goods vehicle is not correct. The Regional Transport Officer, in his deposition, stated that the vehicle in question was a goods vehicle.”

26. From the discussions made hereinbefore, it is, thus, evident that it is proved that respondent No. 6 did not hold a valid and effective driving licence for driving a goods vehicle. Breach of conditions of the insurance is, therefore, apparent on the face of the records.

13. From the aforesaid, it is amply clear that if a vehicle is a light motor vehicle but falls under the category of transport vehicle, the driving licence has to be duly endorsed as such under Section 3 of the Act. If the driving licence is not so endorsed, a person holding a driving licence to drive a light motor vehicle cannot drive a transport vehicle. It is not in dispute that in the present case the respondent

No.5 was having a licence to drive scooter, motorcycle, car and jeep, which fall in the category of light motor vehicles. It is also not in dispute that the said licence was not endorsed for driving of a three-wheeler scooter which was a transport vehicle, as required. The accident took place on 02.10.2003, that is, after the amendment carried out in the Rules by G.S.R. 221 (E) w.e.f. 28th March, 2001 in terms whereof, *inter alia*, licence which is required to be granted in Form 6 requires a specific authorization to drive a transport vehicle. Further, as pointed out by the learned counsel for the appellant, the driving licence was not even for driving a light motor vehicle. Hence, quite clearly, the respondent No.5 was not authorised to drive the T.S.R. in the absence of requisite endorsement on the driving licence and the Insurance Company could not be held liable.

14. In view of the aforesaid, the inevitable conclusion is that it must be held that the respondent No.5 did not hold a valid and effective driving licence to drive the offending vehicle. In view, however, of the fact that the entire award amount has since been deposited by the Insurance Company, the respondents No.1 to

3/claimants shall be entitled to withdraw the same. Liberty is granted to the Insurance Company to recover the said amount from the owner and the driver of the vehicle, being the respondents No.4 and 5.

15. In view of the aforementioned findings, the appeal is allowed. There will be no order as to costs.

16. Records of the learned Tribunal be sent back to the concerned Tribunal.

**REVA KHETRAPAL
(JUDGE)**

August 10, 2011
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