

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

Reserved on: 3rd January, 2012

Pronounced on: 16th March, 2012

+ **MAC. APP. No.92/2011**

MUKESH DUREJA

..... Appellant

Through: Ch. Rabindra Singh, Advocate

Versus

NARENDER KUMAR & ANR.

..... Respondents

Through: Ms. Neerja Sachdeva, Advocate
for the Respondent No.2
Insurance Company

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Mukesh Dureja who is the owner of the offending vehicle DL-1V-7872(RTV) involved in the accident impugns a judgment dated 25.09.2010 whereby a compensation of ₹82,706/- was awarded in favour of the First Respondent for having suffered grievous injuries in an accident which occurred on 27.07.2007.
2. The contentions raised on behalf of the Appellant are as under:
 - i) The compensation awarded is excessive.

- ii) There was contributory negligence on the part of the injured and the Appellant's driver was not liable to be blamed squarely for the accident.
 - iii) There was overwriting in the MLC, the same should not have been believed.
 - iv) RTV is covered within the definition of Light Motor Vehicle (LMV). A person who can drive a private LMV can also drive a Transport Vehicle. The Claims Tribunal erred in granting recovery rights against the Appellant.
3. On the question of negligence, the Claims Tribunal held as under:

"7. The petitioner deposed that on 27.07.07 at about 11.15 a.m. the petitioner was going towards Khora Colony on a bicycle and when he reached opposite Nathu Sweets, Vikas Marg, Delhi, a RTV no. DL-1V-7872 came from behind and hit the petitioner. As a result of which the petitioner fell down and sustained grievous injuries i.e. fracture on left foot, crush injury on left foot besides multiple injuries all over the body. The petitioner exhibited the attested copy of FIR as Ex.P-2. During cross-examination the petitioner denied the suggestion that the accident took place due to his negligence.

8. The respondent no.1 examined himself as RIW1 and stated that it was the petitioner who was not vigilant while driving the bicycle and collided the bicycle with the RTV. During cross-examination the respondent no.1 stated that he was arrested by the police in connection with accident and was later released on bail. I have

gone through the material on record. The testimony of PW-1, FIR and site clearly indicate that the accident was caused because of the negligence of the respondent no.1. The testimony of the respondent no.1 is not reliable.

9. From the site-plan it is clear that accident was caused because of the negligence of the driver of the RTV. There is no reason to disbelieve the testimony of the petitioner. The FIR, site-plan and mechanical inspection report taken together fully establish that the injuries were sustained by petitioner involving RTV bearing registration No. DL-1V-7872 in a road accident. Even the cross-examination of the petitioner by the counsel for respondents does not create shadow of doubt on the credibility of the Petitioner's testimony. The testimony of the Petitioner remained consistent, cogent and trustworthy. On the other hand the testimony of respondent is not reliable and is inherently improbable. There is nothing on record to dispel the inference that petitioner sustained injuries in a road accident which occurred on 27.07.2007 because of rash and negligent driving of RTV bearing no.DL-1V-7872 being driven by the respondent No.1. Ld. counsel for respondent No.1 and 2 contended that the petitioner was driving his vehicle in a rash and negligent manner which led to the accident. The contention of ld. counsel for respondent No.1 and 2 is misleading. The testimony of the petitioner, FIR, site plan, taken together clearly indicate that the accident was caused because of the negligent driving of respondent No.1. Issue no.1 is accordingly decided in favour of the petitioner and against the respondents."

4. The First Respondent examined himself as PW1. In his affidavit Ex.P1, he testified that when he reached on Vikas Marg, Opposite Nathu Sweets, an RTV DL-1V-7872 being driven by the Second Respondent came from behind and hit him

while he was riding a bicycle. This part of PW1's testimony was left unchallenged by the Appellant. Of course, the driver Mohd. Naved filed his affidavit Ex.R1W1/A and disputed the manner of accident. However, his testimony is of no avail as the manner of the accident claimed by him was not put to the First Respondent. All these facts, coupled with registration of a criminal case against the driver Mohd. Naved, were sufficient for the purpose of a Claim Petition to hold that the accident was caused on account of rashness or negligence on the part of the offending vehicle's driver.

5. The Claims Tribunal by the impugned judgment granted compensation of ₹83,000/- under the following heads:

1.	Compensation towards Pain, Suffering & Loss of Amenities	₹35,000/-
2.	Loss of Income during treatment(three months)	₹11,100/-
3.	Attendant Charges for one month (₹3500/- per month)	₹3,500/-
4.	Expenses towards Medical Bills	₹11,106/-
5.	Reasonable Medical Expenses(without bills)	₹7,000/-
6.	Compensation towards Conveyance and Special Diet (without bills)	₹15,000/-
	Total	₹82,706/-
	(rounded off to ₹83,000/-)	

6. The First Respondent suffered fracture of left foot besides multiple injuries all over the body. He remained admitted in hospital from 27.07.2007 to 28.07.2007. He claimed that his outdoor treatment continued for over a year. He deposed that he could not walk without the help of crutches. Although, it is claimed by the Appellant that there was overwriting in the MLC placed on the record, but no suggestion in this regard was given, nor do I find any such overwriting as to disbelieve the First Respondent's case of having suffered multiple injuries including fracture of second metatarsal left foot. The compensation of ₹35,000/- towards pain and suffering and loss of amenities was the subjective assessment made by the Claims Tribunal which, in my view, cannot be said to be arbitrary and the compensation awarded excessive. The compensation under other heads was a reasonable assessment of the actual pecuniary damages suffered by the First Respondent. The compensation of ₹83,000/- awarded by the Claims Tribunal cannot be said to be exorbitant or excessive so as to call for any interference.
7. Turning to the argument on the liability. In paras 13, 14 and 15, the Claims Tribunal held as under:

“13. The respondent no.2 examined himself as R2W1 and filed his affidavit stating that the respondent no.2 was having valid route permit in respect of the offending vehicle and further stated that the vehicle was insured with respondent no.3. During cross-examination he

stated that the vehicle was impounded by the police after accident and was released to him on superdari. The testimony of Sh. Mahender Kumar and Sh. Jay Chand is relevant on this issue. Sh. Mahender Kumar, R3W1 proved the copy of the policy as R3W1/A and pointed out the condition regarding driving licence at point A. He further stated that the driving licence was not produced by the driver despite notice. Sh. Jai Chand, R3W2 stated that the license of Md. Naved was issued for motorcycle and LMV(NT). He further clarified that the word 'P' mentioned before the starting of driving license number meant for private vehicle and the word 'NT' as mentioned after LMV means non-transport vehicle. He further deposed that holder of that licence could not drive any commercial vehicle whether it is goods carrying or passenger carrying including RTV. He exhibited the report as R3W2/A.

*14.I have gone through the testimony of the witnesses and rival contentions of the parties. Ld. counsel for respondent no.1 and 2 contended that respondent no.1 and 2 is not liable for any compensation as there was a valid route permit and a valid license was possessed by the driver of the vehicle. Ld. counsel for respondent No.1 and 2 contended that the respondent No.3 failed to prove that the license possessed by respondent No.1 was fake and the onus was on the respondent No.3 to prove the breach of condition of insurance policy. In support of his contention, ld. counsel for respondent No.1 and 2 relied upon **National Insurance Co. Ltd. Vs. Maheshwaramma and National Insurance Co. Ltd. Vs. Swaran Singh & Others (2004) 3 SCC 297.** On the other hand, Ld. counsel for respondent No.3 contended that the respondent no.3 be exonerated from any liability as there is violation of policy condition on the part of respondent no.2. he further contended that the respondent no.2 allowed the respondent no.1 to drive the vehicle although the respondent no.1 was not possessing the valid license for driving RTV. Ld. counsel for*

respondent No.3 relied upon National Insurance Co. Vs. Kusum Rani & Others 2006(2) TAC 1 SC.

15.From the testimony of R3W1, it is clear that the respondent no.1 was possessing driving license which was for non-transport vehicle and the respondent no.1 was not having licence to ply the goods vehicle or the passenger vehicle including the RTV. The judgment cited by ld. counsel for respondent No.1 and 2 does not help the case of respondent No.1 and 2 as respondent No.3 has proved on record that respondent No.1 was not holding valid license to drive the offending vehicle. The judgment cited by ld. counsel for respondent No.3 is squarely applicable in the facts and circumstances of the present case. Since there is a violation of the condition of the policy, the insurance company is entitled for recovery rights. However, the insurance company has admitted the policy, the insurance company shall initially satisfy the award and shall have right to recover the awarded amount from respondent no.2.”

8. In *National Insurance Company Limited v. Annappa Irappa Nesaria & Ors.*, 2008 IV AD (SC) 358, the Supreme Court drew a distinction between the validity of licence for LMV to drive a light goods carriage or a light passenger vehicle before amendment in form 4 prescribed under Rule 2 (e) in the Central Motor Vehicles Rules, 1989 (the Rules). Before the amendment in 2001 the entries Medium Goods Vehicles and Heavy Goods Vehicles existed which have been substituted by a “transport vehicle”. It was held that a person holding a licence for Light Motor Vehicle after 28.03.2001 would not be competent to drive a “transport vehicle”. In the said case, the accident occurred on 09.12.1999. It was in that context that it was held

that the driver by holding a valid licence for LMV was authorized to drive Light Goods Vehicle as well. In this case, the accident took place on 16.10.2004 and thus the driver who was holding a driving licence to drive a Light Motor Vehicle was not competent to drive a transport vehicle. Para 12 to 17 of the report are extracted hereunder:-

“12. The Central Government has framed Rules known as The Central Motor Vehicles Rules, 1989.

13. 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:....”

14. 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.

15. "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 their authority who conducted the driving test.”

16. 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.

17. 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.”

9. In *National Insurance Co. v. Kusum Rai*, (2006) 4 SCC 250 where a driver holding a driving licence to drive a Light Motor Vehicle was held to be not entitled to drive a taxi.
10. In *Natwar Pariksh & Co. Ltd. v. State of Karnataka & Ors.*, (2005) 7 SCC 364, a distinction was drawn between a transport vehicle and non transport vehicle by a three Judges Bench of the Supreme Court. I would extract Para 24 of the report hereunder:-

“24. Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under section 2 (46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under section 2 (28). Similarly, the word "tractor" is defined in section 2 (44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforesaid definitions under section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to

another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under section 2(47) of the M.V. Act, 1988."

11. Subsequently, in *New India Assurance Company Limited v. Roshanben Rahemansha Fakir & Anr.*, (2008) 8 SCC 253; the Supreme Court differentiated between a transport vehicle and non transport vehicle and held that a driver who had a valid licence to drive a Light Motor Vehicle was not authorized to *drive* a light goods vehicle. It was further held that the person must possess the licence for the class of vehicle involved in the accident.
12. In the circumstances, Mohd. Naved, driver of the offending vehicle was not competent to drive RTV No.DL-IV-7872 involved in the accident.
13. The second Respondent New India Assurance Company Limited was entitled to avoid the policy but for its statutory liability to satisfy the claim of the third party.
14. The Claims Tribunal, therefore, was justified in granting recovery rights to the insurer against the Appellant (the insured).

15. The Appeal is devoid of any merit; the same is accordingly dismissed.

(G.P. MITTAL)
JUDGE

MARCH 16, 2012
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