

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

Decided on: 6th March, 2012

+ **MAC.APP. 31/2009**

M/S. NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. D.K. Sharma, Advocate

versus

SMT. SAVITRI DEVI & ORS. Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants impugn the judgment dated 03.10.2008 whereby while awarding a compensation of ₹ 6,88,000/-, the Motor Accident Claims Tribunal (the Claims Tribunal) denied recovery rights to the Appellant on the ground that the holder of LMV (NT) driving licence is competent to drive a transport vehicle which in this case was a Mahindra Jeep (Phat Paht Sewa meant for carrying passengers for hire) bearing registration No.DL-1Q-0277.
2. Admittedly, the accident took place on 16.10.2004. Driver of the offending vehicle Shyam Singh (the fifth Respondent) possessed a driving licence No.P05042004257258 valid for the period from 26.04.2004 to 25.04.2024.

3. Since no Appeal has been filed by the Claimants, the owner and the driver of the offending vehicle, I am not to go into the question of quantum or the negligence. While dealing with the question of liability, the Claims Tribunal held as under:-

“LIABILITY (IN BOTH THE CASES):

Ld. Counsel for the Ins. Co. had argued that the driving licence possessed by the driver did not permit him to drive the passenger vehicle. Ins. Co. thus insist for recovery rights. R3W1 stated that he got verified the licence number 4267258 for motorcycle and LMV (NT). He further deposed that the driver was driving commercial vehicle. Therefore, he submits that Ins. Co. is not liable to indemnify.

R3W2 official from the transport department deposed that the licence issued on 26.04.2004, for LMV (NT) was to expire by 25.04.2024. Ex.R3W2 is the verification report. He also deposed that this licence is not valid for driving commercial vehicle. Per contra, Ld. Counsel for R-1 relied on the following rulings a) Ashok Gangadhar Maratha v. Oriental Ins. Co. Ltd. SC 2000 (1) RCR (Civil) 437 b) Jeet @ Ajeet Singh v. Poonam & Ors. 2006 (4) RCR (Civil) 640 P&H Court c) Nirmala & Ors. v. Satish DB 2005 (4) RCR (Civil) P&H Court 827 d) National Ins. Co. Ltd. v. Shankar Lal 2005 (1) RCR (Civil) 550 MP.

Ld. Counsel for Ins. Co. relied on the ruling of New India v. Suraj Parkash, 2001 ACJ 85 HP.

I have gone through the above rulings. The controversy is now resolved by the Hon'ble Supreme Court in National Insurance Company Ltd. v. Annappa Irappa Nasaria and Ors., 2008 IV AD (SC) 358.

The date of accident is 16.10.2004. While rendering the above recent ruling, the Hon'ble Supreme Court has noted that Section 2 (21) of the MV Act, which defines light motor vehicle. It also discussed Section 3 and the Central Motor Vehicles Rule, 1989. The application form for licence at rule 2 (c) show the licence for MLV, MGVS, HGV, motor vehicles of other descriptions. Para 16 is very clear as held by the Hon'ble Supreme Court.

Para 16. "From what has been noticed hereinbefore, it is evidence 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 authorized to drive a light goods vehicle as well."

In view of the above law, the licence to drive LMV covers both light passenger vehicles and light goods vehicle also. Therefore, the ruling in New India Ass. Co. Ltd. v. Suraj Parkash of HP High Court, is of no help to the Ins. Co. Hence, no recovery rights can be granted in both the cases to the Ins. Co. the Ins. Co. having admitted the policy shall make good the payment."

4. It is urged by the learned counsel for the Appellant that the Claims Tribunal erred in holding that a person possessed of a licence for LMV was competent to drive a transport vehicle. Reliance on the judgment in *National Insurance Company Limited v. Annappa Irappa Nesaria & Ors.*, 2008 IV AD (SC) 358 was also misplaced.

5. I tend to agree with the contention raised on behalf of the

Appellant. My Lord Hon'ble Mr. Justice S.B. Sinha while writing judgment drew a distinction between the validity of a 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.”

6. 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.
7. 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 aforestated 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."

8. 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.

9. A *Light Motor Vehicle* is defined under Section 2 (21) to mean *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 7,500 kg.* A “transport vehicle” on the other hand has been defined under Section 2 (47) to mean *a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.* Section 10 of the Act says 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. A learner’s licence shall also be expressed as entitling the holder to drive a motor vehicle on one or more of the following class. Section 10 of the Act is extracted hereunder:-

“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) motor cycle without gear;*
- (b) motor cycle with gear;*
- (c) invalid carriage;*

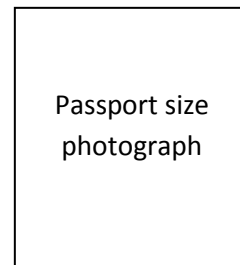
- (d) light motor vehicle;*
- (e) transport vehicle;*
- (i) road-roller;*
- (j) motor vehicle of a specified description.”*

10. Rule 16 (1) of the Central Motor Vehicles Rules, 1989 provides Form 6 for issuance of a driving licence, which is extracted hereunder:-

FORM 6
[See rule 16(1)]
(To be printed in Book Form of the size six centimeters into eight centimeters)
Form of Driving Licence

Name of the Licence Holder

Son/Wife/Daughter of



Name to be written across the photograph (Part of the seal and signature of the Licensing Authority to be on the Photograph and part of the driving licence).

Specimen signature/Thumb impression
of the Holder of the Licence.

Signature and designation of the
Licensing Authority.

Driving Licence number

Date of issue

Name

Son/wife/daughter of

Temporary address/Official address (if any)
.....

Permanent address

Date of Birth

Educational qualifications
Optional
Blood group
RH factor

The holder of this licence is licensed to drive throughout India vehicles of the following description:-

Motor cycle without gear
Motor cycle with gear
Invalid carriage
Light motor vehicle.
Transport vehicle.
Road roller
Motor vehicle of a specified description, namely
The licence to drive a motor vehicle other than transport vehicle is valid from..... to

The licence to drive transport vehicle is valid from.....to

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

Signature
Designation of the Licensing Authority

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

Space for addition of other classes of vehicles
Number
Date.....

Also authorised to drive the following class of or description of motor vehicles :

Name & designation of the Authority who conducted the driving test.
.....

11. The definition of LMV as given in Section 2(21) of the Motor Vehicles Act (the Act) is very wide so as to include a transport vehicle omnibus or a motor car or a tractor or a road roller, the unladen weight any of which does not exceeds 7500 kg. For

driving a transport vehicle or a road roller, a separate endorsement would be required on the LMV as can be seen from Section 10 of the Act.

12. The Sixth Respondent Surinder Kumar, who was Respondent No.2 before the Claims Tribunal filed a written statement stating that the much prior to the date of the accident he transferred the offending vehicle in favour of the fifth Respondent. At the time of evidence, an affidavit Ex.R2W-1/A was filed to this effect. No document of transfer has been produced. Even if his Affidavit is accepted on face value, he being the owner as defined under Section 2 (30) of the Act read with Section 168 of the Act , he remains liable for payment of compensation along with the driver, who is the tortfeasor. The Sixth Respondent has not given any explanation as to the circumstances under which the vehicle was entrusted to the Fifth Respondent. The driving licence has been proved to be not valid for driving the offending vehicle and in the absence of any evidence produced by the Sixth Respondent as to the circumstances under which the vehicle was entrusted to him, the breach of the policy condition read with Section 149 (2) (a) (ii) of the Act is established.
13. The Appellant was therefore entitled to the grant of recovery rights on the basis of the law laid down in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338 and *National Insurance Co. Ltd. v. Swaran Singh & Ors.*, 2004

(3) SCC 297.

14. It is, therefore, directed that the Appellant shall be entitled to recover the compensation paid from the driver and the owner of the offending vehicle, the Fifth and the Sixth Respondent respectively.
15. The Appeal is allowed in above terms.

(G.P. MITTAL)
JUDGE

MARCH 06, 2012
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