

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

Reserved on: 18th January, 2012

Pronounced on: 6th February, 2012

+ **MAC.APP. 741/2011**

BALWAN SINGH Appellant

Through: Mr. Bhupesh Narula, Adv.

versus

UNITED INDIA INSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr. K. L. Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant Balwan Singh impugns the judgment dated 17.04.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹ 3,08,000/- in favour of the Second Respondent, the Claims Tribunal granted right to the First Respondent (the Insurer) to recover the compensation paid from the Appellant who was the owner of the offending vehicle number HR-14-A-5846.
2. By the impugned judgment, the Tribunal held that the driver i.e. the Third Respondent by virtue of driving licence Ex.PW-1/4 was authorized to drive a motor cycle and LMV(NT) and thus, he was not authorized to drive a tractor trolley (tractor +

trolley).

3. The Learned counsel for the Appellant referred to a decision of this Court in *Oriental Insurance Company Limited v. Smt. Sushma & Ors.* MAC APP. 503/2006 (decided on 01.09.2008) wherein this Court while analyzing the definition of Light Motor Vehicle (LMV) as given in Clause 21 of Section 2 of the Motor Vehicles Act (the Act) held that wherever unladen weight of a vehicle is less than 7,500/- kg., it would be covered within the definition of LMV irrespective of the fact that it was a transport vehicle or a non-transport vehicle. Though, it was not disputed before the Claims Tribunal that a tractor while pulling trolley would be a transport vehicle, I would like to refer to the Notification number 1248 (E), dated 05.11.2004 issued by the Central Govt. whereby the transport vehicles have been differentiated from the non-transport vehicles. The Notification is extracted hereunder:-

Sr. No.	Transport Vehicles	Sr. No.	Non-Transport Vehicles
i	Motor cycle with side car for carrying goods.	i	Motor cycle with or without car for personal use.
ii	Motor cycle with trailer to carry goods	Ii	mopeds and Motorised Cycle (Engine Capacity exceeding 125 cc.)
iii	Motor cycle used for hire to carry one passenger on pillion and motorised cycle – rickshaws for goods or passengers on hire.	iii	Invalid carriage.
iv	Luxury cabs	iv	Three wheeled vehicles for

			personal use.
v	Three wheeled vehicles for transport of passenger/goods	V	Motor car
vi	Goods carrier trucks or tankers or mail carriers (N1 – N3 category)	vi	Fork lift
vii	<u>Power tiller and Tractors using public roads.</u>	vii	Vehicles/trailors fitted with equipments like Rlg.generator,compressor
viii	Mobile Clinic or X-Ray Van or Library Van.	viii	Crane mounted vehicle
ix	Mobile workshops.	ix	<u>Agriculture Tractor and power tiller.</u>
x	Mobile canteens	x	Private Service Vehicle, Registered in the name of an individual and if declared to be used by him solely for personal.
xi	Private Service Vehicle	xi	Camper Van or trailer for private use.
xii	Public Service Vehicle such as Maxi cab, Motor cab, stage carriages and contract carriages including tourist vehicles.	xii	Tow trucks, Brakedown van and Recovery vehicles
xiii	Educational Institution buses	xiii	Tower Wagons and tree trimming vehicles owned by Central, State and local authority.
xiv	Ambulances	xiv	Construction Equipment Vehicles as defined in rule 2 (ca).
xv	Animal ambulances		
xvi	Camper vans/trailers		
xvii	Cash Vans		
xviii	Fire tenders, snorked, ladders, auxillary trailers and fire fighting vehicles		

xix	Articulated Vehicles		
xx	Hearses		
xxi	Omnibus		

4. In *Natwar Pariksh & Co. Ltd. v. State of Karnataka & Ors.*, (2005) 7 SCC 364, a three Judges Bench of the Supreme Court held that even though a trailer was drawn by motor vehicle, it by itself being a motor vehicle the tractor trolley would constitute a goods vehicle under Section 2(14) and would consequently be a transport vehicle under Section 2(47). Para 24 of the report is extracted 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."

5. 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.
6. 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.”*

7. 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

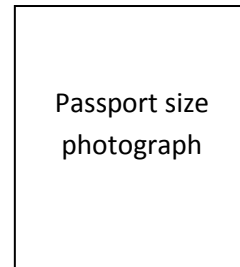
[See rule 16(1)]

(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.
.....
.....

8. A combined reading of Section 2(21), 2 (47), Section 10 of the Act and Form 6 issued under Rule 16 (1) would clearly show that a separate endorsement is needed for a person to drive Light Motor Vehicle when it is a transport vehicle. The period of validity of licence to drive a transport vehicle is also different from the period of validity of any other licence. Section 14 lays down that a driving licence for a transport vehicle shall be effective for a period of three years whereas a licence issued in any other case would be valid for 20 years or upto the age of 50 years of the holder of the licence.
9. In the present case, the licence was issued in the year 2008 and it was valid up to the year 2014. (Perhaps on account of the date of birth which is not available). It is also clear that the

licence was for LMV (NT) i.e. non-transport.

10. It would be relevant to extract Para 14 and 15 of the report of the Supreme Court in *Roshanben Rahemansha Fakir (supra)* hereunder:-

“14. In National Insurance Co. Ltd. v. Swaran Singh & Ors.(2004) 3 SCC 297, this Court opined:

“89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for "motorcycle

without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. 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."

The said decision has been considered by this Court in National Insurance Co. v. Kusum Rai, (2006) 4 SCC 250.

15. In National Insurance Company Ltd. v. Annappa Irappa Nesaria and Ors., (2008) 3 SCC 464, it was noticed that the provisions of the Act have undergone a change. The definition of 'light motor vehicle' would not include a light transport vehicle. In that case, keeping in view the date on which the accident took place, it was held:-

"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 authorized to drive a light goods vehicle as well."

11. In view of the above discussion, there is no escape from the

conclusion that the Third Respondent was not entitled to drive the tractor trolley involved in the accident. The Claims Tribunal rightly granted the recovery rights. It is not the case of the Appellant that he was not aware of the licence held by the Third Respondent and thus, it cannot be said that he was not guilty of willful breach of the terms of the policy. Since the First Respondent could avoid the liability on successfully proving the breach of the terms of the policy, the Claims Tribunal's order granting recovery rights to the First Respondent cannot be faulted.

12. The Appeal is devoid of any merit; the same is accordingly dismissed.
13. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 6, 2012
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