

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

Reserved on: 10th April, 2012

Pronounced on: 23rd July, 2012

+ **MAC.APP. 235/2009**

OIC LTD.

..... Appellant

Through: Ms. Manjusha Wadhwa,
Advocate

versus

KHUSHBOO DEVI & ORS.

..... Respondent

Through: Mr. R.K. Pandit, Advocate with
Mr. Pappu Singh, Advocate for
R-6.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The question for determination in this Appeal is whether the deceased driver of the tempo No.DL-IM-1000 (which was a Medium Goods Vehicle) can drive the said vehicle with a licence for a Light Motor Vehicle which he possessed. In other words, whether there was breach of the terms of the policy by the owner of the vehicle (Respondent No.6) by allowing the deceased to drive a Medium Goods Vehicle (MGV) who had a licence to drive LMV and thus, the Appellant Insurance Company could avoid the liability.

2. A Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) preferred by Respondents No.1 to 5 was converted into one under Section 163-A of the Act. According to the allegations made in the Claim Petition, on 23.09.2005 at about 5:15 P.M., the deceased Shiv Mangal Pandey while driving vehicle No.DL-IM-1000 was returning from Mawana to Delhi. One Ram Kumar was also present in the vehicle (Tata 1109 weighing 10,500 kg.). When the deceased while driving the earlier said vehicle reached the Delhi Road near Kishan Petrol Pump, a vehicle carrying husk appeared suddenly and tried to overtake their vehicle from the wrong side. The deceased Shiv Mangal Pandey tried to avoid collision with the aforementioned vehicle. In the process, he lost control and collided with the central divider. The vehicle turned turtle. Shiv Mangal Pandey suffered injuries which proved fatal. SHO, Police Station Niwari, District Ghaziabad, U.P. was informed about the accident.
3. The Claims Tribunal on the basis of the deceased's income (₹3,300/- per month) awarded a compensation of ₹5,11,000/- including the compensation under non pecuniary heads.
4. By an order dated 14.05.2009 notice was ordered to be issued only with regard to the recovery rights against the insured (the owner of the vehicle involved in the accident), I am not to go into the question of negligence and the quantum of compensation.

5. Both the parties do not dispute that the vehicle No.DL-1M-1000 involved in the accident had a gross weight of 10,500 kg. The same is proved by Form No.47 as also through the policy of insurance Ex.R1W1/1 and registration Certificate Ex.R2W2/D which shows that the unladen weight of the vehicle is 10,500 kg. Thus, in view of Sections 2(16), 2(21) and 2(23) of the Act which define Heavy Goods Vehicle, Light Motor Vehicle and Medium Goods Vehicle respectively, the vehicle in question was a Medium Goods Vehicle.
6. The Claims Tribunal while awarding a compensation of ₹5,11,000/- declined recovery rights against the Respondent No.6 on the ground that the witness examined by the Appellant Insurance Company could not state as to whether the driver holding a licence to drive LMV could drive a Medium Goods Vehicle or not and thus held that breach of the policy condition was not established and therefore the Appellant was not entitled to recovery rights against Respondent No.6.
7. It is urged by the learned counsel for the Appellant that the Claims Tribunal erred in relying on the opinion of R2W1 that “*I cannot say whether the driver could drive the medium motor vehicle with the present DL.*”
8. In view of the clear distinction between a Light Motor Vehicle and a Medium Goods Vehicle, it was incumbent on the driver to

possess an appropriate licence to drive a Medium Goods Vehicle.

9. On the other hand, it is urged by the learned counsel for Respondent No.6 that distinction was abolished in different types of transport vehicles and anybody holding a licence to drive a transport vehicle could drive any vehicle. Both the counsels place reliance on the judgment of the Supreme Court in *Oriental Insurance Company Limited v. Angad Kol & Ors.* (2009) 11 SCC 356.
10. For clarity it would be fruitful to extract Section 2 (21) of the Act which defines Light Motor Vehicles (LMV).

“2 (21) "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”

11. A perusal of the above definition makes it apparent that LMV would mean to include only vehicles which have an unladen weight upto 7500/- kg. In this case, as pointed out earlier it is admitted by both the parties that the weight of the offending vehicle is 10,500/- kg. Therefore, since the driver of the offending vehicle possessed a licence to drive “LMV only” he cannot be said to have a valid and effective driving licence to drive the offending vehicle which was MMV. In Paras 15 and 16 of the report in *Angad Kol (supra)* it was held as under:-

“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)-(c)****

(d) light motor vehicle;

(e) transport vehicle; [Substituted for clauses (e) to (h) by Act 54 of 1994, Section 8 (w.e.f. 14-11-1994).]

(i) road roller;

(j) motor vehicle of a specified description.”

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.

16. 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.”

12. In the above case, the Supreme Court pointed out the difference between LMV and a Transport vehicle. It was observed that a Transport Vehicle may be a Light Motor Vehicle but for driving the same a distinct licence is required to be obtained. Therefore, every Transport Vehicle may be either a Light Motor Vehicle, a Medium Goods Vehicle or a Heavy Motor Vehicle. If a person possesses a driving licence to drive a transport vehicle, it may include vehicles of all categories i.e. light, medium and heavy but if a licence is restricted to a specific vehicle i.e. LMV then the person will not be competent to drive other vehicles i.e. MMV and HMV. For example a person approaches a Licensing Authority to grant him licence to drive a taxi. He takes a test to drive a motor car. He cannot be asked to take a test to drive a MMV or HMV. Similarly, on the authority of LMV licence he cannot drive other category of vehicles i.e. MMV and HMV.
13. A perusal of the driving licence held by deceased Shiv Mangal Pandey shows that he possessed a driving licence to drive a Light Motor Vehicle and the licence to drive a transport vehicle was valid from 20.01.2003 to 19.01.2006. "LMV ONLY" was specifically endorsed on the licence. It was, therefore, crystal clear that the deceased was not competent to drive any transport vehicle other than a Light Motor Vehicle.
14. R2W1 Brij Raj Krishan testified that the licence was valid for the period 20.01.2003 to 19.01.2006 for LMV only. He added that the holder of the licence was not authorized to drive a

vehicle of a capacity of more than a LMV. The witness expressed his ignorance, if the driver could drive a medium goods vehicle on the authority of the driving licence in question. This was merely an opinion of the Junior Clerk from the Licensing Authority. Obviously, he could not form an opinion whether on the basis of a driving licence for LMV (Transport), a person could drive Medium Motor Vehicle or not.

15. Since the deceased was holding a driving licence to drive only an LMV, he was not competent to drive any Medium Goods Vehicle, which was the vehicle involved in the accident in this case.
16. A notice under Order XII Rule 8 CPC given to the owner (Respondent No.6) was proved as Ex.R2W2/A and its postal receipt was proved as Ex.R2W2/B. The Insurance Policy which was proved as Ex.R2W2/D excluded the liability of the Insurance Company where the driver was not holding a valid licence to drive a vehicle involved in the accident.
17. The Appellant, Insurance Company has, therefore, successfully proved the breach of the terms of policy. The Appellant was therefore, entitled to the recovery rights. (*United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338; *Skandia Insurance Company Limited v. Kokilaben Chandravan*, (1987) 2 SCC 654 and *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297).

18. The Appeal is allowed and the Appellant Insurance Company is granted recovery rights against Respondent No.6 (owner of the offending vehicle) in the execution of this very judgment without having recourse to separate proceedings.
19. The statutory amount of ₹25,000/- shall be refunded to the Appellant Insurance Company.
20. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 23, 2012

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