

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

Date of decision: 29th March, 2012

+ **MAC.APP. 343/2008**

THE NEW INDIA ASSURANCE CO.LTD..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SUBODH & ORS. Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Company Limited impugns the judgment dated 28.02.2008 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby while awarding a compensation of ₹ 40,000/-, the Claims Tribunal held that the first Respondent was competent to drive a Jeep as he was holding a valid driving licence to drive LMV.
2. It is a matter of record that the Insured vehicle bearing registration number DL-1LE-2172 (Mahendra Pick Up Van) was a goods carrying commercial vehicle, owned by M/s. Ajay Service Station, the Second Respondent. While making the

Appellant Insurance Company liable to indemnify the award, the Claims Tribunal held as under:-

“16. ... The respondent no. 3 took the plea that the R-1 was not having valid and effective driving license at the time of accident so the RW2 examined two witnesses in this respect RW1 Padam Singh and RW2 Anil Kumar. RW1 Padam Singh, Record Keeper North Zone, Mall Road Authority deposed that as per his testimony that Rakesh Kumar Verma R-1 was having valid and effective driving license for LMV, non transport and motor cycle only and he proved its record as Ex.R3W1 and as per the testimony of RW2 who proved the policy as Ex.R3W2/4 and I have given my thoughtful consideration on its relevant clause at point A which is as under :-

Persons or class of persons entitled to drive :-

Any person including insured provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that rule 3 of the contract Motor Vehicle rule, 1989 so in view of the testimonies of RW1 and RW2 it has been cleared that the R-1 was having proper driving license which was issued to him on 08.10.2001 and valid up to 07.10.2021 and the date of accident is 12.11.2003 so even as per the terms and conditions of insurance policy the R-1 was having valid and effective driving license because as per the policy the R-1 was having valid and effective driving license because as per the policy terms and conditions even learner is also entitled to drive the vehicle and R-1 was driving jeep which falls under the category of light motor vehicle and the R-1 was having license for the category of LMV.....”

3. The driving licence Ex.PW-1/E-9 belonging to the first Respondent was seized by the police at the time of the accident, the same was duly proved. Padam Singh RW-1 examined by the Appellant Insurance Company proved that the driver Rakesh Kumar Verma held a valid and effective driving licence to drive LMV (Non-Transport) and motorcycle only.
4. The Claims Tribunal fell into error in holding that the offending vehicle being a Jeep fell within the category of LMV and the first Respondent held a valid driving licence to drive it. The Claims Tribunal lost track of the fact that the vehicle involved in the accident was a transport vehicle. It was a goods carrying commercial vehicle as reflected in the Insurance Policy Ex.R3W2/4.
5. 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 a motor vehicle, it 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 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."

6. 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.

7. 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 entitle the holder to drive a motor vehicle of one or more of the mentioned class.
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 this case a perusal of the driving licence Ex.PW-1/E-9 shows that the licence is valid for a period of 20 years. It is clear that as per Section 14 driving licence for the transport vehicle shall be effective only for a period of three years. In category of the class of the vehicle it is clearly mentioned on the driving licence that it was for LMV (NT) which was also clarified by Padam Singh, a witness from Mall Road Transport Authority.
10. It is, therefore, established that the first Respondent did not possess a driving licence for the Class of vehicle i.e. a transport vehicle, which met with an accident. The Insurance Company had established the breach of the terms of policy Ex.R3W2/4. In view of the report in *National Insurance Company Limited v. Swaran Singh & Ors.*, (2004) 3 SCC 297, the Appellant Insurance Company is entitled to recover the compensation paid in the execution of the proceedings without filing any independent proceedings.
11. The Appeal is allowed in above terms.
12. No costs.
13. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 29, 2012

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