IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 123 of 2004

* M/s. New India Assurance Co. Ltd.
having its registered and head office
New India Assurance Building,
87, M.G. Road, Fort Bombay 411001
Branch at Parbhani
and Divisional office at Adalat Road,
Aurangabad 431 005
through its
Senior Divisional Manager. **.. Appellant.**

Versus

1) Gulab Sitaram Chavan,
Age 35 years,
Occupation : Labourer,

2) Taibai w/o Gulab Chavan,
Age 30 years,
Occupation : Household

Both R/o Anjanwada Tanda,
Taluka Aundha Nagnath,
District Hingoli.

3) Rajaram Tukaram Bangar,
Age 45 years,
Occupation : Agriculture and
Contractor,
R/o Ram Mandir, Hingoli. **.. Respondents.**

Shri. V.N. Upadhye, Advocate, for appellant.

Shri. A.R. Rathod, Advocate, for respondent Nos.1 & 2.

CORAM: T.V. NALAWADE, J.

DATE : 19th NOVEMBER 2015

JUDGMENT:

1) The appeal is filed against the judgment and award of MACP No.494/2000 which was pending before the Motor Accident Claims Tribunal, Hingoli. The claim filed by present respondents 1 and 2 for compensation under section 166 of the Motor Vehicles Act in respect of death of their son is allowed. Heard learned counsel for both sides.

2) The accident took place on 11-10-2000. Deceased Vishnu Chavan, who was aged 9 years and who was son of the original claimants, was playing on the road near his school and at that time the truck bearing No.MHV 7355 gave dash to him. Vishnu died due to injury sustained by him in the accident. Claim of Rs. Two lakh was made.

3) The Insurance Company contested the matter by filing written statement. It is the case of the Insurance Company that the driver of the truck was not holding

effective and valid driving licence to drive the truck at the relevant time and so the Insurance Company is not liable to pay anything.

4) Issues were framed on the aforesaid contentions. The Tribunal has held that both the owner and the Insurance Company are jointly and severally liable to pay compensation of Rs.1.5 lakh. Present proceeding is filed only in respect of liability of the Insurance company. Learned counsel for the Insurance Company submitted that he is not challenging the quantum.

5) It is not disputed that police had filed case against the tuck driver. The vehicle involved in question was truck bearing No.MHV 7355. The Insurance Company has examined one employee of the RTO office Parbhani like Dagdu Pradhan. In his evidence it is proved that learning licence was issued in favour of the driver by his office on 3-8-2000 and that was in respect of light motor vehicle. The evidence specifically shows that even learning licence was not issued for driving truck, which is heavy motor vehicle.

6) The owner did not contest the matter and no evidence in rebuttal in respect of the aforesaid circumstances is given. Thus, the Insurance Company has proved that the driver, who caused the accident, was not holding a licence to drive truck, heavy vehicle at the relevant time. Learned counsel for the Insurance Company placed reliance on the case reported as **AIR 2009 SC 2151 (Oriental Insurance Company v. Angand Kol)**. This Court had occasion to consider and decide similar point in First Appeal No.34/2000 when this Court decided it at this seat. This Court considered the aforesaid case of Angand Kol. The observations made by the Apex Court in the said case (cited supra) are quoted which are as under :-

> "**8.** Motor Vehicles Act, 1988 (hereinafter called as 'the Act') was enacted to consolidate and amend the law relating to motor vehicles. 'Driving licence' has been defined in Section 2(10) to mean the licence issued by a competent authority under Chapter II authorizing the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description. "Goods carriage" has been defined in Section 2(14) to mean any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. The said Act also defines 'heavy goods vehicle', 'heavy passenger motor vehicle', 'medium goods vehicle' and 'medium passenger motor

vehicle' as well as a 'light motor vehicle' in Section 2(21) of the Act to mean :

> " 'light motor vehicle' mens 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."

9. Although the definition of the 'light motor vehicle' brings within its umbrage both 'transport vehicle' or 'omnibus', indisputably, as would be noticed infra, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists.

Section 3 provides for the necessity of driving licence, stating:

> "3. Necessity for driving licence**.** - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle other than a motor car or motor cycle hired for his own use or rented under any scheme made under sub section (2) of Section 75 unless his driving licence specifically entitles him so to do.
>
> (2) ... Section 9 provides for grant of driving licence. Section 10 prescribes the form and contents of licences to drive which is to be 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) to (c) *******

(d) light motor vehicle;

(e) transport vehicle;

(i) road Roller;

(j) motor vehicle of a specified description."

10. 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. 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' wherein in case of any other licence, it may remain effective for a period of 20 years."

It is laid down by the Apex Court that a 'light motor vehicle" and a "transport vehicle" are distinct and so the licence held by the applicant which was for light motor vehicle cannot be used for transport vehicle."

7) By making aforesaid observations this Court had modified the award and right was given to the Insurance Company to recover the amount of compensation already paid, from the owner of the vehicle.

8) Learned counsel for the Insurance Company placed reliance on a case reported as **(2004) 13 SCC 224 (Oriental Insurance Company v. Nanjappan)** and he produced copy of judgment delivered by this Court at Nagpur Bench in *First Appeal No.6/2014 (The National Insurance Co. Ltd v Jayshri Pramod Gadbail)*. Learned counsel for the Insurance Company submitted that before making disbursement of the amount some steps need to be taken and undertaking needs to be obtained from the owner of the vehicle as mentioned by the Apex Court in the case cited supra. It is true that such direction was given by the Apex Court in the aforesaid case in view of the facts of that case. The record shows that the owner did not file written statement in the present matter and he did not contest the matter. The matter is very old, of the year 2000. In ordinary course the Insurance Company needs to pay the amount first and it can be allowed to recover it from the owner by using the same award delivered in the claim petition. In this case that procedure can be followed. In the result, following order :

9) The appeal is partly allowed. The Insurance Company is entitled to recover the amount from the owner after making payment of the compensation to the claimants and the Insurance Company will be entitled to recover interest at the same rate at which it is paid by it and the interest would be payable till the date of recovery. The award is to be amended accordingly.

Sd/-
(T.V. NALAWADE, J.)

rsl