**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.136 OF 2002

The New India Assurance
Company Ltd., having its
Registered and Head office
at New India Assurance
Building, 87, M.G. Marg,
Fort, Mumbai and Divisional
Office at Aurangabad by its
authorised representative
Shri Namdeo Gangaram Mali
Age 49 years, Occu. Service
R/o Aurangabad ..Appellant

Versus

1. Nana alias Nanasaheb s/o
Bhausaheb Aher, Age 32 years,
Occu. Service, R/o Shivrai,
Taluka Vaijapur,
District Aurangabad

2. Shirish s/o Purushottamrao Kathare,
Age Major, Occu. Business,
R/o House No.146/1, Dhangar Galli,
Shindefal, Taluka Vaijapur,
District Osmanabad

3. Ashok Shivaji Jadhave,
Occu. Driver R/o Bavi,
Taluka and Dist. Aurangabad

4. The Secretary,
M.S.R.T.C. Bombay through
its Divisional Controller,
M.S.R.T.C. Divisional Office
Aurangabad

5. Vijay s/o Pandurang Dabhade,
Age 35 years, Occu. S.T. Driver,
R/o Jafrabad, S.T. Depot,
Taluka Jafrabad, District Jalna ..Respondents

Mr D.S. Kulkarni, Advocate h/f Mr S.L. Kulkarni, Advocate for appellant
Mr Sudam Jawale, Advocate for respondent No.1
Mr B.R. Sontakke Patil, Advocate for respondent No.2
Smt. R.D. Reddy, Advocate for respondent No.4
Respondent No.3 served

CORAM : V.K. JADHAV, J.

DATE : 7th June 2016

ORAL JUDGMENT

Heard.

2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Aurangabad dated 9th November 2001 in Motor Accident Claim Petition No.158 of 1998, the original respondent No.3 insurer has preferred this appeal.

3. Brief facts giving rise to the present appeal are as under :

4. On 11th August 1996 at about 7.30 a.m. claimant was traveling in S.T. Bus bearing registration No.MH-20-D-2645 (Shirdi to Jafrabad) and on way when the bus reached near kilo meter No.6 stone, one truck bearing registration No.MTB-1791 came from Vaijapur side in excessive speed and given dash to the S.T. Bus. In consequence of which, the claimant has sustained crush injury fracture to both of his legs. The injury sustained by the claimant also resulted into permanent disablement. The claimant has, therefore, preferred claim petition before the Tribunal for compensation under the various heads.

5. The respondents No.1, 2, 4 and 5 have not filed any written statement and, therefore, hearing of petition ordered to be proceeded without their written statement. The respondent No.3 – insurer has strongly resisted the petition by filing written statement. It has contended that the driver of the truck was not holding valid and

effective licence at the time of accident. It has also contended that there was breach of condition of the policy. It is also contended that the accident took place due to rash and negligent driving of driver of the S.T. Bus. The learned Member of the Tribunal vide impugned judgment and award dated 9th November 2001 partly allowed the petition and thereby directed the respondents No.1 to 3 jointly and severally to pay compensation of Rs.30,000/- and respondents No.4 and 5 jointly and severally to pay Rs.30,000/- to the claimant with the interest and proportionate costs from the date of petition till realisation of entire amount. Being aggrieved by the same, the original respondent No.3 – insurer has preferred this appeal.

6. The learned Counsel for the appellant – insurer submits that the driver of the truck was not holding valid and effective driving licence at the time of accident and, therefore, insurer is not responsible to pay the compensation. It was further pointed out that the licence brought on record vide Exh.45 is issued to drive the light motor vehicle and the same is not valid and effective to drive the truck. The learned Counsel further submits that the Tribunal has not considered the same while fastening the liability on the insurer along with owner of the truck to pay the compensation. The learned Counsel, in order to substantiate his submission placed reliance on the judgments of Apex Court in the matters of **S. Iyyapan Vs. United India Insurance Co.Ltd., and anr.,** reported in **(2013) 7 SCC 62** and **Mukund Dewangan Vs. Oriental Insurance Co.Ltd.,** reported in **LAWS (SC) 2016-2-29.**

7. The learned Counsel for the respondent No.1 – original claimant submits that it is not the case that the driver of the truck was not holding driving licence at all. He submits that the Tribunal has rightly held that the driver of the truck has the valid and effective licence to drive the truck also. The learned Counsel, in the alternate submits that in view of the ratio laid down in the S. Iyyapan's case (cited supra), the appellant – insurer may be directed to pay the amount of compensation, as prescribed by the Tribunal and recover the same from the owner of the truck.

8. The learned Counsel for the respondent – owner of the vehicle submits that the appellant – insurer has failed to prove before the Tribunal that the driver of the truck was not holding valid and effective driving licence to drive the truck. It is submitted that in absence of the said evidence, the Tribunal was right in fastening the liability on respondents No.1 to 3 to pay the compensation of Rs.30,000/- and on respondents No.4 and 5 to pay the compensation of Rs.30,000/- jointly and severally to the claimant.

9. It is rather an admitted position that the driver of the truck was not holding valid and effective driving licence to drive the truck. He was having a licence, which is placed on record vide Exh.45 is prescribed to drive the light motor vehicle.

10. In a case of Mukund Dewangan (cited supra), the question was raised whether for the drivers having licence to drive the light motor vehicle, there is a necessity of obtaining endorsement to drive the transport vehicle when the transport vehicle is of class of light motor

vehicle. In this case, the Apex Court has referred the questions to the larger Bench to the following effect :

(1) What is the meaning to be given to the definition of “light motor vehicle” as defined in section 2(21) of the MV Act ? Whether transport vehicles are excluded from it ?

(2) Whether 'transport vehicle' and 'omnibus' the “gross vehicle weight” of either of which does not exceed 7500 kgs. would be a “light motor vehicle” and also motor-car or tractor or a road roller, “unladen weight” of which does not exceed 7500 kgs. And holder of licence to drive class of “light motor vehicle” as provided in section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the “gross vehicle weight” of which does not exceed 7500 kgs. or a motor-car or tractor or road roller, the “unladen weight” of which does not exceed 7500 kgs.?

(3) What is the effect of the amendment made by virtue of Act No.54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10 (2) which contained “medium goods vehicle”, medium passenger motor vehicle”, heavy goods vehicle” and “heavy passenger motor vehicle” by “transport vehicle” ? Whether insertion of expression 'transport vehicle' under section 10(2) (e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from purview of Sections (10) (2) (d) and 2(41) of the Act ?

(4) What is the effect of amendment of the Form 4 as to operation of the provisions contained in section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of “Light Motor Vehicle” has been changed ?

11. In the case in hand, the driver of the truck was having valid and effective driving licence to drive the light motor vehicle. It is the case that the said driver has driven the transport vehicle which is a class of light motor vehicle.

12. The observations made by the Apex Court in the case of S. Iyyapan's case (referred supra) squarely applies to the facts of the present matter. The respondent – truck owner has not contested the claim petition in any manner and it is rather an admitted position on record that the driver of the truck was having the driving licence to drive the light motor vehicle only.

13. In the light of observations made by Apex Court in the case of S. Iyyapan's case (referred supra), the appellant – insurer may be directed to satisfy the award passed against the insured and then recover it from him. The impugned judgment and award is required to be modified to that extent. Hence, I proceed to pass the following order:

ORDER

(I) The appeal is hereby partly allowed.

(II) the judgment and award passed by the Member, Motor Accident Claims Tribunal, Aurangabad dated 9th November 2001 in Motor Accident Claim Petition No.158 of 1998 is hereby modified in the following manner:

(III) The respondents No.1 and 2 jointly and severally do pay Rs.30,000/- (Rs. Thirty thousand) with interest at the rate of 9% per annum from the date of petition till the realisation of entire amount with proportionate costs. However, the respondent No.3 – New India Assurance Company Ltd. shall pay amount of Rs.30,000/- (Rs. Thirty thousand) along with interest and proportionate costs, as directed, to the claimant and then recover the same from respondent No.1, owner of the truck.

(IV) The award shall be drawn up in tune with the modification, as aforesaid.

(V) Rest of the judgment and award stands confirmed.

(V.K. JADHAV, J.)

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