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

FIRST APPEAL NO.: 847 OF 2007

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The New India Insurance Co. Ltd.
Through its Branch Manager,
Adalat Road, Aurangabad. ... **APPELLANT**
(ORIG. RESPDT.NO.2)

VERSUS

1. Abdul Majid Nijar Ali Panjwani,
   Age: 57 years, Occ: Business,
   R/o Sangamner Road, Shirampur,
   Tq. Shrirampur, Dist. Ahmednagar.

2. Lata Ashok Hiwale,
   Age: Major, Occu: Business,
   Residing at Market Yard, Shrirampur,
   Dist. Ahmednagar. ... **RESPONDENTS**
   (RESPDT.NO. ORI. CLAIMANT
   RESPDT.NO.2 ORIG.REPDT.NO.1)

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Advocate for the Appellant: Mr. S. G. Chapalgaonkar.

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CORAM:- T. V. NALAWADE, J.
DATED:- 12th JANUARY, 2016.

JUDGMENT:

1. The appeal is filed by Insurance Company to challenge the judgment and Award of Claim Petition No.102 of 2002 which was pending before the Claims Tribunal, Shrirampur,

District Ahmednagar. Heard learned counsel for the insurance company.

2. There is no dispute over the quantum of compensation and insurance company has challenged the decision mainly on the ground that there has been breach of conditions of policy but right is not given to the insurance company to recover the compensation which insurance company is made to pay to the claimant.

3. Before the Tribunal, the Insurance Company had filed written statement and it had taken the defence that at the relevant time the driver of the vehicle was not holding valid driving licence and there has been breach of condition of the policy. Dash was given to a pedestrian by the offending vehicle which was tempo bearing No.MH-17-A-5995.

4. The accident had taken place on 2nd May, 2002. The driving licence for L.M.V. Non Transport was issued to the driver of the offending vehicle on 29th March, 2001 and it was

valid up to 5th March, 2003. Licence to drive heady goods vehicle was issued on 6th March, 2003.

5. The learned counsel for the Insurance Company placed reliance on a case reported as ***2009 AIR SCW 2747 (Oriental Insurance Co. Ltd. V/s Angad Kol and Ors.)***. In that case, the accident had taken place on 31st October, 2004 and one mini door auto had given dash to the deceased. It was a goods carriage vehicle. The Apex Court considered the definitions of light motor vehicle goods carriage and heavy goods vehicle, medium goods vehicle and heavy passenger motor vehicle. The Apex Court considered the amendment made in Central Motor Vehicle Rules on 28th March, 2001 and held that in view of the period for which licence was granted, it was for a vehicle other than transport vehicle, it was for more than period of three years. It is observed that in the past light motor vehicle used to cover both light passenger vehicle and light goods carriage vehicle and so a driver who had a valid licence to drive light motor vehicle was authorised to drive a light goods vehicle as well. It is observed taht the transport vehicle has now been substituted for medium goods vehicle

and heavy goods vehicle and so a driver having licencwe to drive light motor vehicle needs to take an endorsement on the licence permitting him to drive transport vehicle. In the case reported as ***2008 AIR SCE 906 (National Insurance Company Ltd. V/s Annappa Irappa Nesaria and Ors.)*** it was held that the person having licence to drive light motor vehicle was permitted to drive light passenger carriage vehicle and light goods carried vehicle in the past. In that case, the accident had taken place on 9th December, 1999.

6. In the recent case decided on 28th October, 2014 reported as ***(2015) 2 SCC 186 (Kulwant Singh and others V/s Oriental Insurance Complany Limited}*** when the accident had taken place on 8th October, 2005 it is held that if a driver was having valid licence to drive a light motor vehicle, he can drive light goods vehicle as well. The driver of the offending vehicle was driving tempo (Tata-407) and he was holding licence to drive light motor vehicle when the vehicle was light goods vehicle. The Apex Court held that there was no breach of conditions of policy and there was no question of even allowing the insurance company to recover the

amount from owner of the vehicle.

7. In the present matter, similar vehicle is involved, a tempo and the driver was holding a licence to drive light motor vehicle. In view of these circumstances, it is not possible to interfere in the decision given by the Tribunal.

8. In the result, appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated: 12/01/2016.
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