IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1260 OF 2013
WITH CIVIL APPLICATION NO. 11075/2017.
IN FA 1260/2013.

THE NEW INDIA ASSURANCE CO. LTD. THROUGH
ITS DIVISIONAL MANAGER.
VERSUS.
BHIMA ANNASAHEB SABLE AND ANOTHER.

CORAM : K. L. WADANE, J.

DATE : 12th September, 2017

ORDER:

1. With consent of the parties, this appeal is taken up for final hearing.

2. The appellant/New India Assurance Company challenged the judgment and award passed by the Member of the Motor Accident Claims Tribunal Kopargaon in Motor Accident Claim Petition No. 49/2005 dated 26.03.2012, by which the claim petition of the respondent No. 1 namely Bhima is partly allowed and the opponents i.e. appellant and respondent No. 2 were directed to pay jointly and severally a sum of Rs. 3,75,000/- to the claimant including no-fault-liability along with 6 % interest.

3. The brief facts of the case may be stated as follows:

On 15.03.2005 the son of the claimant namely Ravindra was travelling in auto-rickshaw bearing registration No. MH-17/K-9355. The respondent No. 2 was owner and the present appellant was insurer of the vehicle involved in the accident. On the date of the accident the deceased was travelling in the auto-rickshaw as a passenger. When the rickshaw came at the spot of incident one cyclist came in front of the rickshaw and to avoid the accident with the cyclist the rickshaw driver turned his rickshaw, which resulted into the accident. The deceased sustained grievous injuries and died.

4. The learned Member of the Motor Accident Claims Tribunal Kopargaon after hearing both the sides awarded the compensation as referred above. The appeal is presented by the insurance company mainly on the ground that the insurance company is not liable to pay the compensation as the driver of the rickshaw was not holding licence to drive the auto-rickshaw (transport) i.e. commercial venicle. According to appellant the driver of the rickshaw was holding a driving licence to

drive auto-rickshaw (non-transport). Therefore, there was breach of terms and conditions of the insurance policy on the part of the opponent No.1/owner of the vehicle.

5. In the present appeal there is no dispute between the parties about the factum of the accident and negligence on the part of the rickshaw driver and the quantum of compensation. Only controversy between the parties is with regards to the liability of payment of compensation. The insurance company says that, due to express terms and conditions elucidated in the insurance policy, the driver of the rickshaw was not holding driving licence to drive the auto rickshaw (transport) i.e. commercial vehicle.

6. During the course of arguments, learned counsel appearing for the appellant relied upon the observations in *A.I.R. 2017 Supreme Court 3668*.

7. I have gone through the observations of the larger Bench of the Apex Court, before whom a reference was made and in the reference, the main question involved is, whether a driver who is having licence to drive 'light motor vehicle' and is driving 'transport vehicle', of that class is required additionally to

obtain an endorsement to drive a transport vehicle ?".

8. While answering the reference, the Apex Court has considered various provisions of the Motor Vehicles Act regarding light motor vehicle, medium vehicle and heavy vehicle and considered the aspect of the class of the vehicle and licence for driving such vehicles, and therefore observed in para 43 to 46 -

> " **43-** Section 10 (2)(a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of section 10(2). This Court has rightly observed in *Nagashetty (AIR 2001 SC 3356)(supra)* that in case submission to the contrary is accepted,then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd result. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence.

In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in *Nagashetty (AIR 2001 SC 3356) (supra)* is correct, however, for the reasons as explained by us.

44. In Natwar Parikh & Co.Ltd. v. State of Karnataka & Ors. (2005) 7 SCC 364: (AIR 2005 SC 3428), this Court was concerned with the taxation under the Karnataka Motor Vehicles Taxation Act, 1957 and question arose whether the tractor along with trailer for transporting goods was to constitute distinct category of goods carrier which requires permission under Section 2(14) of the Motor Vehicles Act, 1957 and absence thereof would render it liable to tax under Section 3(2). This Court held that the tractor when attached with the trailer carrying goods, would become a transport vehicle for the purpose of taxation. This Court has discussed the question thus:

"Section 2(28) is a comprehensive definition of the words "motor vehicle". Although a "trailer" is separately defined in Section 2(46) to mean any vehicle drawn or intended to be drawn by a motor vehicle, it is still included in 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 is 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 MV Act, 1988."

There is no dispute with the aforesaid proposition, that tractor if drawing a trailer with goods would constitute goods carrier and consequently would be a transport vehicle. The aforesaid discussion was with respect to taxation and not with respect to the competence of driver holding light motor vehicle licence to drive the tractor attached with trailer/trolley carrying goods. The driver had the competence to drive such a vehicle, tractor with a trailer carrying goods being of light motor vehicle category transport vehicle which is the question involved in the instant case. Therefore, the decision renders no help with the cause espoused by the insurer.

45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire and reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in Section 2(14) to mean a 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. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licnece can drive all the vehicles of the class including transport vehicle. It was pre-amended position as well as the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of “light motor vehicle” in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicles, heavy passenger motor vehicle which earlier found place in section 10 (2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the question which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No. 54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light vehicle and also motor car or transport or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of “light motor vehicle” is provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No. 54/1994 w.e.f. 14.11.1994 while substituting clauses(e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e),medium passenger motor vehicle in section 10(2)(f),heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression “transport vehicle” as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle,and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

9. Herein the present case the rickshaw driver was driving the vehicle auto-rickshaw (transport) i.e. commercial vehicle and the licence issued to the rickshaw driver to drive the auto-rickshaw (non-transport). Thus the kind of the vehicle is only different but class of the vehicle is same. For the grounds raised by the insurance company in the appeal-memo, the observations of the Apex Court in the aforesaid authority is complete answer.

10. Therefore, in view of the observations of the above cited authority, there is no substance in the appeal, therefore, it is liable to be dismissed. Accordingly, it is dismissed.

11. The amount of compensation deposited in this Court be paid to the original claimant. Civil Application No. 11075/2017 is accordingly disposed of.

(K. L. WADANE, J.)

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