

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 2946 OF 2006
WITH
CIVIL APPLICATION NO. 3286 OF 2015**

The Oriental Insurance Co.Ltd. ...Appellants
Vs.
Smt.Mangal Raosaheb Gujale & Ors. ...Applicants/Respondents

Ms.Shalini Shankar for Appellants.
Mr.N.J. Patil for Respondents.

CORAM : S.C. GUPTE, J.

13 APRIL 2017

P.C. :

Heard learned Counsel for the parties.

2 This first appeal challenges an award passed by the Commissioner of Workmen's Compensation at Kolhapur on 3 December 2004 on an application made by the Respondents herein, who claim to be legal heirs of a deceased driver. The deceased was employed by Respondent No.2. On 21 June 2001, the deceased, whilst driving a dumper, met with an accident. The dumper turned towards wrong side due to breaking of the steering rod and toppled down . The deceased as well as others sustained injuries in the accident. The deceased died on the spot. At the time of the incident, the deceased was insured with the Appellant insurer. The Applicants filed the present workmen's compensation application as legal heirs of the deceased.

3 The only defence raised by the Appellant insurer (opponent no.2 in the application) was that the deceased was not holding valid driving licence at the relevant time. It is not disputed that the deceased held a light motor vehicle licence at the time of the incident. The controversy pertains to the kind of vehicle that the deceased was driving when he met with the accident. It is the case of the Applicants that the vehicle was a light motor vehicle as defined in Section 2(21) of the Motor Vehicles Act, 1988, whilst according to the insurer the vehicle was a heavy vehicle.

4 Section 2(21) of the Motor Vehicles Act defines a light motor vehicle as 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 kilograms. There is a certificate issued by RTO in respect of the dumper (MXL 7520) which was driven by the deceased, which put the unladen weight of the vehicle as 6440 kg. It is not anyone's case that at the relevant time, the vehicle was loaded with goods. In any event, what we are concerned with is the gross vehicle weight or unladen weight, which was, admittedly, as per the certificate, 6440 kg. Based on these facts, the Commissioner came to the conclusion that the dumper, which is nothing but a transport vehicle and which weighed 6440 kg. (there is no evidence to the contrary led by the Appellant insurer), was a light motor vehicle. No infirmity can be found in the order of the commissioner.

5 There is, accordingly, no merit in the first appeal. The same is dismissed.

6 In view of the disposal of the first appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)