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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>MAC.APP. 881/2016 & CM Nos.39279/2016, 7962/2017</u>**

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. S.P. Jain and Mr. Himanshu Gambhir, Advocates.

Versus

NARESH KATARIA & ORS ..... Respondents

Through: Mr. Nitin Yadav, Advocate for Respondent No.1.
Mr. Anil Kumar Gupta, Advocate for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 24.05.2017

1. The compensation awarded for the injury to respondent No.1 has been impugned on the ground that the driving licence of respondent No.1 was only for LMV (NT) and was not for driving commercial transport vehicles. The Detailed Accident Report (DAR) filed by the police has charge sheeted the driver on the ground that he did not possess the requisite driving license i.e. LMV (Transport).

2. The learned counsel for the appellant submits that special training and skill is required to drive the LMV commercial vehicles and prospective candidates are issued a driver's license only upon their passing the requisite test. He relies upon the dicta of the Supreme Court in ***National Insurance Co. Ltd. Vs Kusum Rai (2006) ACC 19 (SC)***, which held that only a person who is licenced to drive a particular type of vehicle would be deemed to be

the person qualified to do so. In the present case, the driver did not possess the requisite licence, therefore, it is contended that there was breach of policy terms.

3. The Court notices that this issue has been dealt with in detail by the Tribunal as under:-

> *"19. Learned counsel for Insurance Company has taken a defence that respondent No. 2 was driving a passenger carrying light motor vehicle while he was possessing a licence meant only for light motor vehicle (non transport). Hence, there is a violation of terms and conditions of insurance policy and Insurance Company is not liable to pay the compensation.*
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> *20. Driving licence of respondent No. 2 was seized during investigation in criminal case according to which, DL was valid for LMV (NT). Offending vehicle is an Esteem Car, though it was plied as a taxi. The question which arises whether there is a breach of terms and conditions of insurance policy and Insurance Company is entitled for recovery rights.*
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> *21. LMV i.e. light motor vehicle, as per Section 2 (21) of Act means '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'.*
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> *22. . Section 2 Sub-Section 47 defines 'transport vehicle' as a public service vehicle, goods carriage and educational institution bus or private service vehicle. This implies that transport vehicle include goods vehicle and a private service vehicle. The offending vehicle, thus, comes within the category of transport vehicle and was, therefore, LMV. The only difficulty in the licence was that it was issued for non-commercial purpose, while the offending vehicle was being driven for commercial purpose.*
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> *23. The intention of the Legislature in engrafting relevant provisions under MV Act is to ensure that the driver should have skills to drive a particular category of vehicle.*

24. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. In the case of 'National Insurance Co. Ltd vs Swaran Singh & Ors' 2004 ACJ 1 (SC), which is a Full Bench judgment, Hon'ble Apex Court had noted that the provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object. However, it was noted that insurer is entitled to raise a defence in a claim petition filed under Motor Vehicle Act in terms of Section 149 (2) (a) (ii) of the said Act. The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver have to be proved to have been committed by the insured, for avoiding liability by the insurer. Even where the insurer is able to prove breach regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. "The rule of main purpose" and the concept of "Fundamental Breach" would have to be applied while interpreting the policy conditions.

25. It is the unladen weight of the vehicle which is decisive for determining if a vehicle is Light Motor Vehicle (LMY). In 'Radheyshyam Vs. Chhogalal' 2001 ACT 2000 (MP), it was noted that it is not the name given to the vehicle, but it is the weight which is a decisive factor. If unladen weight is less than 7,500 kilogram, then vehicle is held to be LMV and a driver having a valid licence for this category would be holding a valid licence.

26. Similarly, in 'National Insurance Company Ltd. Vs. Gadigewwa' 2005 (1) ACT 40 (Kam) (DB), it was observed that a tempo bearing unladen weight of 2075 kilogram would be treated as a LMV even though it was a transport vehicle as the weight was far less than prescribed limit of 7,500 kilogram.

27. In 'Oriental Insurance Company Ltd. Vs. Sohan Lai' 2002 (2) ACC 316 (Allahabad) (DB), it was observed that a tempo which is a LMV being used as taxi, would not imply that the driver was not holding a valid licence to drive tempo. Similar, observations were made in the case of "United India Insurance Co. Ltd. Vs. Ramesh Chandra' 2003 ACJ411(MP).

28. In the case of 'National Insurance Co. Ltd. Vs. K. Ramaswamy' 2008 ACT 516 (Madras), Hon'ble High Court noted that the absence of endorsement, cannot be considered so fundamental that Insurance Company can be exonerated from its liability to pay the compensation.

29. Similar conditions were before The Hon'ble Apex Court in the case of 'Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.' AIR 1999 SC 3181, where the driver was having a valid licence to drive a light motor vehicle but only lacked an endorsement authorizing to drive a transport or commercial vehicle. It was held that the vehicle belonged to the same category and type i.e. LMV and in these circumstances, Insurance Company cannot avoid its liability.

30. In 'National Insurance Company Ltd. Vs. Annappa Irappa Nesaria' AIR 2008 SC 1418, Hon'ble Apex Court held that a driver having a valid licnece to drive a light motor vehiele is authorized to drive a light goods vehicle as well.

31. In the case of 'Oriental Insurance Company Ltd. Vs. Biro Devi & Ors' MAC APP 732/06 decided on 13.01.2014 by the Hon'ble High Court of Delhi, it was noted that a person having valid driving licence for driving LMV, but not having licence for driving the commercial vehicle, is a difference which is purely technical in nature. A person having DL for LMV is competent to drive Light Motor Vehicle irrespective of whether it is being driven for private or commercial purposes.

32. In case titled 'S Aiyyapan Vs. United India Insurance

Company Ltd.' (2013) 4 see 62, Hon'ble Apex Court made a reference to Section 2(21) and (23) of Motor Vehicle Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and concluded that a driver having a licence to drive LMV court drive LMV used as commercial vehicle without obtaining an endorsement for commercial vehicle. This judgment has again been followed by the Division Bench of Hon'ble Apex Court in case of 'Kulwant Singh & Ors. Vs. Oriental Insurance Company Ltd.' Civil Appeal No. 9927-28/2014 decided on 28.10.2014.

33. In the present case as well, respondent No. 2 was having valid driving licence for driving LMV. Though, he was not having licence for driving the commercial vehicle, but it is a difference which is purely technical in nature. No special techniques were required for driving this light motor vehicle merely because it was a commercial vehicle. Thus, Insurance Company has failed to prove any Fundamental Breach of terms of insurance policy. However, Insurance Company / respondent No. 3 has proved that deceased was travelling as a gratuitous passenger in the offending vehicle at the time of accident and, therefore, not liable to indemnify the owner or is liable to pay the compensation."

3. From the preceding discussion of the facts and the law, what emerges is that the possession of a driving license for a Light Motor Vehicle (LMV) is the essential element for driving an LCV; the non-endorsement of "Commercial" on it is a technicality which will not clothe the insurer from avoiding its liability. The Court does not find any reason to interfere with the order. The appeal alongwith the pending applications stand dismissed. The amount awarded alongwith interest accrued thereon be released to the beneficiaries in terms of the Award. The statutory deposit be refunded to the appellant.

NAJMI WAZIRI, J.

MAY 24, 2017/sb