

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

FIRST APPEAL NO. 1546 OF 2004

The New India Assurance Co. Ltd.,
Branch Sangli, Dist. Sangli,
Through its authorized Signatory,
Hiralal s/o Namdeo Vispute,
Age 49 yrs. Occ. Asstt. Manager, Aurangabad.

... **APPELLANT**
Orig. Resp. No.2

VERSUS

1. Kamalbai Wd/o Wachista Kotule,
Age 39 yrs, Occ. Labourer,
R/o Deodi, Tq. Wadwani, Dist. Beed.
2. Nirguna d/o Wachista Kotule,
Age 15 yrs, Occ. Minor,
3. Satyabhama d/o Wachista Kotule,
Age 13 yrs, Occ. Minor,
4. Radha d/o Wachista Kotule,
Age 11 yrs, Occ. Minor,
5. Godawari d/o Wachista Kotule,
Age 9 yrs, Occ. Minor,
6. Daivshala d/o Wachista Kotule,
Age 7 yrs, Minor,

Orig. Claimants

Resp.2 to 6 minors, U/g of
Resp.1, mother Kamalbai Kotule

7. Sureshkumar Bhore,
Age 40 yrs, Occ. Agri.,
R/o Nandre, Tq. Miraj, Dist.Sangali.

8. Raosaheb Namdeo Athawale,
Age 43 yrs, Occ. Driver,
R/o Dholewadi, Tq. Kauthemahankal,
Dist. Sangali.

... **RESPONDENTS**
Orig. Resp. Nos.1 & 3

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Mr. Dhananjay Deshpande, Advocate for the Appellant.
Ms. S. K. Doke, Advocate for Respondent Nos.1 to 6 / Claimants.
Mr. A. R. Syed, h/f Mr. S. P. Brahme, Advocate for Respondent No.7.

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CORAM : **M. S. SONAK, J.**
DATE : 15th February, 2018.

ORAL JUDGMENT:

. Heard Mr. Deshpande, learned counsel for the Appellant,
Ms S. K. Doke, learned counsel for Respondent Nos.1 to 6 –
Claimants and Mr. A. R. Syed, holding for Mr. S. P. Brahme, learned
counsel for Respondent No.7 – owner.

2 The challenge in this appeal is to the judgment and award
dated 8th March, 2004 made by the Motor Accident Claims Tribunal
(Tribunal), Beed.

3 Mr. Deshpande, learned counsel for Appellant –
Insurance Company submits that the Tribunal has committed an error

apparent on face of record in misreading or in any case, misinterpreting the provisions of Section 2(21) of the Motor Vehicles Act, 1988 (said Act), which defines the expression "light motor vehicle". He submits that in the present case, there is no dispute whatsoever that the offending vehicle was a transport vehicle as defined under Section 2(47) of the said Act. He, therefore, submits that in terms of Section 2(21) of the said Act, unless the gross vehicle weight were not to exceed 7500 kilograms, only such a vehicle can be said as light motor vehicle. He points out that, in the present case, the gross vehicle weight of the offending vehicle was 16200 kilograms as per the R.C. book, which has been produced on record and admitted in evidence. He submits that in case of a transport vehicle, the issue of unladen weight, which is what the Tribunal has taken into consideration, is quite irrelevant. For this reason, he submits that there is an error apparent on face of record in the impugned judgment and award in treating the offending vehicle as light motor vehicle.

4 Mr. Deshpande, learned counsel submits that there is overwhelming evidence on record, particularly in the form of driver's licence and the deposition of the clerk from the RTO department that

the driver, had a licence to only drive the light motor vehicle and not a heavy goods vehicle. Mr. Deshpande submits that in fact, the clerk from the RTO department has deposed that this is only after five months from the date of accident that the driver of the offending vehicle obtained a licence to drive a heavy goods vehicle. Mr. Deshpande, submits that from this, it is clear that the offending vehicle was being driven by a driver who had no licence to drive the same. Mr. Deshpande, submits that this is a fundamental breach of the terms of the insurance policy. He submits that in terms of Section 149 of the said Act, the insurance company is entitled to raise this defence and since, this defence has been raised and made good by the Appellant – insurance company, the insurance company should be absolved any liability to pay the compensation to the Respondents – Claimants.

5 Mr. Deshpande in the alternate and without prejudice, submits that even if an extremely liberal interpretation is adopted in this matter, at the highest, this is a case to order payment and recover. He submits that in the case of **Oriental Insurance Co. Ltd. Vs. Nanjappan and Ors**, reported in, **(2004)13 SCC 224**, at the

highest, this Court may make an order to pay and then recover the amount from the owner and the driver of the offending vehicle.

6 Mr. Syed, learned counsel for Respondent No.7 – owner submits that there has been neither any negligence nor want of reasonable care on the part of Respondent No.7 – owner in compliance of the terms and conditions of the insurance policy. He submits that the Tribunal has correctly interpreted the provisions of Section 2(21) of the said Act and in terms of such interpretation, the vehicle in question has to be treated as light motor vehicle because admittedly, its unladen weight was 5600 kilograms, which is less than 7500 kilograms. He submits that if the matter involves interpretation and if two views are possible, then surely this cannot be held to be a case of either negligence or want of reasonable care on the part of Respondent No.7 – owner. He relies on the decision of the Honourable Supreme Court in the case of **National Insurance Co. Ltd. Vs. Swaran Singh and others**, 2004 (Volume I) Accidents Claims Journal, page 1, to submit that in absence of insurance company pleading and proving that the insured was guilty of insurance or fail to exercise reasonable care, no inference of

fundamental breach of the terms and conditions of the insurance policy can be drawn. Mr. Syed, learned counsel submits that in this case, the insurance company has admittedly received the entire premium towards indemnification of the offending vehicle. He submits that Respondent No.7 – owner is also an agriculturist and if any liability is imposed upon him, Respondent No.7 will be in serious difficulties with regard to his sustenance. On all these grounds, Mr.Syed, learned counsel submits that this appeal may be dismissed.

7 Ms S. K. Doke, learned counsel for Respondents – Claimants submits that in this case, there is absolutely no reason to either deprive the Respondents – Claimants of any compensation or to create any difficulties for the Respondents – Claimants in the matter of receipt of compensation. She, therefore, submits that this appeal is liable to be dismissed.

8 The rival contentions now fall for determination.

9 In order to appreciate Mr. Deshpande's contentions, reference is necessary to the statutory definitions of certain expressions employed in the said Act.

10 Section 2(15) of the said Act, defines the expression
“gross vehicle weight”, which reads as follows:

“2. Definitions.—

(15) “gross vehicle weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;”

11 Section 2(16) of the said Act, defines the expression
“heavy goods vehicle”, which reads as follows:

“2. Definitions.—

(16) “heavy goods vehicle” means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;”

12 Section 2(21) of the said Act, defines the expression “light
motor vehicle”, which reads as follows:

“2. Definitions.—

(21) “light motor vehicle” 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;”

13 Section 2(47) of the said Act, defines the expression “transport vehicle”, which reads as follows:

“2. Definitions.—

(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;”

14 Out of the aforesaid statutory definitions, the most important definition for the purpose of the issue raised by Mr.Deshpande is the definition of expression of “light motor vehicle” in Section 2(21) of the said Act. This Section defines “light motor vehicle” to means a transport vehicle or omnibus, the gross vehicle weight of either of which does not exceed 7500 kilograms. This definition also provides that a light motor vehicle means a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. The statutory definition, therefore, treats transport vehicle or an omnibus as one class and a motor car or tractor or road-roller as another class. Both these distinct classes are separated by the preposition “or”. In the context, this means that for a

transport vehicle or an omnibus to be classified as a light motor vehicle, its gross vehicle weight must not exceed 7500 kilograms. On the other hand, for a motor car or tractor or road-roller to be classified as a light motor vehicle, its unladen weight must not exceed 7500 kilograms.

15 In the present case, if the reasoning in paragraph 49 of the impugned judgment and award made by the Tribunal is perused, it appears that the Tribunal has erroneously clubbed first class of vehicles i.e. transport vehicle or omnibus alongwith the second class of vehicles i.e. motor car or tractor or road-roller and further, has applied to this entire class of vehicles the test of unladen weight. The Tribunal has concluded that since, unladen weight of the transport vehicle in the present case was less then 7500 kilograms, therefore, the vehicle was required to be classified as light motor vehicle in terms of Section 2 (21) of the said Act. This appears to be an error in the matter of interpretation of the provisions of Section 2(21) of the said Act.

16 Taking into consideration the aforesaid, contention of

Mr.Deshpande that the Tribunal has misread or misinterpreted the provisions of Section 2(21) of the said Act, will have to be accepted. However, even acceptance of such contention, does not warrant interference with the impugned judgment and award made by the Tribunal for reasons, referred to hereinafter.

17 In order that an insurance company is exonerated of its liability, the insurance company has to plead and establish that there was fundamental breach of the terms and conditions of the insurance policy. Any and every breach does not qualify to be styled as fundamental breach. In fact, as was rightly submitted by Mr. Syed, the Honourable Supreme Court in the case of *Swaran Singh and others* (supra) has held that the breach of policy conditions i.e. disqualification of driver or invalid driving licence of the driver as contemplated by Section 149 of the said Act, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the

insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. The Honourable Supreme Court has further held that even where the insurer is able to prove breach on the part of the insured concerning the policy condition 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 Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act. The Honourable Supreme Court has further that if a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of

vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

18 In the present case, on applying the principles in *Swaran Singh and others* (supra) it is necessary to note that the material on record nowhere suggest that Respondent No.7 – owner was guilty of negligence or that he failed to exercise reasonable care in the matter of fulfilling the conditions of policy regarding use of vehicle by duly licensed or one who was disqualified to drive it at the relevant time. Since, the provisions of the said Act were interpreted by the Tribunal by applying the test of unladen weight as against the gross vehicle weight to return a finding that the vehicle in question was a light motor vehicle, it cannot be said that such fine differences were readily known to Respondent No.7 – owner. Respondent No.7 – owner did secure insurance policy by paying a higher premium so as to cover a heavy goods vehicle. The evidence on record also suggests

that almost five months after the date of the accident, the driver took out a specific licence to drive a heavy goods vehicle. But this, does not suggest that the insured was guilty of negligence or failed to exercise the reasonable care in the matter of fulfilling the conditions of the policy. In *Swaran Singh and others* (supra) as noted earlier, the Honourable Supreme Court has held that even mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. In this case, the Appellant – insurance company neither pleaded nor proved the issue of negligence or want of reasonable care on the part of the insured i.e. Respondent No.7 – owner. There is also no evidence on record to suggest that the sole cause for the accident was the absence of the driving licence, which enables the driver to drive the offending vehicle. In this case, the driver, did possess the licence to drive the light motor vehicles. On interpretation, it is found that the vehicle in question is required to be classified as a heavy goods vehicle. This by itself, is not at all sufficient to bring the case within the exception carved out in *Swaran Singh and others* (supra). For all these reasons, the contention of Mr. Deshpande, that the insurance company should be

absolved of its liability, cannot be accepted.

19 Since the principle in *Swaran Singh and others* (supra) is applicable and is being applied, there is no question of making any order for payment and recover it from Respondent No.7 – owner. *Swaran Singh and others* (supra) clearly provides that mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. This means that the defence now raised by the Appellant – insurance company cannot be permitted to prevail against the insured i.e. Respondent No.7 – owner. Even though, Respondent No.7 – owner had paid the entire premium in respect of the offending vehicle, such a liability, will perhaps crush Respondent No.7 financially. This is only an additional reason and certainly not the main reason.

20 For the aforesaid reasons, this appeal is dismissed. There shall, however, be no order as to the costs.

21 Since the appeal is dismissed, the Respondents' – Claimants' application for withdrawal of balance compensation

amount, which is deposited in this Court is allowed. The Registry to permit the Respondents – Claimants to withdraw the balance portion of the deposited compensation amount together with interest as may be accrued thereon unconditionally.

[M. S. SONAK, J.]

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