

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

**903 FIRST APPEAL NO.1406/2017
WITH CA/1357/2018 IN FA/1406/2017**

- . Bajaj Allianz General Insurance Co.Ltd.,
Through it's Manager/Authorized Signatory,
2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad.

VERSUS

- 1) Hanifabee Bhikan Gulab
Age: 57 years, Occu.: Nil,
R/o.Dhamangaon, Taluka Phulambri,
Dist.Aurangabad.
- 2) Bhagwan Baburao Chitrak
Age: Major, Occu.: Driver-Owner,
R/o.Sultanwai, Taluka Phulambri,
Dist.Aurangabad.

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Advocate for Applicant : Mr.S.G.Chapalgaonkar
Advocate for Respondent No.1 : Mr.Dhakane Rajendra B.
Advocate for Respondent No.2 : Mr.A.P.Pitarwad and
Mr.A.S.Sonone

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WITH

**FIRST APPEAL NO.1358/2017
WITH CA/1358/2018 IN FA/1358/2017**

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**CORAM : M.S.SONAK, J.
DATE : 2nd FEBRUARY, 2018**

ORAL JUDGMENT:-

1) At the request and with the consent of the learned counsel for the parties, both these appeals are taken up for final disposal.

2) In the two appeals, though, no common Judgment and award came to be made because the claimants were different, there is no dispute that the claims arise out of the same accident, which took place on 13.4.2010 involving Mahindra and Mahindra Maxxi Truck No.MH20 AT-5373. The issue raised in these two appeals is identical and therefore, it is only appropriate that both these appeals are disposed of by a common Judgment and order.

3) Mr.S.G.Chapalgaonkar learned counsel for the appellant submits that there is no dispute that Maxxi Truck was required to be and was classified as a light motor vehicle and further, there is no dispute that the vehicle was used as a commercial vehicle. He submits

that there is also no dispute that owner/driver of the vehicle had a licence to drive a light motor vehicle, but his licence had no specific endorsement to drive transport vehicle. He submits that therefore this is a case of fundamental breach of the terms of the Insurance Policy and therefore, the Insurance Policy could not be made to have reliable for payment of compensation in both these matters.

4) This precise issue answered against the appellant by the Hon'ble Supreme Court in the case of *Mukund Dawangan Vs. Oriental Insurance Company Ltd.*, [2017 SCC Online SC 788] decided on 3.7.2017. The relevant discussion is in paragraph No.63, which reads as follows:-

"63. 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 licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well 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 of 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 vehicle, 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 questions 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 motor vehicle and also motor car or tractor 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 as 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 the 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."

5) Accordingly, it is not possible to accept the contention of Mr.S.G.Chapalgaonkar learned counsel as raised in these appeals.

6) However, Mr.Chapalgaonkar learned counsel submits with respect to the decision in the case of **Mukund Dewangan** (supra) that it has defeated the objective of requiring the driver of transport vehicle to have a specific endorsement on the licence and further led to more ambiguity in the matter of definition of light motor vehicle in terms of Section 2(21) of the Motor Vehicles Act, 1988 as in regard of the amended Section 10(2) of the Motor Vehicles Act, 1988 as the two stands contracting the other provisions of the Act in a way making them infructuous. Mr.Chapalgaonkar infact relies upon orders made by the Hon'ble Supreme Court on 31.10.2017 and 16.1.2018 in Special Leave to Appeal(C) No.27787 of 2017 in which the contention precisely similar to the contention now raised by Mr.Chapalgaonkar

came to be raised and the Special Leave to Appeal came to be admitted.

7) The order made by the Hon'ble Supreme Court on 31.10.2017 reads as follows:-

"O R D E R

The learned senior counsel appearing for the petitioner submits that for the purpose of this case, they are, in no way, asking for reconsideration of the amounts already awarded to the claimants. It is further submitted that the amount as awarded had already been deposited and it can be withdrawn by the claimants.

The above submissions are recorded.

All that they pray is a notice in terms of Question No. 2, which reads as follows :-

"Whether Hon'ble High Court ought not to have wrongly dismissed the Appeal while wholly relying on the Judgment of this Hon'ble Court in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors.; C.A.5826 of 2011 which has defeated its objective has led to more

ambiguity towards the definition of the Light Motors Vehicle (LMV) as per section 2(21) of the Motor Vehicles Act, 1988 as well as in regard of the amended section 10(2) of said Act, 1988 as the two stands contracting other provisions of the act in a way making them infructuous. That the passing of the pay and recover order such as this one after appreciating the contentions and circumstances of the petitioner herein would out rightly defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of the MV Act."

For deciding the above question, the respondents are only proforma parties and, therefore, no notice need be issued to them. However, we request Mr. Joy Basu, learned senior counsel, to assist to the court as Amicus Curiae.

The petitioner is directed to serve a copy of the Special Leave Petition to the learned Amicus Curiae.

List on 16.01.2018.

*Sd/-
(JAYANT KUMAR ARORA)
COURT MASTER*

*sd/-
(RENU DIWAN)
ASSISTANT REGISTRAR"*

8) On 16.1.2018 the Hon'ble Supreme Court granted leave in Special Leave to Appeal (C) No.27787 of 2017 and has listed the appeals on 4.4.2018.

9) As of today, the decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan** (supra) holds the field and is undoubtedly binding on this Court. In the light of the law laid down by the Hon'ble Supreme Court in **Mukund Dewangan** (supra), it is not possible to uphold the only ground raised by Mr.Chapalgaonkar learned counsel in support of these two appeals.

10) As a consequence, these two appeals are liable to be dismissed and hereby dismissed.

11) There shall be no order as to costs.

12) At this stage, Mr.Chapalgaonkar learned counsel seeks for continuance of ad-interim relief for a period

of six weeks from today. He points out that the compensation amount has already been deposited in this Court, but submits that the respondents/claimants be restrained from withdrawing such compensation for a period of six weeks from today.

13) The request is reasonable and therefore, for a period of six weeks from today, there shall be a restrain upon the respondents/claimants for withdrawing the compensation amount already deposited by the appellant Insurance Company in this Court. However, after six weeks from today, the respondents/claimants shall be at liberty to withdraw such amount unconditionally.

14) The civil applications for withdrawal of the compensation amount also stand disposed of in the aforesaid terms.

[M.S.SONAK, J.]