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

First Appeal No. 02694 of 2011

District : Latur

The New India Assurance Company Ltd., a Subsidiary of the General Insurance Corporation of India and a company Incorporated under the Companies Act, having one of its Divisional office at Adalat Road, Aurangabad, Through its Manager (Legal Hub) & Authorized signatory. .. Appellant (Original respondent no.03)

versus

1. Shivlila wd/o. Bharat Kotle,
   Age 23 years,
   Occupation Household,
   R/o. Kakhmanpur,
   Taluka Mukhed,
   District Nanded,
   A.P. Udgir, Taluka Udgir,
   District Latur.

2. Soujanya d/o. Bharat Kotle,
   Age 04 months
   U/g. of R.No.01.

3. Devidas s/o. Kishanrao Kotle,
   Age 60 years,
   Occupation Agriculture,
   R/o. Kakhmanpur,
   Taluka Mukhed,
   District Nanded,
   A.P. Udgir, Taluka Udgir,
   District Nanded.

... Contd.

4. Dnyaneshwar s/o. Dhondiba Zade,
   Age 30 years,
   Occupation Driver,
   R/o. Ambulga,
   Taluka Mukhed,
   District Nanded.

5. Balaji s/o. Digambar Patil,
   Age major,
   Occupation Business,
   R/o. Ambulga,
   Taluka Mukhed,
   District Nanded.

.. Respondents (Nos.01 to 03 - Original claimants & Nos.04 & 05 - Original respondent nos.01 & 02)

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Mr. Ajit B. Kadethankar, Advocate, for the appellant.

Mr. P.G. Rodge, Advocate, for respondent nos.01 to 03.

Respondent no.04 served (Absent).

Mr. D.J. Choudhari, Advocate, for respondent no.05.

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CORAM : SMT. VIBHA KANKANWADI, J.

Date of reserving the order : 27th April 2018.

Date of pronouncing the order : 23rd July 2018.

O R D E R :

01. The appellant - Insurance Company has filed the present appeal under Section 173 read with Section 170 of the Motor Vehicles Act, 1988 **[For short, "M.V. Act"].** By this appeal, the Insurance Company has challenged the judgment and award dated 13.07.2011 passed by the Ex-Officio Member of the

Motor Accident Claims Tribunal & District Judge-1, Udgir, District Latur, in Motor Accident Claim Petition No. 28 of 2009.

02. The parties are referred as per their nomenclature before the Tribunal.

03. Respondent nos.01 to 03 are the original claimants. They are the legal representatives of one Bharat s/o. Devidas Kotle. Deceased Bharat was the husband of claimant no.01 and father of claimant no.02. Claimant no.03 is the father of the deceased. It is contended that all the claimants were dependent on deceased. Deceased was 24 years auto-rickshaw driver. He was getting monthly income of Rs. 7,500/-. Deceased was proceeding from Lakhmapur to Aurad on motorcycle on 01st February 2009. When he was near Subhashnagar village, at that time, one Mahindra Max jeep bearing No. MH-26/B-9601 came from front side and gave dash to the motorcycle driven by the deceased. It is stated that the said accident had taken place due to the sole negligence on the part of original respondent no.01. As a result of the said accident, Bharat died at the spot. The claimants had claimed compensation of Rs. 10,00,000/- together with interest at the rate of 18 % per annum.

04. Respondent no.01 had filed his written statement at Exhibit 53. He was the owner and the vehicle i.e. Mahindra Max belong to original respondent no.02. The said vehicle was insured with

original respondent no.03. Respondent no.02 has filed written statement separately and the Insurance Company has also contested the claim by filing written statement. All of them have denied the allegation that the accident had taken place due to the negligence on the part of respondent no.01. As regards the age, income of the deceased is concerned, they have denied the contents in the application. All of them have accepted the fact that the offending vehicle i.e. Mahindra Max was insured with respondent no.03. The Insurance Company has taken a specific defence, that the driver of the vehicle was not holding valid and effective driving license on the date of the accident and therefore, it amounts to breach of terms of policy. The Insurance Company prayed for exonerating it from the payment of compensation.

05. Taking into consideration the rival contentions, issues came to be framed. The claimants have led oral as well as documentary evidence. So also, the Insurance Company has led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Tribunal has allowed the petition partly with proportionate costs. Respondent nos.01 to 03 were directed to pay compensation of Rs. 6,19,000/- including the amount of *no fault liability* to the claimants together with interest at the rate of 7.5 % from the date of registration of the petition till the realization, jointly and severally. The Insurance Company i.e.

the present appellant has challenged the finding regarding making it liable to pay compensation to the claimants jointly and severally with present respondent nos.04 and 05.

06. Heard Adv. Mr. A.B. Kadethankar appearing for the appellant, Adv. Mr. P.G. Rodge appearing for respondent nos.01 to 03 and Adv. Mr. D.J. Choudhari appearing for respondent no.05. None for respondent no.04, though served. Perused the record.

07. It is noted from the arguments those have been submitted as well as from the appeal memo, that the Insurance Company is challenging its liability only on the count that there is breach of terms of policy. There is no challenge to the other facts and the finding of the Tribunal regarding quantum of compensation. Therefore, taking into consideration the limited scope of the appeal, following point arise for my determination. Finding and reasons for the same are as follows :-

Point	**Finding**
Whether the Insurance Company has proved that there is breach of terms of policy and therefore, liability to pay compensation to the claimants cannot be fastened on the Insurance Company, jointly and severally, together with the owner and the driver ?	In the negative.

08. It has been vehemently argued on behalf of the appellant, that a specific defence was taken by the Insurance Company, that the respondent no.01 was not having valid and effective driving license on the date of the accident. In order to prove this defence, the Insurance Company has examined RW 01 Sanjay Gaikwad who was the Assistant Regional Transport Officer. He was working at Nanded. He has deposed that his office had issued motor driving license MH-26/9954/2007 to Dnyaneshwar Zade i.e. original respondent no.01 on 06.09.2006 and the expiry date for the license was 05.09.2027. The said license was issued for the class of vehicle, namely '*Light Motor Vehicle (Non-Transport)*'. He has produced the extract of their register. He has also stated that under the category of '*Light Motor Vehicle*', *transport and non-transport* licenses are issued. However, life of non-transport license is for 20 years or up to the age of 40 years. He has also stated that for the category of '*passenger carrying commercial vehicle*', said driving license will not valid. The Insurance Company has also examined its own officer RW 02 Manmath Talnikar. He has stated that it was one of the conditions of the insurance policy, that the driver must hold the driving license which should be valid and effective. He has produced the policy at Exhibit 71. Inspite of the evidence, the learned Tribunal has fastened the liability on the Insurance Company, jointly and severally with the owner and the driver and therefore,

the appeal deserves to be allowed.

09. Per contra, the respondents have supported the reasons given by the learned Tribunal while arriving at the conclusion that the liability of the Insurance Company is joint and several with the owner and the driver.

10. It is to be noted that though in his examination in chief, RW 01 Sanjay Gaikwad has stated that the driver of the offending vehicle was holding '*Light Motor Vehicle (Non-Transport)*', yet it is to be noted that in his cross-examination, he has admitted that for the vehicle mentioned in certificate of registration Exhibit 35 i.e. in respect of offending vehicle, driving license that was required was '*Light Motor Vehicle*'. He has also admitted that the skill for driver while driving LMV and LMV (Transport) is the same.

11. The law on the above point has been clarified by the Hon'ble Supreme Court in the case of *Mukund Dewangan Vs. Oriental Insurance Company Limited [AIR 2017 SC 3668]*, wherein it has been observed thus :-

> " *Definition of 'light motor vehicle' has to be given full effect to and it has to be read with S. 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', gross vehicle weight or unladen weight does not exceed 7500 kgs. as specified in provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other*

categories as per gross vehicle weight or unladen weight as specified in S. 2(21) of Act. Provision of section 3 of Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, gross vehicle weight or motor car, road roller or tractor, unladen weight of which, as case may be, does not exceed 7500 kg. Insertion of 'transport vehicle' category in S. 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of class of light motor vehicle. A distinction is made in Act if heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle in basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, weight, as case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle. Thus, newly incorporated expression 'transport vehicle' in S. 10(2)(e) would include only vehicles of category as defined in S. 2(16) - Heavy goods vehicle, S. 2(17) - heavy passenger motor vehicle, S. 2(23) - medium goods vehicle and S. 2(24) medium passenger motor vehicle, and would not include the 'light motor vehicle' which means transport vehicle also of weight specified in S. 2(21). Transport vehicle has been defined in S. 2(47) of Act, to mean a public service vehicle, a goods carriage, an educational institution bus or private service vehicle. Public service vehicle has been defined in S. 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passenger for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in S. 2(14) to mean a motor vehicle constructed or adapted for use solely for carriage of goods, or any motor vehicle not so constructed or adapted when used for 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 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 *provisions of Act. When a driver is authorised to drive a vehicle, he can drive it irrespective of fact whether it is used for a private purpose of hire or reward or for carrying goods in said vehicle. It is what is intended by provision of Act and Amendment Act 54/1994. S. 10 of Act requires a drive to hold a licence with respect to vehicles and not with respect of type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in same class of vehicles, no separate endorsement is required to drive such vehicle. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all vehicles of class including transport vehicles. It was pre-amended position as well post-amended position of Form 4 as amended on 28.03.2001. Any other interpretation would be repugnant to definition of 'light motor vehicle' in S. 2(21) and provisions of S. 10(2)(d), Rule 8 of Rules of 1989, other provisions and also forms which are in tune with provisions. Even otherwise forms never intended to exclude transport vehicles from category of 'light motor vehicles' and for light motor vehicle, validity period of such licence hold good and apply for transport vehicle of such class also and 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 S. 10(2)(e) to (h). Thus, it can be concluded that (i) 'light motor vehicle' as defined S. 2(21) of Act would include a transport vehicle as per weight prescribed in S. 2(21) read with Ss. 2(15) and 2(48). Such transport vehicles are not excluded from the definition of light vehicle by virtue of Amendment Act No. 54/1994. (ii) A transport vehicle and omnibus, 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 S. 10(2)(d) is competent to drive a transport vehicle or omnibus, 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 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 valid after Amendment Act 54/1994 and 28.03.2001 in form. (iii) Effect of amendment made by virtue of Act No. 54/1994 w.e.f.*

14.11.1994 while substituting clauses (e) to (h) of S. 10(2) which contained 'medium goods vehicle' in S. 10(2)(e), medium passenger motor vehicle in S. 10(2)(f), heavy goods vehicle in S. 10(2)(g) and 'heavy passenger motor vehicle' in S. 10(2)(h) with expression 'transport vehicle' as substituted in S. 10(2)(e) related only to aforesaid substituted classes only. It does not exclude transport vehicle, from purview of S. 10(2)(d) and S. 2(41) of Act i.e. light motor vehicle. (iv) Effect of amendment of Form 4 by insertion of 'transport vehicle' is related only to categories which were substituted in the year 1994 and procedure to obtain driving licence for transport vehicle of class of 'light motor vehicle' continues to be same as it was and has not been changed and there is not 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. "

12. Therefore, when the driving license that was required to drive Mahindra Max vehicle was the license for Light Motor Vehicle and no separate endorsement was required to drive a transport vehicle, it will have to be concluded that the respondent no.01 was having appropriate license to drive the class of vehicle which he was driving at the time of the accident. The said driving license was valid and was in operation on the date of the accident. Therefore, no fault can be found in the finding given by the learned Tribunal whereby the Insurance Company has been held liable to pay compensation to the claimants, jointly and severally with respondent nos.01 and 02.

13. As aforesaid and at the cost of repetition, I would say that the Insurance Company has not challenged the quantum of compensation as well as the finding that the driver i.e. respondent no.01 was

responsible for the accident. Under such circumstance, there is absolutely no merit in the present appeal.

14. In the result, the appeal fails and the same is hereby dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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