

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 26 OF 2011**

The New India Assurance Co. Ltd.
Velho Building 3rd Floor,
Panaji-Goa.

... Appellant

Versus

1. Smt. Antoneta Milagrosa Agust Pereira
alias Milagrosa Gracies,
Major of age,
Resident of H.No.49,
Deussua-Chinchinim,
Salcete, Goa.

2. Shri Agnelo C.A. Afonso,
H.No.353, Silremwaddo,
Chinchinim-Salcete-Goa.

3. Shri Deepak A. Lanjekar,
Son of Anant Lanjekar,
Nandangadda-Karwar,
Karnataka.

... Respondents

Shri E. Afonso, Advocate for the Appellant.

Shri Nigel Da Costa Frias, Advocate for the Respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 12th June 2018

ORAL JUDGMENT :

Heard Shri E. Afonso, learned Advocate for the appellant who has mainly offered challenge to the impugned judgment on the premise that the learned MACT had held against it on the aspect of fastening the liability to pay the amount awarded with interest thereon.

2. Shri Nigel Da Costa Frias, learned Advocate for the respondent no.1 came to be heard on their behalf. In the course of the arguments it has come to the notice of this Court that the Hon'ble Apex Court in **Mukund Dewangan V/s. Oriental Insurance Company Limited [(2017) 14 SCC 663]** has clearly held that a "light motor vehicle" would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48) and that a transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle. Furthermore, it has been held that the 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.

3. In the facts of the present case, the vehicle in question was a transport vehicle, the laden weight of which was about 5300 kg as against 7500 kg stipulated in the said judgment. In view thereof, the plea on behalf of the appellants that they were not liable to pay the compensation to the respondent no.1 claimant would not survive. Besides, also considering the

latter judgment of the three Judge Bench of the Apex Court in **Jagdish Kumar Sood V/s. United India Insurance Co. Ltd. & Ors. [Civil Appeal No.240/2017]** reiterating the judgment in **Mukund Dewangan** (supra) would equally apply in the facts of this case. The judgment in **Mukund Dewangan** (supra) had considered a host of judgments earlier rendered by the Apex Court to the contrary and come to a finding as before. The judgment in **Jagdish Kumar Sood** (supra) reiterates the said judgment and holds that the said issue is no longer res integra being covered by that in **Mukund Dewangan** (supra). The plea on behalf of the appellants insurer would therefore not survive to absolve them from the liability to indemnify the registered owner. In view thereof the appeal fails and the same is hereby dismissed with no order as to costs.

4. The Registry is directed to disburse the amount deposited by the appellants to the respondent no.1 within two weeks from today alongwith the interest accrued thereon.

NUTAN D. SARDESSAI, J.

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