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

Date of Decision: August 31, 2018

\+   **MAC.APP. 422/2016 & C.M. 18889/2016**

ARVINDER WALIA (OWNER)   ..... Appellant

Through: Mr. K.C.Mittal, Ms. Ruchika Mittal, Mr. Anil Kumar Verma, Ms. Asha Rani & Mr. Y.Mittal, Advocates

Versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ANR.   ..... Respondents

Through: Mr. A.K.Soni, Advocate

\+   **MAC.APP. 448/2016 & C.M. 20326/2016**

ARVINDER WALIA (OWNER)   ..... Appellant

Through: Mr. K.C.Mittal, Ms. Ruchika Mittal, Mr. Anil Kumar Verma, Ms. Asha Rani & Mr. Y.Mittal, Advocates

Versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ORS.   ..... Respondents

Through: Mr. A.K.Soni, Advocate

\+   **MAC.APP. 449/2016 & C.M. 20444/2016**

ARVINDER WALIA   ..... Appellant

Through: Mr. K.C.Mittal, Ms. Ruchika Mittal, Mr. Anil Kumar Verma, Ms. Asha Rani & Mr. Y.Mittal, Advocates

Versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ORS.
..... Respondents
Through: Mr. A.K.Soni, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned three appeals arise out of impugned Award of 7th October, 2015 vide which Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* has awarded compensation of ₹14,09,517/- with interest @ 9% p.a. to Claimants on account of death of *Jivaha Yadav*, in a vehicular accident which took place on 2nd June, 2013.

2. In this unfortunate accident in question, *Ashok Kumar & Vijay Kumar* were also injured and the Tribunal vide common Award of 7th October, 2015, has granted compensation of ₹7,500/- and ₹57,666/- with interest @ 9% p.a. to them, which is also under challenge in these appeals.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"Brief facts of the case are that on 02.06.2013 at about 06.30 pm, deceased namely Jivachha Yadav alongwith Ashok and Vijay were going on foot and when they reched opposite B-243, Okhla Industrial Area, Galazy Toyota Showroom, offending Echo car bearing registration No. DL-1LR-5192 driven by respondent no.1 in rash and negligent manner came from Indira Kalyan Vihar side first hit standing Eicher bearing number DL-1-*

LM8938 of one Mangl Yadav then hit the deceased as well as Ajay and Vijay forcefully, due to which they fell down on the road and sustained grievous and severe injuries and immediately removed to AIIMS Trauma Hospital, New Delhi. Later on deceased succumbed to these injures on 03.06.2013 and injured Vijay and Ajay were discharged from the AIIMS hospital."

4. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other evidence on record. On the strength of evidence recorded, impugned Award has been rendered.

5. Since these three appeals arise out of one vehicular accident, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

6. The challenge to the impugned Award by learned counsel for appellant-*Arvinder Walia (hereinafter referred to as the "owner of the vehicle in question")* is not on quantum of compensation awarded but is on the ground that driver of the insured vehicle was authorized to drive LMV (Light Motor Vehicles) and his driving license *(Ex. R3W1/7)* has been duly verified. It is pointed out that the insured vehicle is a Maruti Eco No. DL-1LR-5192, which was having a laden weight of 1540 kgs. Attention of this Court is drawn to copy of Registration Certificate of this vehicle. Reliance is placed upon *Mukund Dewangan Vs. Oriental Insurance Company Limited* AIR 2017 Supreme Court 3668 to submit

that *'Light Motor Vehicles'*, as defined in Section 2(21) of the *Motor Vehicles Act, 1988* would include the transport vehicle as per the weight prescribed in Section 2(21) r/w Section 2(15) and Section 2(48) of the *Motor Vehicles Act, 1988* and such transport vehicles are not excluded from the definition of *'Light Motor Vehicles'* by virtue of Amended Act 54 of 1994.

7. It is submitted by appellant's counsel that laden weight of insured vehicle in question is 1540 kgs, whereas as per the aforesaid provisions of *Motor Vehicles Act, 1988*, the transport vehicle having weight of more than 7,500 kgs would require the driving license valid for commercial vehicle. As regards, possession of two driving licenses is concerned, appellant's counsel places reliance upon decision in *Sikander Singh Vs. Future General India Insurance Co. Ltd. & Anr.* 2016 SCC OnLine Del 6399 to submit that merely because driver of the insured vehicle possessed two driving licenses, would not justify shifting of liability to pay the awarded compensation upon the owner of the vehicle. So, it is submitted that the impugned Award deserves to be modified to the extent of putting the liability on the respondent-Insurer to pay the awarded compensation.

8. On the contrary, counsel for respondent-Insurer supports the impugned Award and submits that decision in *Mukund Dewangan (Supra)* is under consideration by a larger Bench. Thus, dismissal of these appeals is sought.

9. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that driver of insured vehicle was

holding a valid driving license *(Ex.R3W1/7)*, which was duly verified and the laden weight of insured vehicle in question is 1540 kgs. In view of Supreme Court's decision in *Mukund Dewangan (Supra)*, the insured vehicle in question comes within the definition of LMV (Light Motor Vehicle), which does not require a commercial license.

10. Regarding putting the liability of paying the awarded compensation on the owner of the insured vehicle on the ground that driver of the insured vehicle was possessing two driving licenses is concerned, I find that in view of the decision in *Sikander Singh (Supra)*, the liability to pay the awarded compensation cannot be shifted on the owner of the insured vehicle, as possessing two driving licenses is in violation of Section 6 of *the Motor Vehicles Act, 1988* for which drivers can be prosecuted but insurer cannot escape the liability to pay awarded compensation.

11. In the light of aforesaid, impugned Award is modified to the extent of absolving appellant-Owner from paying the awarded compensation as the liability to pay the awarded compensation is of the respondent-Insurer.

12. With aforesaid modification in the impugned Award, the above captioned three appeals and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 31, 2018
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