

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

FIRST APPEAL NO.1639 OF 2013

The National Insurance 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
Hazari Chambers, Station road, Aurangabad
Through its Authorized signatory ...Appellant

Versus

1. Rekha Vijay Pardhee
Age 29 yrs, Occ: housewife
r/o Loni, Tk.Rahata
At present at
Valumata Pashu Paidas Kendra
Station road, Kopargaon
Dist. Ahmednagar.
 2. Suman Vijay Pardhee
Age 4 yrs, U/g R.No.1
 3. Vaishnavi Vijay Pardhee
Age 4 months u/g R.No.1
 4. Kishor Ganpat Borade (Dismissed)
Age major, Occ. Business
R/o H.No.1103, Ward No.9/4,
Nasik Dist. Nasik
 5. Vastalabai Jagannath Pardhe (Dead)
Age 65 yrs, occ. Nil
r/o Saykhindi, Tk.Sangamner
Dist. Ahmednagar ...Respondents
- ...
- Mr. A.B. Kadethankar, Advocate for Appellant.
Mr. A.S. Gandhi, Advocate for Respondent Nos. 1 to
3.
- ...

**CORAM : P.R. BORA, J.
DATED : 22nd JANUARY, 2019.**

ORAL JUDGMENT:-

. Heard Shri Kadethankar, the learned counsel appearing for the appellant-insurance company and Shri Amol Gandhi, the learned counsel appearing for the original claimants.

2. The insurance company has preferred the present appeal against the judgment and award passed in Motor Accident Claim Petition No.08 of 2007 decided by the Motor Accident Claims Tribunal Kopergaon on 16.02.2013. The only ground raised in the present appeal is that the Tribunal has erred in holding the insurance company liable to pay the amount of compensation though, the insurance company has sufficiently proved that the driver of the offending vehicle was not holding a valid driving licence. The learned counsel pointed out that the driver of the offending vehicle was holding the licence to drive light motor vehicle however, he was found to be driving heavy transport vehicle and as such, the breach of policy conditions was proved by the appellant-insurance company.

3. The objection as above raised in exception to the impugned judgment however cannot be sustained in view of the law laid down by the Hon'ble Apex Court in the case of **"Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017 AIR(SC) 3668"**. I deem it appropriate to reproduce here-in-below the relevant paragraphs of the said judgment which read thus:

"45. Transport vehicle has been defined in [section 2\(47\)](#) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in [section 2\(35\)](#) to mean any motor vehicle used or adapted to be used for the carriage of passengers 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 [section 2\(14\)](#) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the 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 the purpose of carrying passengers for hire or reward,

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would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

46. 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

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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

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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

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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".

4. In view of the observations made and the conclusions arrived at by the Hon'ble Apex Court, the objection as has been raised by the insurance company cannot be sustained. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

5. The claimants are entitled to withdraw the amount of compensation, if any, along with the interest accrued thereon deposited by the insurance company in this Court, if already not withdrawn.

(P.R. BORA, J.)