

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 FIRST APPEAL NO.2451 OF 2016

NEW INDIA ASSURANCE CO LTD THR BR MANAGER JALNA
VERSUS
SHANTABAI BHAGWAN VIR AND ORS

...
Advocate for Appellant : Mr. Deshpande Dhananjay P.
Advocate for Respondents No.1 to 5 : Mr. D. S. Gupta holding for Mr. R.
V. Gore
Advocate for Respondents No.6 and 7 : Mr. S. K. Chavan.

...
WITH FA/2452/2016

...
CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13-08-2019.

ORAL ORDER :

1. Both the appeals have been filed by the Insurance Company challenging the Judgment and award passed in Motor Accident Claim Petition No.97 of 2009 and No.96 of 2009, by Ex-Officio Member MACT, Jalna, dated 15-07-2011, whereby the claim Petition filed under Section 166 of the Motor Vehicles Act came to be partly allowed against the present appellant and other respondents.
2. Heard learned advocate Mr. D. P. Deshpande for appellant, learned advocate Mr. D. S. Gupta holding for Mr. Gore, and learned advocate Mr. S. K. Chavan for respondents No.6 and 7.

3. The only point the Insurance Company had raised was that, the driving licence of the driver of the offending vehicle had a specific endorsement of LMV – NT, meaning thereby holding of the said licence was authorized to drive non-transport vehicles only, though the term LMV includes transport vehicle. under such circumstance it was the contention of the Insurance Company that, it ought to have been exonerated from payment of compensation.

4. Taking into consideration the three Judgment Bench decision in, *Mukund Dewangan Versus Oriental Insurance Company Limited*, reported in *AIR 2017 Supreme Court 3668*, wherein it has been held that,

"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 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."

The vehicle involved in this case was Ape auto rickshaw which was admittedly a transport vehicle and in view of Section 46 (ii), no fault can be found with the Judgment and award passed by the learned Tribunal holding the Insurance Company also liable to pay compensation jointly and severally. Under such circumstance, both the appeals are dismissed. No order as to costs.

5. In both the appeals the award amount is deposited in this Court. Under such circumstance the original claimants are entitled to withdraw the amount together with interest accrued as per the award.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.