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

+ **Date of Decision: 25.03.2019**

% **MAC.APP. 406/2019 and CM APPL. 13564/2019**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through Mr. D.K. Sharma, Advocate.

versus

SANJU & ORS Respondents
Through

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant-The New India Assurance Co. Ltd. in short 'the Insurer', assails the impugned judgment/award dated 30.01.2019 passed by MACT-02 (West District), Tis Hazari Courts, Delhi to the limited extent of the right to recover the award amount from the driver and the owner of the offending vehicle i.e. the respondent Nos.8 and 9.
2. Appellant seeks to have the recovery rights on the premise that the driving licence held by the driver-the respondent No.8 at the time of the accident was not valid for driving a commercial vehicle inasmuch as the offending vehicle bearing registration No.HR-46D-4053, was Mahendra & Mahendra Alfa Passenger (Auto).

3. It is not in dispute that the driver-respondent No.8 was holding a driving licence to drive a light motor vehicle, which, the offending vehicle is. The only contention of Mr. Sharma, ld. counsel for the appellant to refute its liability under the policy is that the said licence was not meant for commercial purpose. The contention so raised by Mr. Sharma is well covered by the ratio of the judgment of Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited***, (2017) 14 SCC 663. In ***Mukund Dewangan's*** case (supra), the Supreme Court, has observed, as under:

"60. Thus, we answer the questions which are referred to us thus:

60.1. "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 Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.

60.2. 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 roadroller, "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 roadroller, 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 of 1994 and 28-3-2001 in the form.

60.3. The effect of the amendment made by virtue of Act 54 of 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.

60.4. 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”.

4. The Tribunal has declined the recovery right to the appellant in view of the ratio of the judgment supra and this Court finds no reason to interfere therewith in view of the undisputed fact that the offending vehicle was a light motor vehicle and the driver-the respondent No.8 held a licence to drive a light motor vehicle, though, for non-transport purpose.

5. In view of the foregoing, the appeal is dismissed. No order as to costs.

A.K.CHAWLA, J.

MARCH 25, 2019

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