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

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*Judgment delivered on: 24.04.2019*

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**MAC.APP. 489/2019**

NATIONAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Sanjay Rawat, Advocate.

Versus

SHIVANI & ORS.

..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J (Oral)**

**MAC.APP. 489/2019 & CM Nos.19037-38/2019**

1. The appellant – Insurance Company has impugned an order dated 23.01.2019 awarding compensation of an amount of Rs.8,70,000/- with interest at the rate of 9% per annum, from the date of filing of the Detailed Accident Report (DAR) till realization of the aforesaid monies. The compensation has been awarded to a six year old girl, who was injured in a motor vehicle accident and has suffered 40% permanent disability in her right lower limb. The challenge is to the quantum of Rs.4,00,000/- instead of Rs.3,00,000/-, awarded apropos the aforesaid disability.

2. The learned counsel for the appellant relies upon the judgment of *Master Mallikarjuna vs. Divisional Manager, National Insurance Co., (2014) 14 SCC 396*, which held that when the disability of an injured person is between 10% to 30% of the whole body, the compensation should be

Rs.3,00,000/- and if it is upto 60%, then it should be Rs.4,00,000/-. The Court, however, notes that the aforesaid quantum was indicative of the quantum of damages that could have been awarded, at that time to children suffering disability on account of a motor vehicle accident. The said judgment was passed in 2014. Almost half a decade has gone by. Times have changed; costs of things all around has altered dramatically due to inflation etc., therefore, for the compensation amount then awarded, to remain relevant and meaningful, the quantum of damages too must be dynamic and keep up with the times. Being stuck with one figure of compensation for all times is, with the passage of time, likely to make it symbolic, perhaps irrelevant and illusory compensation. Surely the objective of the socially beneficial legislation apropos grant of compensation to motor vehicle accident victims and their kin has been interpreted to mean that realistic and meaningful compensation should be granted. The Court has also noted that for permanent disability upto 10% of the whole body, compensation should be Rs. 1,00,000/-, unless there are exceptional circumstances to take different yardsticks. Therefore, it is open to the assessing authority to look into each case on its individual merits while keeping in mind the aforesaid guidelines of the Supreme Court.

3. In the present case, a six year old girl has been disabled permanently, in such a manner that she would not be able to live a normal life, as she did prior to the unfortunate accident. She would not be the same girl, who played with the children of her age in her neighbourhood park or in her school playfield or run about with gay abandon whenever she desired. She may well have to be assisted and cared-for for the rest of her life. Therefore, looking at her permanent dependency on other persons, her quality of life would be affected irreparably, as would her participation in sports and other regular activities of

children her age. Her social life too could be impaired, and who knows, her personal life and relations could be affected in myriad ways.

4. In view of the at the principles of **Master Mallikarjuna** (*supra*), insofar as the disability to the victim is 40%, the limit of Rs.3,00,000/- would not be applicable to her; she would fall in the category upto 60%. Hence Rs.4,00,000/- was rightly awarded as payable to her by the learned Tribunal.

5. However, for the reasons mentioned in para 3 hereinabove, the amount of Rs.1,00,000/- awarded towards pain and suffering needs to be enhanced.

6. The learned counsel for the appellant – Insurance Company contends that the impugned order has erred insofar it has awarded compensation for injury being caused by a vehicle, which was being driven by a person, who did not possess a valid driving licence. The driver was authorized only to drive a 'LMV-NT & motorcycle' (Light Motor Vehicle, non-transport and Motorcycle). However, the impugned order has dealt with the issue as under:-

*“29. DL of respondent No. 1 is on record. Perusal of the same shows that respondent No. 1 was authorized to drive 'LMV-NT & motorcycle' only. DL verification report Ex. R3W1/5 also confirms the said fact. Offending vehicle is Toyota Innova Car which was used for commercial purpose at the time of accident. However, Registration Certificate of offending vehicle is also on record which shows its unladen weight as 1600 kilograms. Further, permit of offending vehicle shows its gross weight as 2300 kilograms. In 'Radheyshyam Vs. Chhogalal' 2001 ACJ 2000 (MP), it was noted that it is not the name given to the vehicle, but it is the weight which is a decisive factor. If unladen weight is less than 7,500 kilogram, then vehicle is held to be LMV and a driver having a valid licence for this category would be holding a valid licence. Similarly, in 'National Insurance Company Ltd. Vs. Gadigewwa' 2005 (1) ACJ 40 (Karn) (DB), it was observed that a tempo bearing unladen weight of 2075 kilogram would be treated as a LMV even though it was a*

transport vehicle as the weight was far less than prescribed limit of 7,500 kilogram. In '*Oriental Insurance Company Ltd. Vs. Sohan Lai*' 2002 (2) ACC 316 (Allahabad) (DB), it was observed that a tempo which is a LMV being used as taxi would not imply that the driver was not holding a valid licence to drive tempo. Similar observations were made in the case of '*United India Insurance Co. Ltd. Vs. Ramesh Chandra*' 2003 ACJ 411 (MP). In the case of '*National Insurance Co. Ltd. Vs. K. Ramaswamy*' 2008 ACJ 516 (Madras), Hon'ble High Court noted that the absence of endorsement cannot be considered so fundamental that Insurance Company can be exonerated from its liability to pay the compensation. Similar conditions were before The Hon'ble Apex Court in the case of '*Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd.*' A!R 1999 SC3181, where the driver was having a valid licence to drive a light motor vehicle but only lacked an endorsement authorizing to drive a transport or commercial vehicle. It was held that the vehicle belonged to the same category and type i.e. LMV and in these circumstances. Insurance Company cannot avoid its liability. In '*National Insurance Company Ltd. Vs. Annappa Irappa Nesaria*' AIR 2008 SC 1418, Hon'ble Apex Court held that a driver having a valid licence to drive a light motor vehicle is authorized to drive a light goods vehicle as well. In the case of '*Oriental Insurance Company Ltd. Vs. Biro Devi & Ors*' MAC APP 732/06 decided on 13.01.2014 by the Hon'ble High Court of Delhi, it was noted that a person having valid driving licence for driving LMV, but not having licence for driving the commercial vehicle, is a difference which is purely technical in nature. A person having DL for LMV is competent to drive Light Motor Vehicle irrespective of whether it is being driven for private or commercial purposes. Same was the dicta of Hon'ble Supreme Court in '*Mukund Devangan Vs. Oriental Insurance Co. Ltd.*' 2017 (7) SCC 731. In the present case as well, admittedly respondent No. 1 was having valid driving licence for driving LMV. Though, he was not having licence for driving the commercial vehicle but-it is a difference which is purely technical in nature. No special techniques were required for driving this light motor vehicle merely because it was a

*commercial vehicle. Thus, Insurance Company has failed to prove its defence regarding driving licence of respondent No.1.”*

7. Furthermore in ***Mukund Dewangan vs. Oriental Insurance Company Ltd., (2017) 14 SCC 663***, the Supreme Court had held 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.”*

*(Emphasis supplied)*

8. The learned counsel for the appellant submits that the review petition apropos the judgment of ***Mukund Dewangan*** (*supra*) has been referred by the Supreme Court to a larger Bench of three Judges by order dated 03.05.2018.

9. Be that as it may, the Court does not find any order which stays the applicability of the judgment of ***Mukund Dewangan’s*** case (*supra*).

10. In view of the above, the Court finds no reason to interfere with the impugned order except that, for the reasons mentioned in para 3 hereinabove to the compensation awarded apropos the pain and suffering needs to be enhanced from Rs.1,00,000/- to Rs.5,00,000/-. It is so ordered.

11. The appeal, alongwith pending applications, stands disposed-off accordingly in the above terms. Statutory deposit be returned to the appellant.

**NAJMI WAZIRI, J.**

**APRIL 24, 2019**

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