IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 229 OF 2004 WITH
CIVIL APPLICATION NO.4488 OF 2002

United India Insurance Company Lt.,
Branch Office at Parbhani,
Through its Branch Manager,
Parbhani
Through Divisional Office at
Osmanpura, Aurangabad through
The Divisional Manager, Aurangabad.
..APPELLANT
(Ori. Resp. No.3)

VERSUS

1. Maruti S/o Harishchandra Chopade
   Age : 21 years, Occ : Student,
   R/o Sarola, Tq. & Dist. Latur.

2. Babusha S/o Pandhari Ghute
   Age : 35 years, Occ : Driver,
   R/o Ekurga, Tq. & Dist. Latur.

3. Ashok S/o Trimbakrao Aghav
   Age : 35 years, Occ : Business,
   R/o Wahegaon, Tq. Partur,
   Dist. Jalna.

4. Sanjay S/o Murlidhar Raut
   Age : 26 years, Occ : Auto Driver,
   R/o Sarola, Tq. & Dist. Latur.

..RESPONDENTS
(Resp. No.1 Orig.
Claimant Resp. Nos.2 to 4-
Orig. Resp.Nos.1, 2 and 4)
…

Mr.S.V. Kulkarni, Advocate for appellant.

...

CORAM: V.L. ACHLIYA, J.
DATED : 24.01.2020

JUDGMENT:

. Being aggrieved and dissatisfied by the judgment and award dated 15.03.2002 passed by the District Judge & Ex-Officio Member of Motor Accident Claims Tribunal, Latur in Motor Accident Claim Petition No.309/1998 thereby allowed the Claim Petition filed by the respondent no.1 – claimant and awarded compensation of Rs.75,000/- making appellant and respondent nos.2 and 3 liable to pay compensation jointly and severally to claimant, the appellant – insurance company (original respondent no.3) has preferred this appeal.

2. Heard the learned counsel for the appellant. Advocates representing respondent nos.1 and 3 absent. Respondent No.2 though served failed to appear. Perused the Record

and Proceedings.

3. Before adverting to deal with submissions advanced, it is useful to refer few facts leading to filing of claim application. For the sake of brevity and convenience, the parties are referred as they are referred/described in Claim Application.

4. Respondent No.1 – claimant has preferred Claim Application seeking compensation of Rs.1,50,000/- on account of injuries sustained by him in vehicular accident taken place on 21.08.1995. the claimant has approached with the case that on 21.08.1995, he was travelling in Auto Rickshaw bearing registration No.MH-12-J-5903 owned and driven by respondent no.4. When the auto rickshaw reached near Sakhara Pati, the offending vehicle i.e. tempo bearing registration No.MH-21/5273 driven by

respondent no.2 came from opposite direction and gave forceful dash to auto rickshaw. Due to dash given by the tempo to auto rickshaw, the claimant sustained fracture to shaft humorous right side as well as injury to his right scapula. He was admitted in hospital. For long time, he was require to remain in hospital. He underwent prolong treatment and incurred huge expenses to treat injuries sustained in accident. On account of accidental injuries the claimant has claimed compensation of Rs.1,50,000/- making the respondent nos.1 to 4 jointly and severally liable to pay the compensation.

5. Respondent Nos.1, 2 and 4 though served with notices failed to appear and file written statement. The appellant i.e. respondent no.3 alone contested the Petition by filing written statement. Respondent no.3 has pleaded to exonerate from payment of

compensation on the ground of breach of policy condition by owner-insured of the tempo. The appellant-insurance company has contested the claim with contention that the driver of the auto rickshaw was not holding requisite driving licence to drive the vehicle insured with appellant – insurance company.

6. In support of his claim, the claimant has examined himself and deposed s per the facts pleaded in the Claim Application. No evidence adduced on the part of the respondent no.3. By the impugned judgment and award, the Tribunal has allowed the Claim Application and ordered the respondent nos.1 to 3 jointly and severally to pay the compensation of Rs.75,000/- to claimant with future interest @ 9% p.a. from the date of Petition till realization of amount. Being aggrieved, the appellant –

insurance company preferred this appeal.

7. The learned counsel for the appellant submits that the Tribunal has erred in making the appellant – insurance company liable to pay the compensation along with respondent nos.1 and 2. It is submitted that there was breach of policy condition on the part of the owner of the vehicle. He had entrusted the vehicle to respondent no.2 – Babusha knowing well that he holds no driving licence to drive the insured vehicle. It is submitted that the vehicle in question insured with the appellant being goods carriage vehicle, the driver of the tempo ought to have licence to drive the LMV (Transport). In absence of such licence being possessed by the driver of the tempo, the owner of the vehicle has committed breach of policy condition by entrusting the insured vehicle to drive to a person not holding

valid and effective driving licence to drive such type/class of vehicle.

8. I have carefully considered the submissions advanced in the light of record and proceedings of the case. At the outset, there is no specific pleading made on the part of appellant – insurance company as to breach of policy condition, and more particularly, the plea raised that the driver of the insured vehicle was not holding the requisite licence to drive the Light Motor Vehicle (Transport). Para no.2 of the written statement of the appellant – insurance company reads as under :-

> “2.... *That in view of the police papers, there is collusion in between two vehicles and the claimant has not made party to the Insurance, owner of the another vehicle so, for want of necessary party, the claim ought to have deserves to be dismissed. The said auto was not having any passing nor driver of the auto was having any permanent driving*

licence and also the tempo driver had no permanent driving licence, permit or passing etc. so, no responsibility lies in any way with this Insurance company. So far as filing of the criminal case under the crime No.41/95, this Insurance Company has no concerned at all."

9. Thus the perusal of pleadings itself make out that no specific plea has been raised that the driver of tempo was not holding the effective driving licence to drive the insured vehicle. On the contrary vague plea was raised, the driver of the truck was not having permanent licence. The manner in which the written statement has been filed and the plea has been raised reflects the casual approach on the part of appellant – insurance company in conduct of proceeding.

10. The Tribunal has framed issue no.3 and recorded the finding as under :-

3. Whether Insurance Company proves that there is breach of condition of policy as alleged in para No.2 of W.S. of respondent No.3 ? ... No

Although the specific issue has been framed casting burden upon the insurance company to prove the breach of policy condition, the appellant – insurance company failed to adduce any evidence to prove the breach of policy condition. Neither there was any specific pleading nor any evidence adduced on the part of appellant – insurance company to prove the breach of policy condition. It is strange to note that at the time of filing appeal, first time the plea has been raised that the driving licence possessed by the driver of the tempo was in respect of light motor vehicle and there was no endorsement made on the licence to drive the Transport Light Motor Vehicle. No such plea can be entertained at the stage of appeal. In absence of specific plea the contention raised by the appellant deserves no consideration.

11. Apart from this, in view of the decision by the Apex Court in the case of ***Mukund Dewangan V/s Oriental Insurance Company*** reported in ***(2017) 14 SCC 663,*** the issue raised about the validity of driving licence of the driver of the insured vehicle by the appellant – insurance company remains no more *res integra*. It has been held by the Apex Court that Light Motor Vehicle as defined in section 2(21) of the Motor Vehicle Act,1988 includes Transport Vehicle having unladen weight not more than 7500 Kg and driving such Light Motor Vehicle requires no separate endorsement on the driving licence to drive the Transport vehicle. It is held that the person having licence to drive Light Motor Vehicle can drive Transport Vehicle of

such class without any specific endorsement to that effect. In answering the reference, the Apex 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."*

12. Thus in the light of rival pleadings and evidence adduced in the case, there is no perversity in the reasons and findings recorded by the Tribunal making appellant-

insurance company liable to pay the compensation. The appellant has neither specifically pleaded breach of condition nor adduced evidence to discharge the burden in terms of issue no.3 framed in the matter. For the first time, the appellant has raised plea before this Court that the driver was not holding driving licence to drive the Light Motor Vehicle (Transport). In the light of decision of the Apex Court in the case of ***Mukund Dewangan,*** the contentions raised by the appellant deserves no consideration. The person holding licence to drive the Light Motor Vehicle can drive the transport vehicle of which unladen weight not more than 7500 Kg. No separate endorsement to drive transport vehicle require by such person. In that view there is no merit in the appeal preferred by the appellant. Accordingly, the appeal is dismissed with no order as to costs.

13. In view of disposal of Appeal no cause survives to prosecute Civil Application No.4488 of 2002. Hence the same is disposed of in terms of order in appeal.

[V.L. ACHLIYA]
JUDGE

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