IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 917 OF 2015

Shreeji Gas Agency,
through its Proprietor Mr. Ritesh Paliwal,
R/o Sindi (Railway), Tal. Selu, Dist. Wardha.

...**APPELLANT**

Versus

1. Pankaj s/o Vasantrao Sorte,
   aged about 24 years, Occ. Private Service,
   through it power of attorney
   Vasantrao s/o Krishnaji Sorte,
   aged about 56 years, Occ. Labour,
   R/o Sindhi Railway, Nr. House of Pravin Sirsikar,
   Tal. Selu, District Wardha.

2. The Branch Manager,
   The United Indian Insur. Co. Ltd.
   'Sun Gul' Tower, Main Road, Wardha.

3. Sharad s/o Prabhakar Zade,
   aged 31 years, Occ. Driver,
   R/o Sindhi Railway, Tah. Selu, Dist. Wardha.

...**RESPONDENTS**

Shri S.V. Deshmukh, Advocate for the appellant.
Shri Asghar Hussain, Advocate for respondent No.1.
None for respondent Nos.2 and 3.

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CORAM : **PUSHPA V. GANEDIWALA, J.**
DATED : AUGUST 26, 2021.

ORAL JUDGMENT :

Present is an Appeal filed by the owner of the offending vehicle under Section 173 of the Motor Vehicles Act, 1988 ("**MV Act**") challenging the judgment and award dated

01/06/2015 passed by the Chairman, Motor Accident Claims Tribunal, Wardha in Motor Accident Claim Petition No. 109/2013, whereby the Tribunal has directed the owner and driver, i.e., the appellant and respondent No.3 herein to pay Rs.9,18,870/- together with interest @ 7.5% per annum from the date of application till realisation to the claimant.

2. The grievance of the appellant/ owner in the instant Appeal is that the Tribunal could not have exonerated the Insurance Company from the payment of compensation considering the law laid down by the Hon'ble Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited, (2017) 14 SCC 663**, so also in the case of **Kulwant Singh & Ors. Vs. Oriental Insurance Company Ltd., 2015(1) ALL MR 481 (S.C.)**.

The facts of the case, in nutshell, may be stated as under :

3. On 21/01/2013, at about 19:00 hrs, respondent No.1/ claimant while proceeding towards Sindhi (Railway) from Seldoh on a motorcycle bearing No. MH-32-V-8291, one vehicle bearing No. MH-32-Q-0766 loaded with LPG cylinders came from opposite direction in a high speed and gave dash to the motorcycle from the front side, as a result of which, the claimant sustained severe injuries to his right leg and other parts of the body. That he was admitted in HOPE hospital at Nagpur on 21/01/2013 and got discharged on 31/01/2013. Thereafter, he again came to be admitted to Kasturba Hospital at Sewagram where he was treated from 02/02/2013 to 08/05/2013. The discharge summary reflects the entire treatment given to him.

The injured thereafter filed Claim Petition before the Chairman, Motor Accident Claims Tribunal, Wardha claiming compensation of Rs.10,00,000/-. The Tribunal, on the basis of oral and documentary evidence available on record, so also on the basis of submissions made on behalf of both the sides, though held the claimant entitled for compensation of

Rs.9,18,870/- along with interest, exonerated the Insurance Company from payment of compensation mainly on the ground of breach of policy conditions, thereby fastened the liability of payment of compensation upon the owner and driver of the offending vehicle. This judgment is impugned in this Appeal.

4. Shri Deshmukh, learned counsel for the appellant, submits that the Tribunal ought to have saddled the liability of payment of compensation upon the Insurance Company as the vehicle was insured for third party. The Tribunal has wrongly observed that the driving license of respondent No.3 was issued for twenty years and not for three years, and therefore, it cannot be held that it was an appropriate driving license, and therefore, when there is a breach of terms of policy, the Insurance Company cannot be held responsible for payment of compensation. He further submitted that as per the judgment of the Hon'ble Supreme Court in the case of **Mukund Dewangan** (*supra*), the following question was referred for consideration of the larger Bench :

"Whether a driver, who is having a license to drive the Light Motor Vehicle and is driving transport vehicle of that class, is required additionally to obtain an endorsement to drive the transport vehicle ?"

The Hon'ble Supreme Court answered the above question in para 60 of the said judgment. For ready reference, the said para is reproduced below :

*"**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 motorcar 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.*
>
> *XXXX".*

The learned counsel further submits that in the instant case, the driver was holding the license for Light Motor Vehicle ("**LMV**") and at the relevant time, he was driving three wheeler Tempo carrying cylinders. The weight of the said vehicle was certainly not exceeding 7500 kg, and therefore, the learned counsel submits that as per the ratio laid down by the Hon'ble Supreme Court in the case of **Mukund Dewangan** (*supra*), the finding recorded by the Tribunal is grossly erroneous, and thus, he urged to set-aside the impugned judgment and award exonerating the Insurance Company.

5. Shri Hussain, learned counsel for the claimant/ respondent No.1, supports the case of the appellant.

6. None appears for respondent Nos.2 and 3, though served.

7. I have considered the submissions put forth on behalf of both the sides and perused the record.

8. Considering the law laid down by the larger Bench of the Hon'ble Supreme Court while answering the reference as reproduced above, it is now well settled that LMV as defined in Section 2(21) of the MV Act would include 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 LMV by virtue of Amendment Act No. 54/1994. For ready reference, Section 2(21) of the MV Act is

reproduced below :

> *"2(21). "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;"*

9. In the case in hand, as there is no dispute with regard to holding of effective driving license by the driver of the offending vehicle for LMV and as per the aforesaid ratio, without any endorsement on the license for driving the transport vehicle, he could have drive the LMV below weight 7500 kg. It appears that the Tribunal was interested by the fact that the present case is different as the offending vehicle was transporting goods like cylinders which is highly inflammable. The Tribunal even though considered **Kulwant Singh** (*supra*), wherein it was held that the motor driver holding "LMV" license can drive goods vehicle, however, the Tribunal distinguished the same judgments on facts.

10. In the opinion of this Court, the only point which the Court has to see is whether the weight of the vehicle is

below 7500 kg, and not to the goods that the vehicle was carrying at the relevant time. In the instant case, the occurrence of the accident, the contract of insurance and valid and effective license of the driver of the offending vehicle are not disputed.

11. In the light of the above discussion, it cannot be said that there was a breach of terms and conditions of the Insurance Policy by the driver of the offending vehicle.

12. In such circumstances, the Tribunal has erroneously held that the Insurance Company is not liable as there was a breach of terms and conditions in the policy.

13. With regard to the amount of compensation, it appears the Tribunal has wrongly deducted $1/3^{rd}$ of the income of the injured towards personal expenses.

14. Therefore, the compensation, as has been awarded by the Tribunal, needs to be recalculated by considering the

income of the injured without deducting any amount towards personal expenses. Accordingly, accepting Rs.3,000/- as the monthly income of the deceased, the yearly income would be Rs.36,000/-, to which the claimant shall also be entitled for 50% towards future prospects, i.e., Rs.18,000/-, which would bring the yearly income of the claimant at Rs.54,000/-. Assessing the disability of the claimant at 70%, the loss of earning capacity would be Rs.37,800/-, which if multiplied by applying multiplier of 18, the amount would come to Rs.6,80,400/-. In addition, the claimant shall also be entitled for Rs.2,27,270/- towards medical expenses, Rs.18,000/- towards actual loss of earning during the period of hospitalization, Rs.1,00,000/- towards pain and suffering, Rs.70,000/- towards permanent disability and Rs.50,000/- towards expenses on attendant, travelling expenses and miscellaneous expenditure. Thus, the total amount of compensation payable to the claimant would be Rs.11,45,670/-.

15. For the reasons aforestated, the finding with regard to exonerating the Insurance Company from its liability of payment of compensation is required to be quashed and set aside, and hence, the impugned order stand modified as under:

ORDER

i. The Appeal stands partly allowed.

ii. The appellant – owner of the Tempo, respondent No.2 Insurance Company and respondent No.3 driver of the offending vehicle shall jointly and severally pay compensation to the tune of Rs.11,45,670/- to respondent No.1/ claimant with interest @ 7.5% per annum from the date of petition till its deposit.

iii. Respondent No.2/ Insurance Company to deposit Rs.11,45,670/- with interest as above with the Registry of this Court within a period of three months.

iv. The appellant is permitted to withdraw Rs.4,02,005/- with interest @ 7.5% per annum from 03/05/2016 till realisation as and when the Insurance Company deposits the enhanced amount of compensation.

v. Respondent No.1/ claimant is permitted to withdraw the balance amount of enhanced compensation with interest @ 7.5% per annum.

vi. The balance amount, deposited by the appellant in this Court, is permitted to be withdrawn by respondent No.1/ claimant with accrued interest thereon.

JUDGE

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