

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2196 OF 2018

The Reliance General Insurance Company Ltd.
Through its Branch Manager,
Reliance Center, 19, Walchand Hirachand Marg,
Ballard Estate, Mumbai – 400 001.

Through it's Authorized Signatory / Manager,
Office at Opposite District Court New Building,
2nd Floor, Aurangabad Business Center,
Adalat Road, Aurangabad.

.. APPELLANT

[Org. Respondent No.1]

VERSUS

1] Shaikh Ashfaq s/o. Shaikh Mahboob,
Age: 51 Years, Occu. Service in Bajaj
Auto Ltd., Waluj,
At present Occu. Nil.
R/o. New Nandanvan Colony, Plot No.16/69,
Near Chand Mari Masjid, Post Padegaon,
Dist. Aurangabad.

2] Sahebrao s/o. Khandu Ahire,
Age : Major, Occu. Business,
R/o. Mahal Patane, Tq. Deola,
Dist. Nashik.

3] Anil s/o. Bhagwan Ahire,
Age : Major, Occu. Driver,
R/o. At post 36, Mahal Patane,
Tq. Baglan, Dist. Nashik.

.. RESPONDENTS

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Mr.S.G.Chapalgaonkar, Advocate for the appellant.
Mr.Vishnu Y. Patil, Advocate for respondent no.1.

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CORAM : S.G.DIGE, J.

RESERVED ON : 12.08.2022

PRONOUNCED ON : 07.09.2022

JUDGMENT :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, the appellant – original respondent no.1 Insurance Company has preferred this appeal.

Brief facts of the case are as under :

2] On 16th May, 2012 near about 14.30 hours the claimant was proceeding towards his house on motor cycle No. MH-20-AT-7649. When he was on Gangapur-Aurangabad Road, near Marathwada Company Chowk, MIDC Waluj, Mahindra Pick Up Jeep No. MH-41-G-4684 came from opposite direction with speed and gave dash to the claimant – respondent no.1. Respondent no.3 Anil was driving the said pick up Jeep in rash and negligent manner and gave dash to motorcycle. Due to said dash, respondent

no.1 – original claimant sustained head and leg injury. Respondent no.1 was shifted to City Care Superspeciality Hospital, Aurangabad for further medical treatment.

3] Respondent no.1 filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Aurangabad [for short ‘the Tribunal’]. The Tribunal has awarded the compensation. Against the said judgment and award, this appeal.

4] It is the contention of the learned counsel for the appellant that at the time of driving the jeep, the driver of the said jeep was holding driving licence of LMV non transport category. It constitutes breach of terms and conditions of insurance policy. But this fact was not considered by the Tribunal, nor opportunity was given to the appellant to lead the evidence to establish breach of terms and conditions. The learned counsel further submits that the appellant had filed an application below Exh.47 for issuance of the witness summons to the Regional Transport Officer but the said application was rejected by the Tribunal

on the ground that xerox copy of the driving licence is already on record, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent no.1 that the issue of non holding the valid and effective driving licence of transport is no more res integra as the Hon'ble Apex Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in [2017] 14 SCC 663 has held that licence to drive light motor vehicle includes licence to drive transport vehicle, hence, the order passed by the Tribunal is legal and valid.

6] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue raised by the learned counsel for the appellant that at the time of accident, the driver was holding licence to drive light motor vehicle non transport category, in my view, this issue is no more res integra as the Hon'ble Apex Court in the case of **Mukund Dewangan [supra]** has held that licence to drive the light motor vehicle includes licence to drive transport vehicle. Hence, I do not agree with the contention

of the learned counsel for the appellant that at the time of accident, the driver of the jeep was not holding proper driving licence. In respect of issue of not giving opportunity to lead the evidence, in my view, xerox copy of the driving licence is at Exh.61. The appellant has not challenged the order passed by the Tribunal below Exh.71, hence, it attained finality.

7] Considering the above, I pass the following order:-

ORDER

- i] The appeal is dismissed.
- ii] No order as to costs.

**[S.G.DIGE]
JUDGE**