

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

FIRST APPEAL NO. 2707 OF 2010

United India Assurance Company Ltd.,
Through its Divisional Office,
Divisional Manager,
Osmanpura, Aurangabad.

.. **APPELLANT**
(Org. Respondent No.4)

VERSUS

1. Subham S/o Nageshrao Bapure
Age : 11 years, u/g of real
mother Parwatibai w/o Nageshrao Bapure
Age : 40 years, Occ : Household,
R/o Nideban, Tq. Udgir
2. Elyas S/o Ekbal Shaikh
Age : 25 years, Occ : Driver,
R/o Latur
(Driver of offending tractor
Trolley)
3. Mohd. Yunus S/o Shaikh Mohd.
Ekbal, Age : major, occ : Business,
R/o Parkatte Galli, Pet Darwaza,
Udgir, Tq. Udgir, Dist. Latur.
4. Shaikh Mohd Fras S/o Shaikh Mohd
Ekbal, Age : major, Occ : Business,
R/o Paratte Galli, Pet Darwaza,
Udgir, Tq. Udgir, Dist. Latur.

.. **RESPONDENTS**
(R.No.1 – orig. claimant &
R.nos.2 to 4 – Ori. R. Nos.1 to 3)

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

Mr.Madhav N. Kalyane h/f Mr. Ram S. Shinde, advocate for respondent no.1.

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CORAM : S.G.DIGE, J.

RESERVED ON : 30.09.2022

PRONOUNCED ON : 13.10.2022

JUDGMENT :

. Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Udgir, the appellant – original respondent no.4 Insurance Company has preferred this appeal.

Brief facts of the case are as under :

2. On 19th February, 2008, the claimant along with his friend and brother were proceeding towards flour mill on bicycle. When they reached near the house of one Chandrakant Kulkarni at about 3.30 p.m., one tractor-trolley driven by respondent no.1 bearing registration No.MH-24 D-579 came from back side in a fast speed and negligent manner and had given forceful dash to the

bicycle, due to which the claimant and others seriously injured. After the accident, the claimant was immediately admitted in Civil Hospital, Udgir, but doctors advised to shift him at Civil Hospital, Latur for further treatment. Thereafter, the relatives of the claimant shifted the claimant in Government College and Hospital at Latur. After some treatment, on next day, the Medical Officer, Civil Hospital, Latur advised to shift the claimant to Solapur for better treatment, however, the relatives of the claimant admitted him in Vivekanand Hospital, Latur.

3. Respondent no.1/claimant filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Udgir (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 tractor, the driver of the said tractor was not holding driving licence as

the accident has taken place on 19.02.2008 and the licence was renewed on 21.04.2008, therefore, it constitutes breach of terms and conditions of the policy and the driver was not having a valid and effective driving license in respect of LMV non transport category. But this fact was not considered by the Tribunal. The learned counsel further submits that the risk of the claimant was not covered under the policy, therefore, it is clearly breach of terms and conditions of the policy, 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.

7. 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 tractor-trolley was not holding proper driving licence.

8. Considering the above, I pass the following order:-

ORDER

- i] The appeal is dismissed.
- ii] The respondent no.1/original claimant is permitted to withdraw the amount along with interest, if already not withdrawn.

iii] No order as to costs.

[S.G.DIGE]
JUDGE

SGA