Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.96 OF 2017

National Insurance Co. Ltd.,
Through its Divisional Manager,
Having Office at "Subraya Chambers, F. L.
Gomes Road, Vasco-da-Gama, Goa 403 802 … Appellant

Versus

1. Miss. Endreshia Ashiana Fernandes,
   Daughter of Mr. Cecil Fernandes,
   Aged 19 years, student,
   Resident of H. No.72/B,
   Kerkicotto, Cuncolim,
   Salcete Goa.

2. Mr. Amon Vani,
   Son of Atar S. Vani,
   Aged 38 years, service,
   Resident of H.No.185,
   Carvato, Loutolim,
   Salcete, Goa (Driver)

3. Mr. Jayram Madan Naik
   Son of Madan Naik,
   Major of age, Business,
   Resident of H.No.92,
   Castel Waddo, Nagoa, Verna,
   Salcete Goa (Owner). …Respondents

Mr. U. R. Timble, Advocate for the Appellant.

Mr. Ryan Menezes, Advocate for respondent No.1.

CORAM: M. S. SONAK, J

DATE : 6th May 2022

P.C.:

1. Heard Mr. Timble, learned counsel for the Appellant and Mr. R. Menezes, learned counsel for respondent No.1.

2. On 10.03.2022, I made the following order:-

> *"1. Mr. Timble, learned Counsel for the Appellant submits that in this case, though there may not be a leave under Section 170 of the Motor Vehicles Act, 1988, the main ground urged by the Appellant-Insurance Company is that there was a breach of the terms and conditions of the insurance policy, inasmuch as the driver did not hold a valid driving licence at the time of the accident.*
>
> *2. At the request of Mr. Ryan Menezes, the matter is now posted for final hearing on 31st March 2022."*

3. Mr. Timble submits that the driver of the offending vehicle only had a licence to drive Light Motor Vehicle (LMV) but he drove the transport vehicle which was impermissible. Mr. Timble submits that this amounts to fundamental breach of the terms and conditions of the insurance policy and therefore, the insurance company ought to have been exonerated from the liability to pay.

4. After the institution of this appeal, the Hon'ble Supreme Court in ***Mukund Dewangan Vs Oriental Insurance Company Limited***[1],

1 (2017) 14 SCC 663

has held that the driver having a licence to drive a LMV can drive a transport vehicle. This decision answers the only contention raised by the insurance company in this matter.

5. Mr. Timble however points out that the decision in *Mukund Dewangan* (supra) has been referred to larger bench of more than three Judges in ***M/s. Bajaj Alliance General Insurance Co. Ltd. Vs Rambha Devi and others[2].*** Though, such reference has been made, the law laid down in *Mukund Dewangan* (supra) will have to be followed by this Court because as of date, the position in *Mukund Dewangan* (supra) represents the law that is binding on this Court.

6. Therefore, by following *Mukund Dewangan* (supra), this appeal is dismissed. There shall be no order for costs.

7. The insurance company had already deposited the awarded amount in this Court, out of which 50% has been withdrawn by the claimant. Leave is granted to the claimant to withdraw the balance amount together with interest that may have been accrued on this amount after six weeks from today since Mr. Timble states that the insurance company might consider challenging this order before the Hon'ble Supreme Court. If within six weeks from today, there is any interim order from the Hon'ble Supreme Court then, obviously the registry will not permit any further withdrawal. The registry to verify

---

2 2022 LiveLaw (SC) 270

the identification documents and bank details before the amounts are directly remitted into the bank account of the claimant.

M. S. SONAK, J

TARI AMRUT NAGESH Digitally signed by TARI AMRUT NAGESH Date: 2022.05.07 12:46:21 +05'30'