

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1155 OF 2018

The Oriental Insurance Co. Ltd }
Claims Service Centre, 6th Floor, }
Maker Bhavan No.1, New Marine }
Lines, Mumba-400 020. }

Through Motor Third Party Claim }
Hub, MRO-II, SBI Anex Building, 3rd }
Floor, Bank Street, Fort, }
Mumbai-400 023. }

...Appellant

**NILAM
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Versus

1. Sushama Raghunath Mendon }
R/at Agrichawl, Room No.41, 1st }
Floor, 21, Calicut Street, }
Ballard Estate, Mumbai-1 }

2. Mr.Madhukar A. Tavandkar }
Prop of M/s.Atharva Travels, }
Manthan Niwas, H.No.121, Walgaon, }
Post Kalher, Bhiwandi, }
Dist-Thane-421303 }

...Respondents

Mr.Devendranath S. Joshi, for the Applicant.
Mr.T.J. Mendon, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 27 FEBRUARY 2023

JUDGMENT:-

. The issue involved in this Appeal is at the time of the accident driver of offending vehicle was not holding effective and valid driving license and the offending vehicle was carrying passengers more than capacity.

2. It is contention of the learned counsel for the Appellant that at the time of the accident the driver of offending vehicle was holding license of light motor vehicle non transport. Whereas he was driving offending vehicle of light motor vehicle transport but this fact is not considered by the Tribunal.

3. The learned counsel further submits that the capacity of offending vehicle for carrying the passengers was of six plus one, but it has come on record that at the time of accident there were eight passengers present in the offending vehicle. It shows breach of terms of Insurance Policy. But this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondent-Claimants that admittedly driver was possessing license of light motor vehicle non-transport. It can't be a ground to exonerate Insurance Company from paying compensation. He

relied on *Mukund Dewangan vs Oriental Insurance Company Limited*¹.

5. The learned counsel further submits that though eight passengers were present at the time of the accident, out of the eight passengers two were minor, so it cannot be said that offending vehicle was over capacity and requested to dismiss the Appeal.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal').

7. In respect of the issue of driving license of driver of offending vehicle, admittedly, the driver of offending vehicle was holding driving license of light motor vehicle non-transport at the time of the accident. As per view of the Hon'ble Apex Court in case of *Mukund Dewangan (Supra)*, it cannot be considered that he was not holding valid driving license as driving license for light motor vehicle can be considered as a driving license to the light motor vehicle transport. Hence, I do not see merit in the contention of the learned counsel for the Appellant that at the time of the accident the driver of the offending vehicle was not holding effective and valid driving license.

1 2017-ACJ-2011

8. In respect of issue of over capacity passengers present in offending vehicle at the time of the accident, the Tribunal has observed that though eight passengers were present in the offending vehicle at the time of the accident. But out of eight passengers two were minor children, hence it cannot be considered that the offending vehicle was carrying passengers more than capacity. I do not find any infirmity in it. In view of above Appeal is devoid of merit and I pass following order.

ORDER

- (i) Appeal is dismissed. No order as to costs.
- (ii) The Claimants are permitted to withdraw the award amount along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal, if not, already transferred.
- (iv) Parties are at liberty to withdraw it.
- (v) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)