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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 04.12.2023

\+ **MAC.APP. 48/2019**

NATIONAL INSURANCE CO LTD .... Appellant

Through: Mr.Sanjay Rawat, Adv.

versus

ANISH & ORS ..... Respondents

Through: Mr.Balwan Singh, Mr.V.D.Mishra, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 48936/2019

1. The application already stands disposed of vide order dated 22.11.2019.

MAC.APP. 48/2019 & CM APPL. 704/2019

2. This appeal has been filed challenging the Award dated 11.10.2018 passed by the learned Motor Accident Claims Tribunal, Rohini, Delhi in MAC Petition no.5148/2016 titled ***Anish v. Sh.Ashkar Shah & Ors***.

3. It was the case of the respondent no.1/claimant before the learned Tribunal that on 28.05.2012 at about 5.00 PM, the respondent no.1 along with his friend Sh.Nitish was going to his home on a

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motorcycle bearing no. DL7S-AB-0619 driven by Sh.Nitish and on which the respondent no.1 was riding as a pillion. When they reached at 66 Foota Road, Libaspur, Delhi, one Truck bearing Registration no. MP07-GA-1123 (hereinafter referred to as the 'offending vehicle'), which was being driven by the respondent no.2 herein at a very high speed and in a rash and negligent manner, came and hit the motorcycle on which the respondent no.1 was travelling. As a result of the accident, both the riders of the motorcycle fell down. The left leg of the respondent no.1 came under the rear tyre of the offending vehicle. The respondent no.1 was taken to the BSA Hospital, Rohini, Delhi.

4. The learned Tribunal, on the basis of the evidence that was led before it, has held that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner. The learned Tribunal has awarded compensation of Rs.6,59,000/- in favour of the respondent no.1, to be paid along with an interest at the rate of 9% per annum with effect from the date of filing of the petition, that is, 07.09.2012, till its realization.

RIGHT TO RECOVER COMPENSATION:

5. On the question of liability to pay the compensation, the learned Tribunal has held that, as the respondent no.2 herein was holding a valid and effective driving licence for the category of Light Goods Vehicle (in Short 'LGV') /Light Motor Vehicle (in Short 'LMV') as on the date of the accident, and as the unladen weight of the offending vehicle was 7,000 kilograms as per the Registration Certificate and, therefore, it would fall in the

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category of LGV, the appellant herein will be liable to pay the compensation amount.

6. The first challenge of the appellant to the Impugned Award is on this finding of the learned Tribunal and the liability being fastened on the appellant to pay the compensation without a right to recover the same from the respondent nos.2 and 3.

7. Herein, I must first note that in spite of service of notice, none is appearing for the respondent nos.2 and 3. They are accordingly proceeded *ex-parte*.

8. The learned counsel for the appellant placing reliance on Section 2(16) and 2(21) of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') submits that as the laden weight of the offending vehicle was 16,200 kilograms, it would fall within the category of a Heavy Goods Vehicle (HGV). As the respondent no.2 was holding a driving licence that was valid only for LMV/LGV, it would be a case of the respondent no.2 not having a valid driving licence. He submits that therefore, the appellant should have been granted a right to recover the compensation paid to the respondent no.1, from the respondent nos.2 and 3.

9. I find merit in the above submission.

10. Section 2(16) of the Act, defines the term '*heavy goods vehicle'* as under:

> *"2…(16) 'heavy goods vehicle' means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms."*

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11. A reading of the above definition shows that any 'goods carriage', the 'gross vehicle weight' of which exceeds 12,000 kilograms, shall fall in the category of 'heavy goods vehicle'. On the other hand, if the vehicle is a 'tractor' or a 'road-roller', it shall be treated as a 'heavy goods vehicle' only where its 'unladen weight' does not exceed 12,000 kilograms. Therefore, for a 'goods carriage' it is the 'gross vehicle weight' which is the determinative factor for it to be classified as a HMV, while for a 'tractor' or a 'road-roller', it is 'unladen weight' which is the determinative factor.

12. A 'goods carriage' has been defined in Section 2(14) of the Act as under:

> *"2...(14) 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."*

13. In the present case, the Offending Vehicle is a truck and would, therefore, fall within the definition of a 'goods carriage'.

14. The 'gross vehicle weight' has been defined in Section 2(15) of the Act as under:

> *"2...(15) 'gross vehicle weight' means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle."*

15. In the present case, as noted by the learned Tribunal, the gross weight of the offending vehicle as per its Registration Certificate

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is 16,200 kilograms.

16. From the above, it is apparent that the offending vehicle was 'goods carriage' with a gross vehicle weight of more than 12,000 kilograms and, therefore, it falls in the category of 'heavy goods vehicle'.

17. 'Light Motor Vehicle' is defined in Section 2(21) of the Act as under:

> *"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 7,500 kilograms."*

18. A reading of the above would show that where the 'unladen weight' of the 'tractor' or the 'road-roller' does not exceed 7,500 kilograms, the same would be treated as an LMV/LGV. For a 'transport vehicle' or an 'omnibus', the 'gross vehicle weight' must not exceed 7,500 kilograms for it to fall within the category of LMV.

19. In terms of Section 2(47), a 'transport vehicle' means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. As observed above, the vehicle in question would fall in the category of a 'goods carriage' and is, in terms of Section 2(47) of the Act, a 'transport vehicle'. As its 'gross vehicle weight' exceeds 7,500 kilograms, in terms of Section 2(21) of the Act also, it is not a 'light motor vehicle'.

20. 'Tractor' is defined in Section 2(44) of the Act as under:

> *"2…(44) 'tractor' means a motor vehicle*

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> *which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion), but excludes a road-roller."*

21. 'Road-roller' is not defined either in the Act or the Motor Vehicles Rules, 1989. Collins Dictionary defines it as:

> "any machine for *rolling* road materials flat"

22. The Offending Vehicle is neither a 'tractor' nor a 'road-roller'. Therefore, in terms of Section 2(16) or Section 2(21) of the Act, its 'Unladen weight' is of no significance.
23. The offending vehicle is, therefore, a 'heavy goods vehicle'. The respondent no.2 was, admittedly, not shown as holding a valid driving licence for a 'heavy goods vehicle'. Therefore, he was driving the offending vehicle without a valid licence.
24. Consequently, the appellant was entitled to a right to recover compensation paid by it to the respondent no.1 from the respondent nos.2 and 3.
25. The Impugned Award shall stand modified to this extent.

NEGLIGENCE:

26. The learned counsel for the appellant further submits that the learned Tribunal has failed to appreciate that Sh.Nitish, who was driving the motorcycle, was a minor as on the date of the accident.
27. To a pointed query of this Court whether this issue was raised, at all, before the learned Tribunal and if there is any evidence to

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this effect that Sh.Nitish was a minor as on the date of the accident, the learned counsel for the appellant fairly admits that this issue was not raised nor is there any evidence on record in support of this contention now being raised by the appellant. He submits that the same can, however, be presumed as the respondent no.1 was studying in the 8^{th} standard.

28. I am afraid that no such presumption can be drawn from the above fact. In absence of this issue being raised before the learned Tribunal and there being no evidence led on the same, the appellant cannot be allowed to raise the same in the appeal.

29. I, therefore, find no merit in the above challenge of the appellant to the Impugned Award. The same is, accordingly, rejected.

CONCLUSION & DIRECTIONS:

30. In view of the above discussion, the appeal partly succeeds; while the award of compensation in favour of the respondent no.1 is upheld, the appellant shall be entitled to recover the same from the respondent nos.2 and 3.

31. By the order dated 18.01.2019, this Court had directed that on the appellant depositing the entire awarded amount with interest with the learned Tribunal, the operation of the Impugned Award will remain stayed and the amount so deposited shall be converted into annual Fixed Deposit Receipts with automatic renewal. Now that the compensation amount has been upheld by this Court, the same shall be released in favour of the respondent no.1 along with interest accrued thereon and in accordance with the schedule of disbursal prescribed by the learned Tribunal in the Impugned

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Award.

32. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

33. The appeal, along with the pending application, is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 4, 2023
RN/AS

Click here to check corrigendum, if any

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