



(This judgment is corrected as per speaking to minutes order dated 09.05.2024.)

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

FIRST APPEAL NO.1602 OF 2015

1. Sau. Yogini W/o Vilas Pawar
Age: Major, Occ.: Agriculture,
R/o: Nevergaon, Tq. Gangapur
District-Aurangabad.

2. Datta S/o Laxman Pawar,
Age: Major, Occ.: Agriculture,
R/o: Nevergaon, Tq. Gangapur,
District-Aurangabad.

..Appellants
(Original Respondent 1 & 2)

Versus

1. Haribhau S/o Jagannath Tagad
Age: 45 years, Occ.: Labour.
R/o: Nevergaon, Tq. Gangapur,
District-Aurangabad.

2. Sau. Kusumbai @ Bhambai W/o
Haribhau Tagad, Age: 41 years,
Occ. Household, R/o: Nevergaon
Tq. Gangapur, District-Aurangabad.

(Original Claimants)

3. Geetaram S/o Narayan Girhe,
Age: Major, Occ.: Driver,
R/o: Takalibhan, Tq. Shrirampur,
District-Ahmednagar.

4. The Divisional Manager,
New India Assurance Company Ltd.
Adalat Road, Aurangabad.

(Original Respondent No. 3 & 4)

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Mr. P. F. Patni, Advocate for the Appellants.

Mr. S. A. Gaikwad, Advocate for Respondent Nos.1 and 2.

Mr. S. N. Gaikwad, Advocate for Respondent No.3.

Mr. M. M. Ambhore, Advocate for Respondent No.4.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th APRIL, 2024.**

JUDGMENT:-

1. The appellants / original respondent nos.1 and 2 have filed this appeal under Section 173 of the Motor Vehicle Act impugning judgment and award dated 08.11.2014 passed by the Motor Accident Claim Tribunal, Vaijapur in M.A.C.P. No.18/2012.
2. With the consent of the parties, matter is taken up for final hearing.
3. Mr. Patni, learned Advocate appearing for the appellants submits that the appellants are owners of Tractor and Trolley bearing Registration No.MH-20-AY3193 and MH-20-AB-813 respectively. The vehicles were duly insured with respondent no.4-Insurance Company. The said vehicle met with an accident on 21.05.2010. The son of respondent nos.1 and 2 lost life due to accidental injuries. They lodged M.A.C.P. No.18/2012 before the Tribunal, raising claim for compensation under the provisions of Section 166 of the Motor Vehicle Act. The respondent no.4-Insurance Company raised defence that the Tractor driver was not authorized to drive the vehicle in question, consequently, alleged breach of condition of policy. The Tribunal accepted the said defence and saddled the liability to pay the compensation on the appellants and exonerated insurer.
4. Mr. Patni, learned Advocate would invite attention of this Court to the observations of the Tribunal in paragraph no.22 of the judgment, which states that the offending Tractor is registered in Class of LMV / TT, whereas the driver had license to drive LMT / NT. As such, he was not authorized to drive the same. Mr. Patni, learned Advocate would further submit that in case of Light Motor Vehicle, the distinction of transport and non-transport category

would not arise for the purpose of authorization / driving license. He would, therefore, urge that the award to that extent be modified and insurer be made liable to pay the compensation.

5. Mr. Ambhore, learned Advocate appearing for the Insurer submits that the Tractor attached with Trolley would constitute a transport vehicle. The driver holding authorization to drive the Light Motor Vehicle (non-transport) would not be competent to drive the vehicle. Section 149 (2) of the Motor Vehicle Act provides statutory defence in favour of the Insurer to avoid liability, in case driver had no authorization to drive the vehicle in question at the time of accident. He would, therefore, urge to maintain the award.

6. Having considered submissions advanced by the learned Advocate appearing for the respective parties and after going through the pleadings and evidence laid before the Tribunal, it is apparent that the owner of the offending vehicle raises limited contentions that exoneration of the Insurer is unwarranted and there is no breach of condition of policy as held by the Tribunal. It is true that the vehicle involved in the accident is Tractor attached with Trolley. The predominant registration of the Tractor is in the category of LMV / TT. Once it is found that the vehicle in question is a Light Motor Vehicle, it cannot be said that the driver holding license to drive the Light Motor Vehicle was not authorized to drive such vehicle. The Larger Bench of the Supreme Court in case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited***¹ dealt with the selfsame issue, holding that there is no distinction / categorisation as transport and non-transport license in relation to the Light Motor Vehicle. The person who is authorized to drive a Light Motor Vehicle is competent to drive the Light Motor Vehicle of transport category without having specific

¹ (2017) 14 SCC 663.

authorization for that purpose. The law as espoused by the Larger Bench of the Supreme Court in case of ***Mukund Dewangan*** (supra) is still holding the field.

7. In that view of the matter, the findings recorded by the Tribunal on the point of breach of policy cannot be sustained. Consequently, the award passed by the Tribunal needs to be modified to that extent. Resultantly, following order is passed:

ORDER

- a. First Appeal is partly allowed.
- b. The judgment and award dated 08.11.2014 passed by the Motor Accident Claim Tribunal, Vaijapur in M.A.C.P. No.18/2012 is modified and respondent nos.1 to 4 are held jointly and severally liable to pay the compensation as determined by the Tribunal.
- c. Consequential directions permitting Insurer to recover the amount from the appellant / original respondent nos.1 and 2 are quashed and set aside.
- d. The amount, if any, deposited by the appellants including statutory deposit be refunded to them.

(S. G. CHAPALGAONKAR)
JUDGE