IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1649 OF 2015

1] Rashidabee W/O. Yakub Shaha
Age 31 years, Occ.Household,
R/o. Mansuri Colony, Gangapur,
Taluka Gangapur, dist. Aurangabad.

2] Yakub s/o. Yusuf Shaha
Age 33 years, Occ. Labour,
R/o. Mansuri Colony, Gangapur,
Tq. Gangapur, Dist. Aurangabad.

.. APPELLANTS
(ORIGINAL CLAIMANTS)

VERSUS

1. Sayyad Shaukat s/o. Sayyad Hussain,
Age major, Occ. Driver,
R/o. Agar Kanadgaon,
Tq. Gangapur, Dist. Aurangabad.

2. Hussain s/o. Ibrahim Tamboli,
Age major, Occ. Owner,
R/o. Mandapur, Tq. Rahata,
Dist. Ahmednagar.

3. United India Insurance Company Ltd.,
through its Divisional Manager,
Office Behind Gopal Cultural Hall,
Osmanpura, Aurangabad. ..RESPONDENTS.
(ORI. RESPONDENTS)

Mr. R.V. Gore, Advocate with Mr. K.A. Pathade, Advocate for appellants
Mr. S.R. Bodade, Advocate for respondent No.3.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18th APRIL, 2024.

JUDGMENT :-

1. The appellants/original claimants assails the judgment and dated 21.11.2014 passed by the Motor Accidents Claim Tribunal, Vaijapur, in M.A.C.P. No. 58 of 2012 under the provisions of Section 173 of the Motor Vehicles Act,1988.

2. Mr. R.V. Gore, learned counsel appearing for the appellant submits that the present appeal is filed challenging the finding of the Tribunal regarding breach of conditions of the policy on the basis of defence raised by the Insurance Company and consequential exoneration. He would submit that the insurer raised the defence in the written statement that the driver of the insured Tempo was not authorised to drive the vehicle and, therefore, there is breach of the conditions of the policy. In support of contentions, the insurer relied upon the opinion given by the R.T.O. at Exh.43 which states that the vehicle in question is registered as Light Motor Vehicle LMV – D van, whereas, the respondent No.1 was holding licence to drive LMV – NT (National Transport).

3. Mr. Gore would submit that in fact, the licence held by respondent No.1 was valid for driving the LMV (transport) and separate endorsement for that purpose was not necessary. He would rely upon the judgment of the Supreme Court in the case of ***Mukund Devangan Vs. Oriental Insurance Co. Ltd. (2017) 14 SCC 663.***

4. Per contra, Mr. S./r. Bodade, learned advocate for respondent No.3 would submit that the Tribunal has exonerated the Insurance company and dismissed the claim against the insurer. The claimant can recover the awarded amount from the respondent Nos. 1 and 2 and, therefore, appellants have no cause of action to file present appeal.

5. Having considered submissions advanced, it can be gathered that the deceased Muzammil died in the motor accident dated 22.4.2010 because of dash given by the Tempo bearing Registration No. MH-04/S-4868. The respondent No.1 was driving Tempo at the time of accident. The vehicle was insured with the respondent no.3 Insurance Company. The claimants – parents of the deceased filed MACP No. 58 of 2012 before the Tribunal at Vaijapur raising the claim for compensation under Section 166 of the Motor Vehicles Act against the owner, driver and insurer of the offending vehicle. The insurer took a defence of breach of policy in the written statement, contending that respondent No.1 driver was not authorized to drive the vehicle in question.

6. The Tribunal framed issues based on the pleading of the parties at Exh.35 and recorded the evidence. The Insurance Company examined Mr. Kankal, DW-2 at Exh.53 and also placed on record copy of the driving licence Exh.52 and Insurance Policy at Exh.54. The witness of the Insurance Company deposed that respondent No.1 driver had licence to drive non transport vehicle, whereas, the insured vehicle is registered as a transport vehicle. The tribunal accepted the aforesaid evidence and concluded that the driver was not authorized to drive the commercial or transport vehicle.

7. Pertinently, the issue as to whether the driver holding licence for light motor vehicle (non-transport) can drive the light motor vehicle of Transport category, in absence of authorization to drive the transport vehicle is dealt with and settled by the Supreme Court of India in the matter of ***"Mukund Devangan" (supra),*** holding that in case of light motor vehicle, absence of endorsement for driving transport vehicle on the driving licence, would not dis entitle the driver to drive such vehicle. The distinction of transport and non transport would not be available in case of light motor vehicles for the purpose of authorization/driving licence.

8. Considering the law laid down by the Supreme Court of India in the case of Mukund Devangan (supra), which still holds the field, the order passed by the Tribunal, thereby exonerating the insurer can not be sustained in law. Resultantly, the appeal deserved to be allowed. Hence, the following order :-

O R D E R

[I] The first appeal is allowed.

[ii] The judgment and award passed by the Motor Accident Claims Tribunal, Vaijapur is modified as under :-

[a] The claim petition is partly allowed;

[b] The respondent Nos. 1 to 3 shall be jointly and severally liable to pay compensation of Rs. 1,64,500/- to the claimants alongwith interest @ 9% p.a. from the date of claim petition i.e. 19.6.2010 till the date of payment of said amount in the Tribunal.

[c] The respondent Nos. 1 to 3 to pay proportionate cost of the

petition to the claimants and bear their own costs.

[d] Clause Nos. 4,5, 6 of the judgment passed by the Tribunal are maintained.

[e] Appeal stands disposed of in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-