IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.100 OF 2021

Mrs.Niranjani Chandramouli	}	
Age-42 years,	}	
1704, Building Mirabilis Nahar Amrit	}	
Shakti, Chandivali Farm Road,	}	(Org. Opp. Party)
Anhderi(East), Mumbai-400 072.	}	**...Appellant**

Versus

1. Amit Ganpathi Shet	}	
Age-21 years, R/at ¼ Devshetti Chawl,	}	
Nityanand Colony, Ghatkopar (W),	}	
Mumbai-400 086.	}	
2. Bajaj Allianz General Insurance Co. Ltd.	}	
3rd Rustomji Aspieree, Near Priyadashani,	}	
Chunbhatti, Wadala Road, Sion,	}	
Mumbai-400 022.	}	
Pol.No.HBA/00220096 (Insurer of vehicle	}	
No.MH-03-BJ-1146)	}	
	}	**...Respondents**

NILAM SANTOSH KAMBLE

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Date: 2024.03.15 18:07:14 +0530

Mr.Saumen S. Vidyarthi a/w Ms.Ishita Bhole and Mr.Kissen Biswal, for the Appellant.
Mr.D.S. Joshi, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th FEBRUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is at the time of the accident driver of the offending vehicle was holding license of Heavy Goods Vehicle ('HGC' for short) whereas he was driving Light Motor Vehicle ('LMV' for short).

2. It is contention of the learned counsel for the Appellant-Owner of the offending vehicle that, at the time of the accident driver of the offending vehicle was holding driving license of HGV vehicle and he was driving LMV vehicle i.e. offending car. The Tribunal has held that, as driver was not holding license of driving LMV vehicle. Hence, there is breach of Terms and Conditions of the Insurance Policy and exonerated the Insurance Company from paying compensation and had directed the Insurance Company to pay the compensation to the Claimants and recover it from the Appellant, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that as per provisions of the Motor Vehicle Act ('M.V. Act' for short) no person shall drive

motor vehicle in any public place unless he hold an effective valid driving license. Admittedly, at the time of accident the driver of the offending vehicle was holding license of HGV vehicle and he was driving LMV vehicle. The learned counsel further submitted that as per Section 10 of the M.V. Act classification of vehicles is done LMV is categorized in one category and HGV vehicle is categorized in other category. Though the driver of the offending vehicle was holding HGV license it does not mean that he can drive LMV vehicle. He had to obtain license for driving the LMV vehicle. The Tribunal has passed well reasoned order and no interference is required in it. He relied on following judgments:

(i) Pappu & Others V/s. Vinod Kumar Lama & Others [2018(3)-SCC-208].

(ii) National Insurance Company Ltd V/s. Vidhyadhar Mahariwala & Ors [2008(12) SCC 701].

(iii) Oriental Insurance Co. Ltd V/s. Zeharulnisha [2008(12) SCC 385].

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The

Tribunal' for short), Mumbai.

5. Admittedly, at the time of the accident driver of the offending vehicle was holding driving license of HGV vehicle and he was driving LMV vehicle i.e. offending car.

6. While dealing with the issue of license the Tribunal has observed that, at the time of the accident the driver was not holding license. There was violation of Section 10(2) of the M.V. Act, hence, there is breach of Terms and Conditions of the Insurance Policy and the Tribunal has passed pay and recovery order.

7. In my view, as per definition of the HGV as per Section 2(16) of M.V. Act "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 kilo grams. As per Section 2(21) "light motor vehicles" 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 7500 kilo grams. So there is difference between HGV and LMV about carrying of weight. Section 7 of M.V. Act, states

about Restriction on the granting of learner's license for certain vehicles it reads.

> *(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year….*
>
> *(2) No person under the age of eighteen years shall be granted a learner's license to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learners license.*

This Section prescribes one year minimum driving experience in light motor vehicle before a person issuing driving license to drive a transport vehicle. Admittedly, in the present case the driver of offending vehicle was holding driving license for heavy good vehicle. Though it is categorized in different category, as per Section 10 but after getting experience in driving LMV, the license in HGV is issued. So possessing the license of HGV and driving the LMV vehicle cannot be a ground to say that the driver was not eligible to drive the LMV vehicle. Hence I set aside the observations of the Tribunal that there was breach of Terms and Conditions of the Insurance Policy. As at the time of the accident the offending vehicle was insured with the Respondent-Insurance Company. The Respondent-Insurance Company is liable to pay the compensation as fixed by the Tribunal.

8. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Respondent-Insurance Company shall not recover the compensation amount from owner of the vehicle, if paid, to the Claimant's.

(iii) The Appellant is permitted to withdraw the statutory amount deposited before this Court alongwith interest, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)