2024:DHC:2843

$~36

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 8th April, 2024**

\+ MAC.APP. 29/2024 and CM APPLs. 1749/2024, 1751/2024

NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Ms. Kanchan Kaur Dhodi, Adv.

versus

MAMTA & ORS. ..... Respondents

Through: Ms. Prema Priyadarshini, Adv. for R-5/DMRC.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This hearing is being conducted through hybrid mode.

2. The instant appeal has been preferred by the appellant/Insurance Company under Section 173 of the Motor Vehicles Act, 1988[1], assailing the impugned judgment-cum-award dated 21.08.2023 passed by the learned Presiding Officer, MACT-02, Central District, Tis Hazari Courts, Delhi[2], whereby the learned Tribunal granted compensation in favour of the respondents No.1 to 3/claimants on account of death of Raj Kumar and fastened the liability to pay the compensation upon the appellant/Insurance Company.

---

1 The Act
2 Tribunal

FACTUAL BACKGROUND:

3. Shorn of unnecessary details, a claim petition was filed by the respondents No. 1 to 3/claimants *viz.* widow, son and daughter of the deceased for seeking compensation on account of death of deceased Raj Kumar in a motor accident on 18.10.2018 at about 10:00 PM when he was travelling in a Phat-Phat Sewa vehicle as a passenger, which vehicle was struck by a Metro Rail Feeder Bus bearing registration No. DL-1PD-0482 (hereinafter referred to as the 'offending vehicle') by its driver i.e. respondent No.4 /Sonu in a rash and negligent manner.

4. The appellant/insurance company has assailed the impugned judgment-cum-award in so far as the liability for making the payment of compensation has been fastened upon it, primarily on the ground that the respondent No.4 i.e. the driver[3], namely Sonu, who was employed with the respondent No.5/Delhi Metro Rail Corporation Limited, was evidently holding a driving license[4] for plying the vehicle in the category of LMV-TR[5] but instead, he was driving the offending bus in question, which comes under the category of a Heavy Motor Vehicle, or, to be specific, a HPMV[6] category vehicle.

5. Notice of the present appeal has been served upon respondent No.5/Delhi Metro Rail Corporation Ltd.

---

[3] Section 2(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

[4] Section 2(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

[5] Light Motor Vehicle -Transport

[6] Heavy Passenger Motor Vehicle

ANALYSIS AND DECISION:

6. Learned counsel for the appellant/Insurance Company has pointed out that the issue raised in the present appeal already stands decided by this Court in MAC. APPL. 33/2024[7] and MAC.APPL. 34/2024[8] *vide* judgment dated 04.03.2024. Suffice to state that the aforesaid two appeals *arose out of the same motor accident involving the two* vehicles and it would be apposite to refer to the observations made by this Court that read as under:-

> Having heard the learned counsels for the parties at the admission stage, and on perusal of the record, learned counsel for the appellant/insurance company alluded to the statement of R3W1/Uttam Foujdar, Motor Vehicle Inspector, Wazirpur Transport Authority, Delhi, which reads as under:
>
> "I am a summoned witness. The copy of my employment ID Card is Ex. R3W1/1 (OSR). I have brought the summoned record i.e. the extract of driving license of Sonu. The attested copies of the same are Ex. R3W1/2 (Colly). As per records, the driving license of Sonu comes under the category of LMV (TR) at the time of accident i.e., 18.10.2018. As per the RC which is already Ex. PW1/5 (Colly) in DAR, the driver of the offending vehicle is not eligible to drive the offending vehicle bearing registration No.DL-1PD-0482."
>
> It was vehemently urged that although an issue about the respondent No.4/driver not possessing a valid driving license to ply the offending vehicle was addressed at the time of making final submissions, the same was not decided correctly as per the law by the learned Tribunal. It would be expedient to reproduce

[7] New India Assurance Co. Ltd. v. Kanta Devi

[8] New India Assurance Co. Ltd. v. Haridwar @ Haridwar Singh

the relevant portions of the common impugned judgment-cum-award that dealt with the aforesaid issue, which is as follows:

"**73**. On the point of liability, an objection has been raised by R-3/ Insurance Company. Ld. Counsel for R-3/ Insurance Company has submitted that R-1 was driving the vehicle for which he was not entitled as the license possessed by R-1 was valid for 3W-CAB, LMV-TR and MCWG. Perusal of DAR reveals that the offending vehicle bearing registration no. DL-1PD-0482 is registered with MLO, HQ, Govt. of NCT of Delhi. As per the Registration Certificate of the offending vehicle (placed on record with the DAR), the unladen weight of the said vehicle is 3813 kilograms. Light Motor Vehicles have been defined under Section 2(21) of M.V. Act, 1988, which is reproduced as under :-

> "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 which, does not exceed to 7,500 kilograms".

73.1 Admittedly, the unladen weight of the offending vehicle is less than 7,500 kilograms. Admittedly, the driver of offending vehicle (R-1) was holding a driving licence permitting him to drive LMVs. Therefore, the license of R-1 would be deemed valid for driving the offending vehicle. **Accordingly, it could be safely assumed that R-1 was driving the offending vehicle with a valid and effective driving licence at the relevant time. This dis-entities R-3 to be granted recovery rights.**

74. R-3/ Insurance Company is directed to deposit the above award amount within 30 days from the date of this Award by way of NEFT or RTGS mode in the account of this Tribunal maintained with SBI, Tis Hazari Courts, Delhi (account holder's name-Motor Accident Claims Tribunal 02 Central, A/C No. 40743576901, IFSC Code SBIN0000726) under intimation to the petitioner and this Tribunal in terms of the format for remittance of compensation as provided in **Divisional Manager Vs. Rajesh, 2016 SCC Online Mad. 1913 (and reiterated by Hon'ble Supreme Court in the orders dated 16.03.2021 and 16.11.2021 titled as Bajaj Allianz General Insurance Co. Pvt. Ltd. Vs. Union of India & Ors)** along with interest @ 9% per annum till the deposit of the compensation as awarded, failing which he shall be liable to pay interest at the rate of 12% per annum for the period of delay."

Learned counsel for the appellant/insurance company in her submissions relied upon the decisions in **Oriental Insurance**

Company Limited v. Zaharulnisha[9] and **Mukund Dewangan v. Oriental Insurance Co. Ltd.**[10]**.**

First things first, it is an admitted fact that the offending vehicle was insured for a third party risk. **Secondly,** the driving license (A-5) was valid from 18.05.2016 to 17.05.2019 for transport for 3W-CAB[11], LMV, LMV-TR, MCWG[12] category of the vehicles, specifically providing that it was valid for 'Non-Transport Hazardous Vehicle' from 05.04.2010 to 04.04.2030. **Thirdly,** the registration certificate of the offending vehicle bearing registration No. DL-1PD-0482 would show that evidently, it contained the following key features of the vehicle:

"Vehicle Class/body type	:	Bus
Seat (inc.driver)	:	27
Unladen Wt (kg)	:	3813
Laden Wt (kg)	:	9600
Fuel	:	CNG only
Permit Category	:	Stage Carriage (MPV)"

In light of the aforesaid structural characteristics of the offending vehicle, let us examine the relevant provisions of Section 2(15), (16), (17), (21), (29), (40), (47) (48) and (49) of the Act, which provides 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;
(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;

[9] (2008) 12 SCC 385
[10] (2017) 14 SCC 663
[11] Three-wheeler cab
[12] Motor Cycle with Gear

(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms

* * * * *

(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;

(29) "omnibus" means any motor vehicle constructed or adapted to carry more than six persons excluding the driver;

(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

(48) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

(49) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests [or moves].

A bare perusal of the aforesaid provisions would show that Section 2(21) of the Act defines a "Light Motor Vehicle" to mean a transport vehicle or omnibus, where the unladen weight[13] does not exceed 7,500 kilograms. Further, Section 2(29) of the Act defines "omnibus" to mean a motor vehicle constructed or adapted to carry more than six persons excluding the driver. Evidently, the offending vehicle was registered as a

[13] Section 2(48) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;

bus manufactured by Tata Motors with a seating capacity of 27 persons and having an unladen weight of 3,183 kilograms.

It is borne out from the records that notwithstanding the statement of R3W1, the respondent No.5/driver/Sonu, was having a driving licence to ply a LMV (Non-Transport Hazardous Vehicle) and it was valid for TR (Transport Vehicle). The offending bus by all means was a transport vehicle. The testimony of R3W1 is not the gospel truth and his interpretation of the validity of the driving licence is contrary to the provisions of the law. By all means, the respondent No.2/Sonu was driving the offending vehicle with a valid and effective driving licence at the time of accident. In any case, there was no breach of any fundamental condition in the insurance policy either, so as to fix the financial liability to pay the compensation upon the driver and the owner of the offending vehicle. Therefore, the appellant/Insurance Company is not entitled to seek any recovery rights against the driver and the registered owner of the offending vehicle.

As regards the case law cited by the learned counsel for the appellant insurance company, ***Zaharulnisha (supra)*** was a case wherein the driver was possessing a driving licence for HMV while he caused the accident driving a motorcycle and it is under such circumstances that the liability to pay the compensation was jointly and severally fastened on the shoulders of the driver and the registered owner of the motorcycle. In so far as the decision by three Judges Bench in the case of ***Mukund Dewangan (supra)*** is concerned, the same has been referred to the Constitution Bench, which is yet to be answered and as on today, the decision to the following effect holds the field[14]:

> "60.1. "Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a road-roller, "unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2) (d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form. 1 (2017) 14 SCC 6635

7. In view of the above, without further *ado*, the present appeal also merits dismissal. The appellant/Insurance Company is directed to deposit the entire amount of compensation with interest accrued thereon, with the learned Tribunal within one month from today failing which, the appellant/Insurance Company shall be liable to pay the interest at an enhanced rate of 12% per annum from the date of filing of this appeal till its realisation. The amount, when deposited with the learned Tribunal, be released to the respondents/claimants forthwith thereafter as per the directions of the learned Tribunal, the

---

[14] Bajaj Alliances General Insurance Company Limited v. Rambha Devi, Civil Appeal no. 841/2018 pending in the Supreme Court

amount of statutory deposit be also released to the appellant/Insurance Company.

8. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

APRIL 08, 2024

sp