2025:BHC-AUG:12146

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

FIRST APPEAL NO.721 OF 2019

1. Vishwambhar s/o. Gopalrao Pethe,
Age : Major, Occu : Business,
R/o. Pethewadi, Tq. Deoni,
Dist. Latur

2. Madhukar s/o. Venkatrao Chame,
Age : Major, Occu : Business,
R/o. Morewadi, Tq. Ahmedpur,
Dist. Latur … Appellants
(Orig. Respondent Nos.1 & 3)

Versus

1. Suman w/o. Jagannath Pawar,
Age : 36 years, Occu : Household,

2. Santosh s/o. Jagannath Pawar,
Age : 20 years, Occu : Nil,
Both R/o. Jamnb, Tq. Vai,
Dist. Satara

3. Bajaj Allianz General Insurance Co.
Through its Branch Manager,
Branch at Latur

4. The Branch Manager,
IFFCO TOKIO General Insurance
Co. Ltd, through its one of the
Branch at Latur, 1st floor,
Innani Building, above Latur Saree
Center, Old Cloth Lane, Latur .. Respondents

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Shri. Krishna P. Rodge h/f. Shri. Pratap G. Rodge,
Advocate for the Appellants
Shri. Fayaz K. Patel, Advocate for Respondent Nos. 1 & 2 (absent)
Shri. Mohit R. Deshmukh, Advocate for Respondent No.3

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WITH

CIVIL APPLICATION NO.1284 OF 2016

IN

FIRST APPEAL NO.721 OF 2019

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CORAM : NEERAJ P. DHOTE, J.
DATED : 24.04.2025

FINAL ORDER :-

. This First Appeal is filed under Section 173 of the Motor Vehicles Act (for short, 'M.V. Act') by the Owner of the Tractor bearing Registration No.MH-24-D-2216 and Owner of Tractor Trolly bearing Registration No.MH-24-E-3047, against the Judgment and Award dated 28.01.2014 passed by the learned Motor Accident Claims Tribunal at Ahmedpur (for short, 'Tribunal') in Motor Accident Claim Petition No.78 of 2011 (for short, 'Claim Petition') to the extent of directing the recovery of the amount under the Award from the Appellants by the Insurance Company of the Tractor and Trolly.

2. Today, the Civil Application No.1284 of 2016 praying for Stay to the above referred impugned Judgment and Award filed by the Appellants, is listed. It is submitted by the learned Advocate for the Appellants that, pursuant to the impugned Judgment and Award, the Insurance Companies of both the Tractor and Trolly have satisfied the Award and have filed Execution Proceedings to recover the amount under the Award from the Appellants pursuant to the Order of Pay and Recovery passed by the learned Tribunal. He submits that the core issue involved in the matter is fully covered by the Judgment delivered by Three Judge Bench of the Hon'ble Supreme Court of India in **Mukund**

Dewangan vs. Oriental Insurance Company Limited, (2017) 14 SCC 663 and therefore, the Appeal itself can be heard and decided.

3. The learned Advocate for Respondent No.3 - Insurance Company of the Tractor and the learned Advocate for Respondent No.4 - Insurance Company of the Trolly submit that, in view of the said decision of the Hon'ble Supreme of India relied upon by the learned Advocate for the Appellants, the Appeal can be disposed off since the issue involved is covered.

4. None for Respondent Nos.1 and 2, who are the Orig. Claimants. Since there is no Appeal by the Original Claimants for enhancement of the compensation and the impugned Award has been satisfied by the Insurance Company, no prejudice would cause to Respondent Nos.1 and 2, if the Appeal is heard finally and disposed off.

5. In view of the above, the Appeal is heard finally.

6. It is submitted by the learned Advocates for the parties that, the only issue involved in the Appeal is, 'Whether the Driver of the said Tractor attached with the said Trolly was having valid and effective driving licence to drive the Light Motor Vehicle, Non Transport (LMV-NT) while driving the said Tractor attached with the said Trolly' and whether there was breach of condition of Insurance Policy and the

order of Pay and Recover would be sustainable. They submit that, in view of the said Judgment in the case of **Mukund** (*supra*), the legal position is that, the Driver, who is having the licence to drive the Light Motor Vehicle, can drive the Light Motor Vehicle (Non Transport) and there was no necessity to obtain separate endorsement since the Tractor attached with the Trolley was a transport vehicle in the category of Light Motor Vehicle. Both the sides submit that there is no other issue involved in the Appeal.

7. The Respondent Nos.1 and 2 had preferred the above referred Claim Petition against the Appellants and both the Insurance Companies. The learned Tribunal observed that the Driver of the Tractor attached with the said Trolly was not having the driving licence to drive the LMV- NT at the time of accident. The learned Tribunal held that since the said Tractor attached with the Trolly was a goods carrier and transport vehicle requiring the driving licence to drive Light Motor Vehicle – Non Transport, the Tractor Driver was not holding valid driving licence and therefore, there was breach of terms and conditions of the policy. By holding so, the learned Tribunal partly allowed the Claim Petition and passed following operative order.

"*ORDER*

> *1. The claim petition is hereby allowed partly against the respondents with proportionate costs.*

2. Respondent Nos. 1 to 4 do pay jointly and severally Rs. 8,08,000/- (Rs. Eight lakh eight thousands only) to claimants with interest at the rate of 6% per annum from the date of petition till realization in its entirety.

3. Sum of Rs. 8,08,000/- includes claim u/sec. 140 of M.V. Act.

4. Out of the compensation amount, amount of Rs.1,50,000/- be invested in F.D.R. in any nationalised bank for the period of five years in the name of claimant No. 1, and Rs. 2,00,000/-be invested in F.D. R. in any nationalised bank for the period of five years in the name of claimant No. 2; and rest of the amount be paid to the claimant No. 1 and 2 equally.

5. Respondents No. 2 and 4 are directed to satisfy the award and then to recover the same from the owners of the tractor and trolley i.e. respondent No. 1 and 3.

6. Award be drawn on payment of deficit court-fee."

8. One of the issues / questions which was dealt with and decided in the above referred Judgment in **Mukund** (*supra*) by the Hon'ble Supreme Court of India was, '*What is the meaning to be given to the definition of "light motor vehicle" as defined in Setion 2 (21) of the MV Act? Whether transport vehicles are excluded from it?'* The said question is answered as *"Light motor vehicle" as defined in Section 2 (21) of the MV Act would include a transport vehicle as per the weight prescribed in section 2 (21) read with section 2 (15) and 2 (48). Such Transport vehicles are not excluded from the definition of the Light Motor Vehicle by virtue of Amendment Act No.54/1994.*'

9. The learned Advocate for the Appellants further cited the Judgment of the Hon'ble Apex Court of India in **Sant Lal vs. Rajesh and**

Others, (2017) 8 SCC 590 wherein the above Judgment in **Mukund Dewangan** (*supra*) is considered. The said judgment reproduced below :

> *"Leave granted. The appeals have been preferred by the owner, aggrieved by the award passed by the Motor Accident Claims Tribunal, Bhiwani (for short, "the MACT"). The driver was driving a tractor which was attached to the trolley carrying goods. The MACT held that the same becomes transport vehicle though the driver was having licence to drive motorcycle, scooter, car, jeep and light motor vehicle. There was no endorsement to drive a transport vehicle. Thus, there was violation of the conditions of the policy. Driver was not having a valid licence to drive transport vehicle. Thus, after making payments to the claimant, right of recovery has been given to the insurer from owner. Reason: The award has been affirmed by the High Court. Hence present appeals.*
>
> *2. This Court has considered the question whether the holder of licence for light motor vehicle can drive tractor attached to the trolley carrying goods and also whether separate endorsement is required authorizing him to drive such a transport vehicle?*
>
> *3. We have answered the question that driver having licence to drive light motor vehicle can drive such a transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy.*
>
> *4. Accordingly, in view of the answer given to reference by the three-Judge Bench of this Court in* ***Mukund Dewangan vs. Oriental Insurance Co. Ltd*** *etc. (Civil Appeal No.5826 of 2011), these appeals have to be allowed and are hereby allowed. The right given to the insurer to recover amount from owner is hereby set aside. The liability is held to be joint and several of owner, driver and insurer. No costs."*

10. In the case in hand, it is clear from the evidence of Witness No.1 examined by the Insurance Company of the Tractor, who was the

employee from the Office of Road Transport Vehicle, Latur, it has come that Tractor comes within the category of Light Motor Vehicle and Tractor attached with Trolly comes within the category of Light Motor Vehicle Transport. Thus, in light of the authoritative pronouncement by the Hon'ble Apex Court of India in the above referred Judgment **Mukunda** (*supra*), there was no breach of condition of the Insurance Policy as the Driver of the Tractor was holding valid licence to drive Light Motor Vehicle. Hence, the Appeal deserves to be partly allowed by setting aside the impugned Judgment and Order to the extent of recovery of the compensation amount by the Insurance Companies from the Appellants. Hence, the following order is passed.

ORDER

(i) The Appeal is partly allowed.

(ii) The part of the Operative Order No.5, as reproduced above, to the extent of recovery of the amount under the Award by the Insurance Companies from the Owners of the Tractor and Trolly i.e. Appellants, is quashed and set aside.

(iii) Record and Proceedings be sent back.

(iv) Pending Civil Application stands disposed off.

(NEERAJ P. DHOTE, J.)

GGP