THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 30th June, 2017

Single Bench : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No. 12 of 2016

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
East Sikkim – 737101.

Versus

Respondents :

1. Mrs. Indra Maya Biswakarma,
W/o Late Sahabir Biswakarma,
R/o Upper Zoshing, Mangshila,
P.O. Mangshila,
P.S. Mangan, North Sikkim.

2. Mrs. Lachi Biswakarma,
W/o Mr. Dhan Bahadur Biswakarma,
R/o Mangshila,
P.S. Mangan, North Sikkim.

(Owner of TATA Sumo Gold Carriage Vehicle bearing Registration No. SK-03/J/0441)

Appearance:

Ms. Smita Pradhan, Advocate for the Appellant.

Mr. Birendra Pourali, Advocate for the Respondent No.1.

None for the Respondent No. 2.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal impugns the Judgment and Award dated 12.07.2016 passed by the learned Member, Motor Accidents Claims Tribunal, East Sikkim at Gangtok (for short 'Claims Tribunal'), in MACT Case No. 26 of 2015, directing the Appellant/Insurer to pay a sum of Rs.4,62,380/- (Rupees four

lakhs, sixty-two, three-hundred and eighty) only, with interest at the rate of 10% per annum on the said sum to the Respondent/Claimant, from the date of filing of the Claim Petition i.e. 7.7.2015, till full and final realisation.

2. The Appellant was the Opposite Party No.2, the Respondent No.1 herein, was the Claimant and the Respondent No.2 was the Opposite Party No.1 respectively, before the learned Claims Tribunal.

3. The parties herein shall be referred to in terms of their appearance before the learned Claims Tribunal.

4. The only ground pressed in Appeal is that the deceased, Driver of the vehicle, was authorized to drive only a Light Motor Vehicle (Non Transport), but he was unauthorisedly driving a Light Motor Vehicle (Transport), which met with the accident leading to his death. That, the deceased having violated the terms and conditions of the insurance policy, the learned Claims Tribunal ought not to have ordered the Appellant to pay the aforestated compensation computed by it.

5. To appreciate the matter in its correct perspective, we may briefly traverse through the facts. The deceased, Bhim Raj Biswakarma, the son of the Claimant was returning to Mangshila,

North Sikkim from Gangtok on 29.1.2014, driving the vehicle, a TATA Sumo Gold, bearing registration No. SK-03/J/0441 with gross weight of 2600 kilograms. At around 10:30 p.m., the vehicle met with an accident at Tenek Ramthang Jhora, near Mangshila, North Sikkim, whereby the deceased succumbed to his injuries on the spot. The matter was reported by one Phurba T. Lachungpa to the Mangan Police Station on 30.1.2014, and a case was duly registered under Section 279/304A IPC. The Claimant filed Petition under Section 163 A of the Motor Vehicles Act, 1988 (for short "the Act"), seeking compensation of an amount of Rs.8,59,320/- (Rupees eight lakhs, fifty-nine thousand, three hundred and twenty) only. This was duly contested by the Opposite Party No.2. The learned Claims Tribunal on consideration of the evidence and documents on record, awarded compensation amounting to Rs.4,62,380/- (Rupees four lakhs, sixty-two thousand, three-hundred and eighty) only, and ordered the Opposite Party No.2 to make good the compensation to the Claimant.

6. Before this Court, O.P. No.2 (Appellant) reiterated that the driver was not authorized to drive the vehicle being in possession of a licence to drive a non-transport vehicle, while the accident vehicle was a commercial vehicle. Hence, O.P. No.2 could not be saddled with the liability. *Per contra*, the Respondent No.1 (Claimant) argued that the decision in ***National Insurance Company***

Ltd. vs. Annappa Irappa Nesaria alias Nesaragi and Others[1], lays down the law on this count which applies to the facts and circumstances herein.

7. I have considered the submissions put forth by learned Counsel and perused the documents on record and the impugned Judgment.

8. Section 163A of the Act, under which the Claim Petition was filed, is a special provision for computing compensation on a structured formula as provided in the Second Schedule of the Motor Vehicles Act, 1988, to extend benefit to the family of a victim or injured person, falling within the income group upto Rs.40,000/- (Rupees forty thousand) only, per annum. In a claim for compensation under Section 163 A, the claimant is not required to plead or establish that the death or permanent disablement pertaining to which the claim has been made, was due to any unlawful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

9. On the limited point raised by the O. P. No.2, it would be beneficial to refer to various decisions of the Supreme Court on that aspect and to analyse the instant matter on the anvil of the judicial pronouncements. In ***Nagashetty vs. United India Insurance Co. Ltd, and ors.***[2], the Motor Accidents Claims Tribunal

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1. (2008) 3 SCC 464 (decided on 22.01.2008) **2.** (2001) 8 SCC 56 (decided on 17.8.2001)

found that the accident which occurred on 4.12.1995, was due to rash and negligent driving and awarded compensation in favour of the Claimants, directing the Insurance Company to pay the amount. The Insurance Company, in Appeal, before the High Court contended that the driver's licence was valid only for driving a tractor, but at the relevant time, the tractor had a trailer filled with stones attached to it and was thereby being used as a "goods vehicle", hence, the decision of the Tribunal was erroneous. The High Court found favour with these contentions and absolved the Insurance Company, holding that, the driver had a licence to drive a tractor only and not a valid driving licence to drive a "transport vehicle". Instead, the owner was ordered to pay the compensation, who was therefore in Appeal before the Supreme Court, which for its part, questioned whether a licence to drive a tractor would be ineffective merely because a trailer was attached to the tractor and the tractor was used for carrying goods? Observing in the negative, it was held that, merely because a trailer is added either to the tractor or to a motor vehicle, by itself, does not make that vehicle a transport vehicle. That, if a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence for those vehicles, even if a trailer with some goods is attached to it. In addition to the above finding, it was also revealed that an additional premium had been taken for the trailer by the Insurance Company. Allowing the Appeal, the Judgment of the High Court was set aside and that of the Tribunal restored.

10. In ***New India Assurance Co. Ltd. vs. Prabhu Lal[3],*** the matter before the District Consumer Forum was with regard to an accident of a vehicle being a TATA 709 on April 17, 1998. According to the Complainant, the vehicle at the time of accident was driven by one Mohd. Julfikar, with a licence to drive both a light motor vehicle (LMV) and a heavy motor vehicle (HMV), despite which the Insurance Company disallowed the insurance claim of the Complainant. The Insurance Company contended that at the time of accident, Ram Narain, the Complainants' brother, who had a licence to drive only a light motor vehicle but not a heavy motor vehicle was driving and not Mohd. Julfikar. Ram Narian could not have driven a transport vehicle in the absence of required necessary endorsement thus, the Insurance Company could not be held liable. The District Forum referred to the decision of ***Ashok Gangadhar Maratha vs. Oriental Insurance Co. Ltd.[4]***, wherein, according to the Forum, the Supreme Court had held therein that, if the driver was having effective driving licence to ply a light motor vehicle, he could not have plied a heavy motor vehicle or transport vehicle and dismissed the Appeal. That, in the case at hand, i.e., *Prabhu Lal*[3], from the evidence on record it was proved that Ram Narain was plying the vehicle and not Mohd. Zulfikar. As the former only had a valid and effective driving licence to ply light motor vehicles, he could not have plied a transport vehicle, the Complaint was dismissed. In Appeal, the State Commission set

3. (2008) 1 SCC 696 (decided on 30.11.2007) **4.** (1999) 6 SCC 620

aside the Order of the District Forum and ordered the Insurance Company to pay compensation. Against this Order, the Insurance Company approached the National Forum, which dismissed the Revision and confirmed the order of the State Commission, this was challenged before the Supreme Court. The Supreme Court, *inter alia*, held that in their Judgment in *Ashok Gangadhar*[4], it did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive a transport vehicle. That, it was on the peculiar facts of the case, i.e. the Insurance Company failed to plead or prove that the vehicle was a transport vehicle, hence, the Insurance Company was held liable. Whereas, in the case under discussion (*Prabhu Lal*[3]), all the facts were before the District Forum, which considered the assertion of the complainant and the defence of the Insurance Company in the light of the relevant documentary evidence and held that it was established that the vehicle in accident was a "transport vehicle" but Ram Narain had a licence to drive only a "light motor vehicle". That, there was no endorsement as required by Section 3 of the Motor Vehicles Act, 1988, read with Rule 16 of the Rules and Form 'C'. That, Section 14(2) provides that, in case of transport vehicles, the licence will be effective for a period of three years, while for any other vehicle it will be for twenty years, provided a person whose licence was issued or renewed had not attained the age of 50 years. Thus, from this fact also it was clear that the licence of Ram Narain was in respect of a motor vehicle other than

a "transport vehicle". The Supreme Court referred to the decision of ***National Insurance Co. Ltd. Vs. Kusum Rai***[5], wherein it was held that if the vehicle is a taxi, which is being driven by a driver holding licence for driving a light motor vehicle only, without there being any endorsement for driving transport vehicle, the Insurance Company cannot be ordered to pay compensation. Reference was also made to the decision of the High Court of Himachal Pradesh in ***New India Assurance Co. Ltd., Shimla vs. Suraj Prakash***[6]. There, the vehicle involved in an accident was a taxi, a public service vehicle. But the licence issued in favour of the driver was to ply "light motor vehicle" with no endorsement to drive a "transport vehicle". The High Court held that the Insurance Company cannot be saddled with the liability to pay compensation to the claimant. The Supreme Court thus while dismissing the Appeal in Prabhu Lal[3], held that if there was no endorsement on the licence, allowing the driver to drive a particular kind of vehicle, i.e., in the said case a TATA 709, and the licence was to drive only a light motor vehicle, the Insurance Company would not be liable.

11. Later in time, in ***Annappa Irappa Nesaria***[1], the Matador van involved in the accident, on 9.12.1999, caused the death of the wife of Respondent No.1. It had a "goods carriage" permit, granted in terms of Form 7 of the Motor Vehicles Act. Before the Motor Accidents Claims Tribunal, a contention was raised on behalf

5. (2006) 4 SCC 250 **6.** AIR 2000 HP 91

of the appellant, that the driver of the said vehicle did not possess an effective licence to drive a transport vehicle. The learned Claims Tribunal while deciding the matter found that, the offending vehicle was authorized to transport 3500 kilograms goods, while a light motor vehicle meant transport vehicle of unladen weight, which does not exceed 7500 kilograms. Relying on the decision of the Karnataka High Court in *United India Insurance Company Limited vs. Shivanna*[7], held that there was no breach of Insurance policy as the driver had a valid driving licence. On Appeal by the Insurance Company, the High Court upheld the decision of the Claims Tribunal. Before the Supreme Court, it was agitated by the Insurer that the High Court was in error, as it failed to take into consideration that a "light motor vehicle" cannot be a "transport vehicle" within the meaning of the provisions of the Act. That, in terms of Rule 14 and 16 of the Central Motor Vehicles Rules, 1989, as also Form 4 and Form 6, it was clear that a "light motor vehicle" does not answer the description of a "transport vehicle". For the Respondent, it was urged that keeping in view the definition of "light motor vehicle", as contained in Section 2(21) of the Motor Vehicles Act, 1988, a light goods carriage would come within the purview thereof, as a light goods carriage was not defined in the Act. Thus, the definition of light motor vehicle clearly indicated that it included both a "transport" vehicle and a "non-transport" vehicle. The Supreme Court discussed the

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7. (2000) 5 Kar L.J. 473 (DB)

provisions of Section 2, Section 2(21), Section 2(23), Section 3 of the Motor Vehicles Act, 1989 and Rule 2(e) as well as Form 4, Rule 14 and, *inter alia*, held as follows;

> "**17.** Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.
>
> **18.** Clause (e) provides for "transport vehicle" which has been substituted by GSR 221 (E) with effect from 28.3.2001. Before the amendment in 2001, the entries "medium goods vehicle" and "heavy goods vehicle" existed which have been substituted by "transport vehicle". As noticed hereinbefore, "light motor vehicles" also found place therein.
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> **19.** "Light motor vehicle" is defined in Section 2(21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted, the relevant portion whereof reads as under;
>
> "Authorisation to drive transport vehicle
>
> Number…… Date……
>
> Authorised to drive transport vehicle with effect from…
>
> Badge number…….
>
> Signature
> Designation of the licensing authority.
>
> Name and designation of the authority who conducted the driving test."
>
> "**20.** From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well."
>
> **21.** The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law."

Thus, it was concluded that a driver who had a valid licence to drive a light motor vehicle was authorized to drive a light goods

vehicle as well. It may be noticed that the accident was of the year 1999, while the amendment referred to above came into force only from 2001.

12. In ***Oriental Insurance Company Limited vs. Angad Kol & Others***[8], the vehicle which met with an accident on 31.10.2004 and caused the death of the deceased was a "goods carriage" vehicle, owned by the Respondent 7 therein, driven by Respondent No.6. A contention was raised before the Tribunal, by the Insurer, that the driver of the vehicle did not possess a valid and effective driving licence. Overruling the said contention, an award of Rs.1,83,000/- (Rupees one lakh, eighty-three thousand) only, was granted. The High Court on Appeal enhanced the compensation. Before the Supreme Court, it was argued by the Insurance Company that the driving licence having been granted to the Respondent No.6 in the year 2003 for a period of 20 years, evidently it was not meant for driving a goods carriage vehicle. The Supreme Court elucidated the provisions of Section 2(10) of the Motor Vehicles Act, 1988, which deals with driving licence and Section 2(14) of the Act, pertaining to goods carriage and Section 2(21) relating to light motor vehicles and also alluded to heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger goods vehicle.

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8. (2009) 11 SCC 356 (decided on 18.2.2009)

Section 3 of the Act which provides for the necessity of a driving licence was discussed as also Sections 9, 10 and 11 of the Act and it was observed that a distinction between a "light motor vehicle" and a "transport vehicle" is therefore, evident. A "transport vehicle'' may be a "light motor vehicle" but for the purpose of driving the same, a distinct licence is required to be obtained. The vehicle in question was a goods vehicle while the driver was armed with a licence to drive only light motor vehicle. It was noticed that the licence granted to the Respondent No.6, was in 2003 after the said amendment being G.S.R. 221E, dated 28.3.2001, came into force, the accident took place on 31.10.2004. The licence having been granted for a period of 20 years, a presumption arose that it was meant for the purpose of driving a vehicle other than a "transport vehicle". The decision in *Annappa Irappa Nesaria*[1] was referred to and was clarified that "light motor vehicle" continued at the relevant point of time to cover both "light passenger carriage" vehicle and "light goods carriage" vehicle, thus a driver who had a valid licence to drive a "light motor vehicle" then was also authorized to drive a light goods vehicle. The Supreme Court allowing the Appeal, held that the Respondent No.6 did not hold a valid and effective driving licence for driving goods vehicle, thereby resulting in breach of conditions of the Insurance.

13. Later in ***S. Iyyapan vs. United India Insurance Company Limited and another[9]*,** the Supreme Court was once again deciding the question as to whether an Insurance Company can disown its liability, on the ground that, the driver of the vehicle duly licenced to drive a "light motor vehicle" was at the time of accident (on 23.5.1998) driving a "commercial light motor vehicle" with no endorsement in the licence to drive such a vehicle. In the said case, the Claims Tribunal at Kanyakumari, after considering the evidence on record had awarded a compensation of Rs.2,42,400/- (Rupees two lakhs, forty-two thousand and four hundred) only, with interest @ 12% per annum, being of the view that the person possessing a licence to drive a light motor vehicle is entitled to drive a Mahindra maxi cab. The Insurance Company preferred an Appeal before the High Court, which, while relying on the case of ***Sardari vs. Sushil Kumar[10]***, observed that since the vehicle was being used as a "taxi" which is a commercial vehicle, the driver of the said vehicle was required to hold an appropriate licence. Hence, a breach of the condition of the contract of insurance had occurred and the Insurance Company was not liable to compensate the claimant. In Appeal, the Supreme Court observed that; on various occasions it had considered the aims and objects of making insurance compulsory before the vehicle is put on the road. That, a new chapter was inserted in the Motor Vehicles Act as a welfare measure to ensure and protect the plight of the

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9. (2013) 7 SCC 62 (decided on 1.7.2013) **10**. (2008) 17 SCC 208

victims of road accidents. Reference in this context was made to the observations of the Court in ***Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan***[11]. Reference was also made to the decisions of the Supreme Court in ***Sohan Lal Passi vs. P. Sesh Reddy***[12], *Ashok Gangadhar*[4] and ***New India Assurance Co. Ltd. vs. Kamla***[13]. While referring to Kamla's[13] decision, the Supreme Court extracted Paragraph 22 of the said Judgment, which read as follows;

> "**12.** ……..……
> ……..……..
>
> "22**.** To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.
> ……"

14. Reference was also made to ***National Insurance Co. Ltd. vs. Swaran Singh***[14], wherein a three Judge Bench held that; if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of a different type. The Supreme Court in *S. Iyyapan*[9] while summarizing the findings on the various issues observed, *inter alia*, as follows;

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11. (1987) 2 SCC 654 **12**. (1996) 5 SCC 21
13. (2001) 4 SCC 342 **14.** (2004) 3 SCC 297

> "**13.** ……..……
>
> 110. ……..……..……....
>
> (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.
> ……..……
>
> (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his disqualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149(2) of the Act.
> ……."

15. Further, reference was made to the decision in ***Kusum Rai***[5], wherein the respondent, the owner of the jeep, was admittedly using the said vehicle for commercial purpose, the "*Khalasi"* sometimes to drive the taxi, having a licence for "light motor vehicle". The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was, as to, whether the driver of the said jeep had a valid and effective driving licence. The Tribunal relying on the decision of the Supreme Court in ***Kamla***[13], held that the Insurance Company cannot shake off its

third party liability. It was further held that the Insurance Company can recover this amount from the owner of the vehicle. The Appeal preferred by the Insurance Company was dismissed by the High Court. Before the Supreme Court, the Insurance Company relying on the decision in ***Oriental Insurance Co. Ltd. vs. Nanjappan***[15], argued that the awarded amount may be paid and recovered from the owner of the vehicle; the Supreme Court dismissed the Appeal.

16. In conclusion, the Supreme Court (in S. Iyyapan[9]) finding that the driver was holding a valid licence to drive a light motor vehicle and the vehicle in accident being a Mahindra maxi cab, held as follows;

> "18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."

17. In ***Kulwant Singh vs. Oriental Insurance Company Ltd.***[16], the death of a driver of a Tempo occurred on 8.10.2005, being hit by another Tempo. The Tribunal held that the death was on

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15. (2004) 13 SCC 224
16. (2015) 2 SCC 186 (decided on 28.10.2014)

account of negligence of the driver of the offending Tempo and the Claimants were entitled to compensation as the driving licence of the driver was valid. In Appeal, the High Court observed that the driving license of the driver was for driving a "light motor vehicle". That, a "light motor vehicle" cannot be equated with a "light goods vehicle". Thus, a breach of the policy condition was found as the driver of the vehicle did not have a valid and effective driving licence at the time of the accident. Recovery rights should have been granted by the Tribunal against the owner, the Award was modified accordingly. Aggrieved by the Judgment of the High Court, the Appellants the vehicle owner, went before the Supreme Court placing reliance on the Judgments of *S. Iyyapan*[9] and *Annappa Irappa Nesaria*[1]. The Insurance Company supported the view of the High Court. The Supreme Court relied on Paragraph 20 of the decision of *Annappa Irappa Nesaria*[1] (already extracted hereinabove) and on Paragraph 18 of the decision in *S. Iyyapan*[9] (as also already extracted hereinabove). It noted that no contrary view had been brought to their notice and accordingly, opined that there was no breach of any condition of Insurance in the present case which entitled the Insurance Company to recovery rights. The Appeal was allowed, the Order of the High Court set aside and the Orders of the Tribunal restored.

18. On the edifice of the above pronouncements, it is evident that the insurer cannot disown its liability only for the

reason that, the licence of the driver was not endorsed to drive a light transport vehicle, when, he had a valid and effective licence to drive a light motor vehicle.

19. Resultant, there is no merit in this Appeal, which fails and is consequently disposed of with costs, quantified at Rs.70,000/- (Rupees seventy thousand) only, which shall be made over to the Claimant, i.e., Respondent No.1 herein, by the Appellant, the Insurance Company.

20. Records of the learned Trial Claims Tribunal be remitted forthwith.

Sd/-
(Meenakshi Madan Rai)
Judge
30-6-2017

Approved for reporting :**Yes**

Internet :**Yes**

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