

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

...
Mac. App. No. 49/2020
CM no. 3774/2020

Reserved on: 23.04.2021

Pronounced on: 22.06.2021

National Insurance Co. Ltd.

.....Appellant(s)

Through: Mr. Nissar Ahmad Dendru, Advocate

Versus

Aijaz Ahmad Shah and Others

.....Respondent(s)

Through: Mr. Shuja ul Haq, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Impugned in this Appeal is Award dated 06.10.2018, passed by Motor Accident Claims Tribunal, Anantnag (for short "*Tribunal*") on a Claim petition bearing File no. 42/Claim titled *Aijaz Ahmad Shah and others v. Ashraf Ali Dar and others*, directing appellant Insurance Company to pay compensation in the amount of Rs. 11,30,010/- along with 6% interest per annum from the date of institution of claim till realization, on the grounds made mention of therein.
2. A claim petition, as is discernible from perusal of the file, was filed by respondents 1 to 4 before the Tribunal on 01.09.2015, averring therein that deceased Aksa Aijaz aged 14 years, died in an accident, which took place on 09.08.2015 at Manzhama K.P. Road, Anantnag, due to rash and negligent driving of driver of offending vehicle, bearing Registration no.JK01G-2177 (Tata Swaraj Mazda) which was insured with appellant Insurance Company, Claimants/Respondents 1 to 4 in their claim petition prayed for grant of compensation in the amount of Rs.1.00 Crore.
3. Appellant Insurance Company resisted the claim petition before the Tribunal. Their stand was that driver of offending vehicle was not

holding valid and effective driving licence and vehicle was being plied without valid and effective vehicular documents. It was also stated that accident was outcome of two vehicles as deceased was driving the bus and collided with offending vehicle.

4. The Tribunal, in view of pleadings of parties, framed Issues for determination, which are:

- 1) Whether on 09.08.2015 the deceased namely Aksa Aijaz while boarding a vehicle Tata-407 at Mazhama, K.P. Road, was hit by the offending vehicle (Tata Sawraj Mazda) bearing registration No. JK01G-2177 driven rashly and negligently by respondent No.1 causing critical injuries to the deceased who succumbed to her injuries at Jaglatmandi Hospital? OPP
- 2) In case issue No.1 is decided in affirmative then whether petitioners are entitled for compensation, if so, to what extent and from whom? OPP
- 3) Whether respondent No.1, i.e., driver of the offending vehicle was not having valid and effective D/L and owner knowing about it had engaged and permitted him to ply the offending vehicle and thereby committed breach of policy conditions? OPR3
- 4) Relief.

5. Claimants in support of their claim before the Tribunal produced and examined four witnesses, besides claimant/respondent no.1. Appellant Insurance Company did not produce any witness in rebuttal to claim of claimants. By virtue of impugned Award, the Tribunal found claimants entitled to compensation in the amount Rs.11,30,010/- along with 6% interest per annum from the date of institution of claim till realization. This is how the instant Appeal has come up before this Court.

6. According to learned counsel for appellant Insurance Company, liability to satisfy the Award has been wrongly mulcted upon appellant. Appellant Insurance Company no doubt was insurer of offending vehicle but as per contract of insurance, liability of appellant Insurance Company would arise only when owner/insured would not commit any breach of terms and conditions of policy of insurance. The owner/insured – respondent no.6 herein is stated to have allowed offending vehicle to be plied by respondent no.5, who was having invalid driving licence to drive offending vehicle and, therefore, liability ought to have been fastened upon owner of offending vehicle. It is contended that finding on Issue no.3 is bad in law as Tribunal has not taken into account the fact that respondent no.5 as driver of offending vehicle was

having authorization to drive only LMV (Light Motor Vehicle) and not a medium passenger motor vehicle. The medium passenger motor vehicle excludes within its definition the light motor vehicle and thus driver was not authorized to drive a medium passenger motor vehicle. Learned counsel also avers that the Tribunal, while relaying upon the judgment of the Supreme Court in *Mukund Dewangan v. Oriental Insurance Company Limited (2016) 4 SCC 298*, holding that a person having light motor vehicle authorization can drive any sort of light motor vehicle and no PSV endorsement is required in the said driving licence, is incorrect.

7. The above contentions of learned counsel for appellant Insurance Company, when examined in the context of impugned Award, more particularly when the Tribunal while deliberating upon and deciding Issue no.3, has taken care of all the aspects of the matter that were required to be looked into by it while rendering the Award.
8. It is pertinent to mention here that the Supreme Court in *National Insurance Company limited v. Annappa Irappa Nesara, 2008 AIR SC Weekly 906*, has been held that a driver who has a valid licence to drive a light motor vehicle, can drive light goods vehicle as well. The similar view has also been reiterated and followed by this Court in *National Insurance Company v. Rameez Ahmad, 2015 (1) SLJ 45*. That apart, the Supreme Court in *Mukund Dewangan*, (supra), has held that '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 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. 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 60 light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form. The effect of the amendment made by virtue of Act No. 54/1994 w.e.f. 14th November 1994, while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act, i.e., light motor vehicle. The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. The relevant portion of the judgement is reproduced hereunder:

“43. Section 10(2) (a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of section 10(2). This Court has rightly observed in *Nagashetty* (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle.

It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it

is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

44. In *Natwar Parikh & Co. Ltd. v. State of Karnataka & Ors.* (2005) 7 SCC 364, this Court was concerned with the taxation under the Karnataka Motor Vehicles Taxation Act, 1957 and question arose whether the tractor along with trailer for transporting goods was to constitute distinct category of goods carrier which requires permission under Section 2(14) of the Motor Vehicles Act, 1957 and absence thereof would render it liable to tax under Section 3(2). This court held that the tractor when attached with the trailer carrying goods, would become a transport vehicle for the purpose of taxation. This Court has discussed the question thus:

“Section 2(28) is a comprehensive definition of the words "motor vehicle". Although a “trailer” is separately defined in Section 2(46) to mean any vehicle drawn or intended to be drawn by a motor vehicle, it is still included in the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load.

Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforesaid definitions under Section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself is a motor vehicle, the tractor-trailer would constitute a “goods carriage” under Section 2(14) and consequently, a “transport vehicle” under Section 2(47).

The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under Section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Section 2(47) of the MV Act, 1988.”

There is no dispute with the aforesaid proposition, that tractor if drawing a trailer with goods would constitute goods carrier and consequently would be a transport vehicle. The aforesaid discussion was with respect to taxation and not with respect to the competence of driver holding light motor vehicle licence to drive the tractor attached with trailer/trolley carrying goods. The driver had the competence to drive such a vehicle, tractor with a trailer carrying goods being of light motor vehicle category transport vehicle which is the question involved in the instant case. Therefore, the decision renders no help with the cause espoused by the insurer.

45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any

motor vehicle not so constructed or adapted when used for the carriage of goods.

It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.

46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions.

Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 59 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) '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 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.

(ii) 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 60 light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle,

from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

9. In view of the above reproduced excerpt of the judgement in *Mukund Dewangan* (supra), there is no substance in the submission of learned counsel for appellant qua validity of driving licence of offending vehicle. Thus, the Tribunal has rightly decided Issue no.3 against appellant Insurance Company.
10. Contention of learned counsel for appellant qua quantum of compensation and computation thereof that is also misconceived inasmuch as the Tribunal has been conservative in computing the compensation and also in view of law laid down by the Supreme Court in catena of cases including *National Insurance Company v. Pranay Sethi*, AIR 2017 SC 5157; *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, (2010) 10 SCC 254; and *M. R. Krishna Murthi Vs. The New India Assurance Company Ltd. & Others*, (2019) 1 ACC 730 (SC). Resultantly impugned Award need not be interfered with and Appeal on hand is liable to be dismissed.
11. For the reasons discussed above, the instant Appeal is **dismissed**. Interim direction, if any, shall stand vacated.
12. Record of the Tribunal, if summoned/received, be sent down along with copy of this judgement.

(Vinod Chatterji Koul)
Judge

Srinagar
22.06.2021
Imtiyaz

Whether the order is reportable: Yes/No.