**(2019) 04 RAJ CK 0034**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Appeal No. 92 Of 2015

Bhirawa Devi @ Girawadevi And Ors — APPELLANT

Vs

Baresh Kumar And Ors — RESPONDENT

**Date of Decision :** 11-04-2019

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 2(15), 2(16), 2(17), 2(21), 2(23), 2(24), 2(48), 3, 10, 10(2)(d), 10(2)(e), 10(2)(f), 10(2)(g), 10(2)(h), 173

**Citation :** (2019) 04 RAJ CK 0034

**Hon'ble Judges :** P.K. Lohra, J

**Bench :** Single Bench

**Advocate :** S.K. Sankhla, Jagdish Vyas

**Final Decision :** Partly Allowed

## Judgement

Heard learned counsel for the parties on application for early hearing of the case.

For the reasons mentioned in the application, same is allowed and matter is taken up for hearing today.

Appellant-claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act') challenging judgment and award dated 10.10.2014 passed by Motor Accident Claims Tribunal, Bhadra, District Hanumangarh (for short, 'learned Tribunal'). Learned Tribunal, while quantifying and awarding compensation to the appellant-claimants, has exonerated the Insurer.

Learned counsel appearing for the appellant-claimants submits that the learned Tribunal has erred in exonerating the respondent-Insurer of its liability. Learned counsel for the appellants further submits that the issue involved in the matter has already been set at rest by the Larger Bench of Supreme Court in Mukund Dewangan Vs. Oriental Insurance Company Limited [(2017) 14 SCC 663].

On the other hand, learned counsel for the respondent-insurer submits that the driver of insured vehicle was not possessing licence to ply heavy goods vehicles but holding a licence to ply LMVs. He, therefore, submits that the instant appeal, being bereft of any merit, is liable to be rejected.

I have considered the submissions made at Bar, perused the impugned judgment & award and also scanned record of the case.

In view of judgment in case of Mukund Dewangan (supra), there remains no quarrel that a transport vehicle, as per weight prescribed in Section 2(21) read with Section 2(15) & 2(48) includes an "omnibus", as the gross weight of either of which does not exceed 7500 kg. The Court further held that holder of a driving licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) would be 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 roadroller, the "unladen weight" of which does not exceed 7500 kg. The Court held:

"Prior to amendment in 1994 licence for transport vehicle was clearly covered as per Section 10(2)in five categories, i.e., Section 10(2) (d) light motor vehicle, Section 10(2)(e) medium goods vehicle, Section 10(2)(f) medium passenger motor vehicle, Section 10(2)(g) heavy goods vehicle and Section 10(2)(h) heavy passenger motor vehicle. The licence for 'light motor vehicle' has been provided in section 10(2)(d). The expression 'transport vehicle' has been inserted by virtue of Amendment Act 54/1994 in Section 10(2) (e) after deleting four categories or classes of vehicles, i.e. medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, and heavy passenger motor vehicle. Earlier Section 10 did not contain the separate class of transport vehicles.

The definition of 'light motor vehicle' makes it clear that for 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 kgs. 'Gross vehicle weight' has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in Section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in Sections 2(21) and 10(2)(d) relating to the light motor vehicle. The definition of 'light motor vehicle' has to be given full effect to and it has to be read with Section 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in Section 2(21) of the Act. The provision of Section 3 of the Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in Section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

Thus, the newly incorporated expression 'transport vehicle' in section 10(2)(e) would include only the vehicles of the category as defined in Section 2(16) - heavy goods vehicle, Section 2(17)- heavy passenger motor vehicle, Section 2(23) - medium goods vehicle and Section 2(24) medium passenger motor vehicle, and would not include the 'light motor vehicle' which means transport vehicle also of the weight specified in Section 2(21)."

In a later judgment rendered on 06.03.2018, in case of Jagdish Kumar Sood V/s. United India Insurance Co. Ltd. & Ors. (Civil Appeal No.240/2017), the Supreme Court has reiterated the same view.

Thus, relying on the judgment in Mukund Dewangan (supra), impugned award to the extent of absolving insurance company is set aside. Accordingly, the appeal is partly allowed and liability to pay compensation is fastened jointly and severally on the insurer in addition to the registered owner and driver.

No order as to costs.

 