
(2017) 05 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : 151 of 2014 MP No 480 & 481 of 2014

Jahangir Ahmad Ahanger

APPELLANT

Vs

Bajaj Allianz Gen. Ins. Co. Ltd. & Ors.

RESPONDENT

Date of Decision : 25-05-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 2\(21\)](#),
[Section 2\(21\)](#), [Section 2\(23\)](#), [Section 2\(23\)](#) - Definitions - Definitions

Citation : (2017) 05 J&K CK 0013

Hon'ble Judges : Ramalingam Sudhakar

Bench : SINGLE BENCH

Advocate : S. M. Ayoub, Imtiyaz Ahmad

Final Decision : Allowed

Judgement

1. Appeal filed by the owner-driver, challenging the award of the Motor Accident Claims Tribunal, Srinagar (2nd Addl. Distt. Judge) dated

27.06.2014, only with regard to the finding that driver is liable to compensate the claimants with the rider that the appellant-Insurance Company

will first pay the claimants and then recover from the owner.

2. The accident in this case happened on 15.05.2012. The appellant was driving the Tata Magic vehicle bearing registration No. JK-18-3475,

which is a Light Commercial Vehicle (LCV)/ Light Transport Vehicle (LTV). It appears that an 8 year old boy ran into the vehicle and was hit by

the offending vehicle. The boy was rushed to hospital but he succumbed to his injuries.

3. In so far as the claim is concerned, the Tribunal awarded Rs. 3,80,000/- as compensation under various heads with 6% interest. On quantum of

compensation, there appears no dispute. The claimants will be entitled to withdraw the amount as per law forthwith.

4. On the plea of no liability, learned counsel for the appellant driver/owner pleads that in issue no. 3, the Tribunal has not taken into consideration

the nature of vehicle, involved in the accident which is admittedly a LCV/LTV and the Tribunal holds that the driver/owner was only authorized to

drive the LMV and at the time of accident he was driving the commercial vehicle. Therefore, the right of recovery granted by the Tribunal is wrong

and the appeal is canvased on that plea.

5. Heard Mr. S. M. Ayoub, Adv. for the appellant and Mr. Imtiyaz Ahmad, Adv. for the respondent and have gone through the various decisions

produced by either counsels.

6. The award in this case was passed on 27.06.2014. On that day decision of Hon"ble Supreme Court covering the issue is as follows:

National Insurance Co. Ltd. v. Annappa Irappa Nesaria, (2008) 3 SCC 464 and S. Iyyapan v. United India Insurance Co. Ltd.

(2013) 7 SCC 62.

7. The said decisions were reiterated by Hon"ble Supreme Court in (2015) 2 SCC 186, Kulwant Singh and Ors. v. Oriental Insurance Company

Ltd. wherein, in a case of a motor accident, vehicle involved was a Tempo and Tata 407, the driver was holding a license for light Motor vehicle

and was driving light goods vehicle. In that factual matrix , relying upon decisions of the Hon"ble Supreme Court in National Insurance Co. Ltd. v.

Annappa Irappa Nesaria, (2008) 3 SCC 464 and S. Iyyapan v. United India Insurance Co. Ltd. (2013) 7 SCC 62. Cases, the Supreme Court

held as follows:-

9. ""We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria (supra), this Court

referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of "light motor vehicle"

and "medium goods vehicle" respectively and the rules prescribing the forms for the licence, i.e. Rule ""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 authorised to drive a light goods vehicle as well.

10. In *S. Iyyapan (supra)*, the question was whether the driver who had a licence to drive "light motor vehicle" could drive "light motor vehicle" used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

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 (Civil Misc. Appeal

No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside." No contrary view has been

brought to our notice.

Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the

Insurance Company to recovery rights".

7. The Hon'ble Supreme Court held that the owner of the vehicle was holding the license to drive the light motor vehicle, covering the case of a

light goods vehicle. Similarly in the present case, the license is issued for Light Motor Vehicle which covers LCV/LTV. The other decisions

referred by the learned counsel for the insurance company has no relevance.

8. The appeal is allowed and the award so far it pertains to the right of recovery from the owner of the offending vehicle is set-aside.