

(2022) 02 GUJ CK 0072
In the Gujarat High Court
Case No : R/First Appeal No. 3736 Of 2010

New India Assurance Co Ltd

APPELLANT

Vs

Mukeshbhai Bhimsingbhai Rajput & 4 Other(S)

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Motor Vehicles Act, 1989 — Rule 8
Motor Vehicles Act, 1988 — Section 2(14), 2(15), 2(21), 2(35), 2(41), 2(47), 2(48),
10, 10(2), 10(2)(a), 10(2)(b), 10(2)(c), 10(2)(d), 10(2)(e), 10(2)(f), 10(2)(g), 10(2)
(h), 10(2)(i), 10(2)(j), 10(2), 173

Citation : (2022) 02 GUJ CK 0072

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Lilu K Bhaya, Vishal B Mehta

Final Decision : ?Dismissed

Judgement

Sandeep N. Bhatt, J

1. The present First Appeal is filed under Section 173 of the Motor Vehicle Act, by the present appellant – Insurance Company, being aggrieved by and dissatisfied with the judgment and award dated 07.05.2010 passed by the Motor Accident Claims Tribunal (Aux.), Surat in Motor Accident Claim Petition No. 465 of 2004, by which, the Tribunal has awarded compensation of Rs.1,55,000/- with 9% interest per annum to the claimants by the opponents i.e. driver, owner and insurance company, jointly and severally. Therefore, the present appeal is filed by the Insurance Company.

2. Brief facts of the present case are that, on 29.05.2004, when the deceased – Minor Ajay, aged about 6 years old, was trying to cross the road, one Tempo bearing registration No.GJ-5-UU-3624 came with rash and negligent manner and dash with him. Minor Ajay sustained injuries and ultimately, he succumbed to the injuries. The parents have lost their son due to the said accident. Therefore, the parents and younger brother have filed a claim petition before the Tribunal for

compensation of Rs.2,05,000/-. Notices were served to the opponents, but opponents No.1 and 2 have not filed their written statement, whereas opponent No.3 – Insurance Company has filed its written statement before the Tribunal and denied the claim. Oral as well as documentary evidence were taken on record by the Tribunal. After considering the submissions of the rival parties, the Tribunal has held liable all the opponents, jointly and severally and awarded compensation as stated hereinabove, to be paid to the claimants. Hence, the present appeal is filed by the Insurance Company before this Court.

3. Learned advocate Ms. Lilu Bhaya for the appellant – Insurance Company has submitted that the appellant has examined the officer of the RTO – Ms. Nishaebn Anilbhai Mehta, who has specifically contended that the driver was not havign the endorsement to driver transport vehicle and for driving goods vehicle as such endorsement is necessary. She has further submitted that since the driver is not holding valid license, the insurance company is not liable to pay the amount. She has further submitted that the Tribunal has erred in coming to the conclusion that though the driver was not authorised to drive the tempo - goods carrying vehicle, even then the Tribunal has held that it cannot be considered as breach of the terms and conditions of the insurance policy. She has also submitted that the Tribunal has erred in granting the compensation of Rs.1,55,000/- to the claimants with 9% per annum interest and therefore, she has submitted that this appeal may be allowed.

4.1 In the present case, the notices of admission were served to the respondents, but they have chosen not to appear before this Court. Therefore, I have considered the submissions of Ms. Bhaya, learned advocate for the appellant and I have also considered the impugned judgment and reasoning given by the Tribunal. I have also gone through the record and proceedings of the Tribunal. It is clearly found from the record that the issue involves in the present appeal is only with regard to not having endorsement by the driver in the license and also not holding valid driving license. Accordingly, at the relevant point of time, the position of law was different and therefore, the appeal was admitted. Now, the position of law is well settled by the Hon'ble Apex Court in the case of Mukund Dewangan versus Oriental Insurance Co. Ltd., reported in AIR 2017 SC 3668, more particularly Paras : 43, 45 and 46, which are as under :

"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 (AIR 2001 SC 3356)(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* (AIR 2001 SC 3356) (*supra*) is correct, however, for the reasons as explained by us.

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 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 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."

4.2 In view of above, now, position of law is well settled. It is noted that, merely in absence of endorsement to drive the transport vehicle in the license does not amount to lead to the interpretation that the driver is not holding valid and effective driving license. Therefore, in view of the settled legal position as noted above, there is no substance in the submissions made by learned advocate for the appellant – Insurance Company that the driver is not holding valid driving license and therefore, the Tribunal has not committed any error in awarding

compensation. Otherwise also, the compensation is on very lower side. I found no illegality or infirmity in the impugned judgment and award passed by the Tribunal. Therefore, no interference is called for under Section 173 of the Act. Accordingly, the appeal deserves to be dismissed.

5. For the reasons recorded above, the following order is passed. 5.1 The present appeal is dismissed with no order as to costs.

5.2 The Tribunal is directed to pay the amount lying with it and/or in the FDR, with accrued interest thereon, to the claimants, by account payee cheque, after proper verification and after following due procedure.

5.3 Record and proceedings be sent back to the concerned Tribunal, forthwith.