(2014) 07 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 306 of 2012, FAOs (MVA) No. 303 and 305 of 2012 & Cross Objections No. 408, 409 & 407 of 2012

Prem Singh — APPELLANT

Vs

Dev Raj — RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:
Motor Vehicles Act, 1988 — Section 10, 10(2)(d), 10(2)(e), 112, 133

Citation : (2014) 07 SHI CK 0057

Hon'ble Judges : Mansoor Ahmad Mir, C.J

Bench : Single Bench

Advocate : Naveen Kumar Bhardwaj, Advocate for the Appellant; H.S. Rangra and P.S. Chandel, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.—All these appeals are outcome of a motor vehicular accident, which was allegedly caused by driver, namely, Shri Kunwar Singh, while driving vehicle-Mahinra Pickup bearing registration No. 65-0120, belonging to late Shri Telagi Ram, rashly and negligently, on 29.7.2005, at about 4.00 p.m., near Dhoi Nala/Temple Dhoi on Gadagusaini-Banjar Road, which turned down and rolled down, as a result of which, two persons, namely Tirath Raj, and Narender Kumar, travelling in the said vehicle who were employed as labourers in the said truck, fell down; hit another person, namely, Nokh Ram, who was walking on the road side; all of them sustained injuries; succumbed to the injuries, restraining their legal representatives to file three different claim petitions before the Motor Accident Claims Tribunal-II, Mandi, hereinafter, referred to as "the Tribunal". Thus, I deem it proper to dispose of all these appeals by a common judgment.

2. In FAO No. 306 of 2012, the appellants-legal representatives of deceased Telagi Ram driver, have questioned the award, dated 18th January, 2012, passed by the Tribunal in MAC Petition No. 55 of 2005, titled as Dev Raj & others versus

Prem Singh and others, whereby compensation to the tune of Rs. 1,75,000/- came to be awarded in favour of the claimants-respondents No. 1 to 4, as per the apportionment made in the award, with interest @ 6% per annum from the date of filing of the claim petition till its realization (hereinafter referred to as "the impugned award-I), on the grounds taken in the memo of appeal.

3. FAO No. 303 of 2012 is directed against the award, dated 18th January, 2012, passed by the Tribunal in MAC Petition No. 54 of 2005, titled as Bimla Devi & another versus Prem Singh & others, whereby compensation to the tune of Rs. 2,20,000/- came to be awarded in favour of the claimants-respondents No. 1 & 2 and against the driver and the owner (hereinafter referred to as "the impugned award-II"), on the grounds taken in the memo of appeal.

4. In FAO No. 305 of 2012, the appellants-claimants-legal representatives of the deceased driver have questioned the award, dated 18th January, 2012, passed by the Tribunal in MAC Petition No. 53 of 2005, titled as Smt. Bali Dev versus Prem Singh and others, whereby compensation to the tune of Rs. 2,20,000-came to be awarded in favour of the claimants-respondents No. 1 & 2, with interest @ 7.5% per annum from the date of filing of the claim petition till its realization (hereinafter referred to as "the impugned award-III") on the grounds taken in the memo of appeal.

5. In all the three impugned awards, the owner-insured was saddled with liability and the insurer-United Insurance Company Limited came to be exonerated.

6. In order to determine the issues and return findings in all the appeals, it is profitable to give a brief resume of the facts of the case.

Brief Facts:

7. In all the three claim petitions, it is averred that driver, namely, Kunwar Singh had driven vehicle-Mahinra Pickup bearing registration No. 65-0120, rashly and negligently, on 29.7.2005, at about 4.00 p.m., near Dhoi Nala/Temple Dhoi on Gadagusaini-Banjar Road, which turned down and rolled down in which two persons, namely Tirath Raj, and Narender Kumar, employed as labourers were travelling, fell down; the vehicle hit another person, namely, Nokh Ram, who was walking on the road side; sustained injuries; succumbed to the injuries.

8. The owner-insured and the insurer-United India Insurance Company Limited resisted the claim petitions by filing separate objections, on the grounds taken in the memos of objections.

9. After noticing the pleadings, following issues were framed in Claim Petition No. 55 of 2005 on 20.01.2007:

1. Whether deceased Nokh Singh died due to the rash and negligent driving of respondent No. 2 of vehicle bearing registration No. HP-65-0120, as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so, to what extent and from whom? OPP

3. Whether driver of vehicle in question was not having a valid and effective driving license at time of accident? OPR

4. Whether the deceased was a gratuitous and unauthorized passenger traveling in the vehicle. If so to what effect? OPR-3

5. Relief

10. Following issues came to be framed in Claim Petition No. 53 of 2005 on the aforesaid said:-

1. Whether deceased Narinder Kumar died due to the rash and negligent driving of respondent No. 2 of vehicle bearing registration No. HP-65-0120, as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so, to what extent and from whom? OPP

3. Whether driver of vehicle in question was not having a valid and effective driving license at time of accident? OPR

4. Whether the deceased was a gratuitous and unauthorized passenger traveling in the vehicle. If so to what effect? OPR-3

5. Relief

11. Following issues came to be framed in Claim Petition No. 54 of 2005:-

1. Whether deceased Tirth Ram died due to the rash and negligent driving of respondent No. 2 of vehicle bearing registration No. HP-65-0120, as alleged? OPP

2. If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so, to what extent and from whom? OPP

3. Whether driver of vehicle in question was not having a valid and effective driving license at time of accident? OPR

4. Whether the deceased was a gratuitous and unauthorized passenger traveling in the vehicle. If so to what effect? OPR-3

5. Relief

12. The only question which arises for consideration in these appeals is-whether the Tribunal has rightly saddled the owner-insured with liability and exonerated/ discharged the insurer-United India Insurance Company with liability?

13. The claimants and the insurer have not questioned the impugned awards on any count. Thus, the impugned awards have attained finality so far as it relates to them.

14. The learned Counsel for the Insurance Company, while addressing arguments, argued that the driver was not having a valid and effective driving licence at the time of accident.

15. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2(10), 2(21), 2(35) and 2(47), respectively, of the MV Act herein:

2. ....

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than a learner, a motor vehicle or a motor vehicle of any specified class or description.

xxx xxx xxx

(21) "light motor vehicle" means 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 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

16. Section 2(21) of the MV Act provides that a "light motor vehicle" means 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 kilograms. Section 2(35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2(47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

17. At the cost of repetition, definition of "light motor vehicle" includes the words "transport vehicle" also. Thus, the definition, as given, mandates the "light motor vehicle" is itself a "transport vehicle", whereas the definitions of other vehicles are contained in Sections 2(14), 2(16), 2(17), 2(18), 2(22), 2(23) 2(24), 2(25), 2(26), 2(27), 2(28) and 2(29) of the MV Act. In these definitions, the words "transport vehicle" are neither used nor included and that is the reason, the definition of "transport vehicle" is given in Section 2(47) of the MV Act.

18. In this backdrop, we have to go through Section 3 and Section 10 of the MV Act. It is apt to reproduce Section 3 of the Act herein:

3. Necessity for driving licence.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising

him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

19. It mandates that the driver should have the licence to drive a particular kind of vehicle and it must contain endorsement for driving a transport vehicle. In this section, the words "light motor vehicle" are not recorded. Meaning thereby, this section is to be read with the definition of other vehicles including the definition given in Section 2(47) of the MV Act except the definition given in Section 2(21) of the MV Act for the reason that Section 2(21) of the MV Act provides, as discussed hereinabove, that it includes transport vehicle also.

20. My this view is supported by Section 10 of the MV Act, which reads as under:

10. Form and contents of licences to drive.-

(1) Every learner''s licence and driving licence, except a driving licence issued u/s 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner''s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following cases, namely:-

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) road-roller;

(j) motor vehicle of a specified description.

21. Section 10(2)(d) of the MV Act contains "light motor vehicle" and Section 10(2)(e) of the MV Act, which was substituted in terms of amendment of 1994, class of the vehicles specified in clauses (e) to (h) before amendment stand deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-a-viz other vehicles, definitions of which are given and discussed hereinabove.

22. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case

titled as National Insurance Co. Ltd. versus Muhammad Sidiq Kuchey & ors., being LPA No. 180 of 2002, decided on 27th September, 2007, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

The question now arises as to whether the driver who possessed driving licence for driving abovementioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled National Insurance Co. Ltd. Vs. Irfan Sidiq Bhat and Mohd Aslam Khan, , wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorization of having PSV endorsement in terms of Rule 41(a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:-

13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorization in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

....

17. In the case of Mohammad Aslam Khan (CIMA no. 87 of 2002) Peerzada Noor-ud-Din appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle u/s 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle.

In the given circumstances of the case PSV endorsement was not required at all.

23. The purpose of mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as Chairman, Rajasthan State Road Transport Corporation and Others Vs. Smt. Santosh and Others, , and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semi-trailer is attached; Section 2(34) defines public place; Section 2(44) defines ''tractor'' as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines ''trailer'' which means any vehicle, other than a semitrailer and a side-car, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. ....

21. ....

22. ....

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in sub-section (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are ''goods carriage'', ''heavy goods vehicle'', ''heavy passenger motor vehicle'', ''invalid carriage'', ''light motor vehicle'', ''maxi-cab'', ''medium goods vehicle'', ''medium passenger motor vehicle'', ''motor-cab'', ''motorcycle'', ''omnibus'', ''private service vehicle'', ''semi-trailer'', ''tourist vehicle'', ''tractor'', ''trailer'' and ''transport vehicle''.

24. The Apex Court in another case titled as National Insurance Company Ltd. Vs. Annappa Irappa Nesaria and Others, , has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of ''light motor vehicle'', ''medium goods vehicle'' and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the ''light motor vehicle'' as contained in Section 2(21) of the Motor vehicles Act, 1988 (''Act'' for short), a light goods carriage would come within the purview thereof.

A ''light goods carriage'' having not been defined in the Act, the definition of the ''light motor vehicle'' clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle.

Strong reliance has been placed in this behalf by the learned counsel in Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd., .

9. ....

10. ....

11. ....

12. ....

13. ....

14. 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.

Clause (e) provides for ''Transport vehicle'' which has been substituted by G.S.R. 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.

15. ....

16. 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.

25. Having glance of the above discussions, I hold that the endorsement of PSV was not required.

26. It is not a case of the insurer that the accident was due to the reason that the driver of the offending vehicle was competent to drive one kind of the vehicle and was found driving different kind of vehicle, which was the cause of the accident.

27. The Apex Court in a case titled as National Insurance Co. Ltd. Vs. Swaran Singh and Others, , held that it has to be pleaded and proved that the driver was having licence to drive one kind of vehicle, was found driving another kind of vehicle and that was the cause of accident. If no such plea is taken, that cannot be ground for discharging the insurer. It is apt to reproduce para 84 of the judgment herein:

84. Section 3 of the Act casts an obligation on a driver to hold an effective

driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) Motorcycles without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are ''goods carriage'', ''heavy-goods vehicle'', ''heavy passenger motor-vehicle'', ''invalid carriage'', ''light motor-vehicle'', ''maxi-cab'', ''motorcycle'', ''omnibus'', ''private service vehicle''. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for ''motorcycle without gear'', for which he has no licence. Cases may also arise where a holder of driving licence for ''light motor vehicle'' is found to be driving a ''maxi-cab'', ''motor-cab'' or ''omnibus'' for which he has no licence. In each case on evidence led before the tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

(Emphasis added)

28. In the said judgment, the Apex Court has also laid down principles, how can insurer avoid its liability. It is apt to reproduce relevant portion of para 105 of the judgment in Swaran Singh''s case (supra):

105.....................

(i)........................

(ii).......................

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2) (a) (ii) of Section 149, have 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, however, with a view to avoid their liability, must not only establish the available defence(s) raised in the said proceedings but must also establish ''breach'' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v)........................

(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 qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards 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 insured u/s 149(2) of the Act.

29. In a case titled as Lal Chand Vs. Oriental Insurance Co. Ltd., , the owner had performed his job whatever he was required to do and satisfied himself that the driver was having valid driving licence. The Apex Court held the insurer liable. It is apt to reproduce paras 8, 9 and 11 of the judgment herein:

8. We have perused the pleadings and the orders passed by the Tribunal and also of the High Court and the annexures filed along with the appeal. This Court in the case of United India Insurance Company Ltd. Vs. Lehru and Others, , in paragraph 20 has observed that where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). He will, therefore, have to check whether the driver has a driving licence and if the driver produces a driving licence, which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take test of the driver, and if he finds that the driver is competent to drive the vehicle, he will hire the driver.

9. In the instant case, the owner has not only seen and examined the driving licence produced by the driver but also took the test of the driving of the driver and found that the driver was competent to drive the vehicle and thereafter appointed him as driver of the vehicle in question. Thus, the owner has satisfied himself that the driver has a licence and is driving competently, there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would not then be absolved of its liability.

10.............................

11. As observed in the above paragraph, the insurer, namely the Insurance Company, has to prove that the insured, namely the owner of the vehicle, 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 licensed

driver or one who was not disqualified to drive at the relevant point of time.

30. It would also be profitable to reproduce para 10 of the judgment rendered by the Apex Court in Pepsu Road Transport Corporation Vs. National Insurance Company, , hereinbelow:

10. In a claim for compensation, it is certainly open to the insurer u/s 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh case. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company is not liable for the compensation.

31. Having said so, I am of the considered opinion that the Tribunal has fallen in error in saddling the insured-owner with liability and exonerating/discharging the insurer from liability. Accordingly, the insurer-United India Insurance Company is saddled with liability.

32. The insurer-United India Insurance Company is directed to deposit the entire awarded amount within three months and on deposition, the same be released in favour of the claimants, strictly as per the terms and conditions, contained in the impugned awards.

33. If the owner-insured has deposited the amount, that be released to the legal representative(s) of the owner-insured after the amount is deposited by the insurer-United India Insurance Company and disbursed to the claimants.

34. The appeals are disposed of and the impugned awards are modified, as indicated hereinabove, alongwith all pending applications.

35. Send down the record after placing a copy of this judgment on each of the

files.

