

**(2017) 12 KAR CK 0026**  
**In the Karnataka High Court**  
**Case No : 32716 of 2013 (MV)**

**The Divisional Manager?Sriram General Insurance Vs Pradeep Kumar  
S/o Krishnakumar Jha**

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**Date of Decision : 07-12-2017**

**Acts Referred:**

<a href=2221>Motor Vehicles Act, 1988</a>, <a href=2221-10>Section 10(2)</a>,  
<a href=15711-10>Section 10(2)</a>, <a href=2221-2>Section 2(21)</a>, <a  
href=15711-2>Section 2(21)</a> -  
Motor Vehicles Act, 1986, Section 166

**Citation : (2017) 12 KAR CK 0026**

**Hon'ble Judges : Rathnakala**

**Bench : SINGLE BENCH**

**Advocate : Sudarshan M., Prakash S. Maisalgi**

**Final Decision : Dismissed**

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## **Judgement**

1. It is an Insurer's appeal challenging its liability to comply the award passed by I Additional Senior Civil Judge and MACT, Gulbarga (hereinafter referred to as "the Tribunal" for short). By the impugned judgment and award the Tribunal allowed the claim petition filed by claimant under Section 166 of the Motor Vehicles Act, 1986 pertaining to the injury suffered by him in a vehicular accident involving the vehicle of the insured.

2. The short question that would arise in this appeal is whether the Tribunal was justified in fastening the liability on the insurer of the offending vehicle though the driver of the vehicle did not possess transport

endorsement on his driving licence LMV (NT).

3. The question regarding requirement of non-transport endorsement on the light motor vehicle licence if the vehicle is a transport vehicle is no more res-integra. The Constitutional Bench of the Apex Court has recorded its findings to the referred points of consideration in the matter of Mukund Dewangan Vs. Oriental Insurance Company Limited and others reported in AIR 2017 SC (Civil) 2531. Points referred for its consideration were as follows:

1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the M.V.Act? Whether transport vehicles are excluded from it?

2. Whether "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 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 kgs., or a motor car or tractor or road roller, the "unladen weight" of which does not exceed 7500 kgs.?

3. What is the effect of the amendment made by virtue of Act No.54 of 1994 w.e.f., 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression "transport vehicle" Under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of Amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "Light Motor Vehicle" has been changed?"

On a detailed examination of the law on the point in the backdrop of the earlier judgments has returned its findings as below:

"46(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. Sri Sudarshan M., learned counsel for the

appellant - insurer submits that the Apex Court in SLP

No.27787/2017 ordered notice in which case question of

law raised by the petitioner insurance company is:

"Whether Hon"ble High Court ought not to have wrongly dismissed the appeal while wholly relying on the judgment of this Hon"ble Court in

Mukund Dewangan vs. Oriental Insurance Company Limited & Ors .; C.A.5826 of 2011 which has defeated its objective has led to more ambiguity towards the definition of the Light Motors Vehicle (LMV) as per Section 2(21) of the Motor Vehicles Act, 1988 as well as in regard of the amended Section 10(2) of said Act,

1988 as the two stands contracting other provisions of the act in a way making them infructuous. That the passing of the pay and recover order such as this one after appreciating the contentions and circumstances of the petitioner herein would out rightly defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of the MV Act ?"

The hearing date of the above case is fixed on 16.01.2018. Hence, at this stage liability will not shift on the Insurance Company unless the matter in the said SLP is adjudicated.

5. However, for the present it is sufficient to notice that as of now the question of law is governed by the principle laid down by the Apex Court in Mukund Dewangan"s case. The vehicle involved in the accident Tum Tum/transport vehicle and its gross weight is 1005 kg. thereby fall within the description of Light Motor Vehicle contemplated by Section 2(21) of Motor Vehicles Act. The driver had a driving licence to drive light motor vehicle (NT) which was in currency in view of the above finding to the referred point of law transport endorsement was not a requirement. Hence, the appeal is dismissed. The appellant/Insurance Company is directed to satisfy the award of the Tribunal within three weeks from the date of receipt of certified copy of this judgment.

Registry is directed to return the amount in deposit to the concerned Tribunal along with records.