

# **SUPREME COURT OF INDIA**

Kulwant Singh

Vs.

Oriental Insurance Company Ltd.

C.A.Nos.9927-28 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

28.10.2014

## **JUDGMENT**

### **ADARSH KUMAR GOEL J.**

1. Delay condoned in SLP (C) Noof 2014 [CC. Nos.4232-4233 of 2014].
2. Leave granted in all the matters.
3. These appeals have been preferred against common judgment and Order dated 5th August, 2011 in MAC Appeal Nos.70 and 68 of 2011 and dated 8th March, 2013 in Review Petition Nos.793 and 776 of 2011 respectively of the High Court of Delhi at New Delhi.
4. The question raised for consideration is whether the Insurance Company is entitled to recovery rights on the ground of breach of conditions of insurance policy when the driver possesses valid driving licence for driving light vehicle but fails to obtain endorsement for driving goods vehicle.
5. The claim petition was filed before the Motor Accident Claims Tribunal by the dependents of the deceased Rizwan S/o Kadir @ Abdul Kadir who died in a road accident on 8th October, 2005 at about 05.30 A.M. while driving Tempo No.HR-G-5234 which was hit by a Tempo (Tata-407) bearing No.DL-1L-D3186. The Tribunal

held that the death was on account of negligence of the driver of the offending Tempo (Tata-407) bearing No.DL-1L- D3186 and the claimants were entitled to compensation. The vehicle was insured with the Insurance Company and the driver was having valid driving licence. The offending vehicle was ~light goods vehicle™. The Insurance Company preferred an appeal before the High Court with the plea that it was entitled to recovery rights as the driving licence (Exhibit R3W1) was for driving ~light motor vehicle™. It could not be equated with ~light goods vehicle™. The High Court observed:

Driving licence of the driver was for driving a light motor vehicle. In no manner can it be said that a light motor vehicle can be equated with a light goods vehicle. In this scenario, it is clear that there was a breach of the policy condition and driver of the vehicle did not have a valid and effective driving licence at the time of the accident. Recovery rights should have been granted by the Tribunal against the owner. The award is modified. Recovery rights are granted in favour of the Insurance Company.

6. Aggrieved by the Judgment of the High Court, the appellants-the owners of the vehicle in question have come up before this Court.

7. Learned counsel for the appellants submitted that the High Court erred in holding that licence for driving light motor vehicle entitled the driver to drive ~light goods vehicle™. Reliance has been placed on the Judgments of this Court in S. Iyyapan vs. United India Insurance Company Limited and Another[1] and National Insurance Company Ltd. vs. Annappa Irappa Nesaria Alias Neseearagi and Others[2] . Thus, there was no breach of policy entitling the Insurance Company to recovery rights against the owner. Learned counsel for the Insurance Company supported the view taken by the High Court.

8. We have considered the rival submissions and perused the judgments relied upon.

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"<sup>TM</sup> could drive "light motor vehicle"<sup>TM</sup> 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.

Accordingly, we allow these appeals, set aside the impugned order of the High Court and restore that of the Tribunal. There will be no order as to costs.

[1] (2013) 7 SCC 62

[2] (2008) 3 SCC 464