

GAHC010189492018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CO/11/2019

SRI HOREN RAJKONWAR AND ANR

2: SRI JAYANTA RAJKONWAR

DIST SIVASAGAR
ASSAM 78568

VERSUS

UNITED INDIA INSURANCE CO. LTD AND ANR
TINSUKIA BRANCH, PO, PS AND DIST TINSUKIA, 786125, ASSAM

2:MR. JUGEN MAL

Advocate for the Petitioner : MR G BOKALIAL

Advocate for the Respondent : MR. S THAKUR

PRESENT**THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Cross Objectors: Mr. G. Bokalial,
Advocate.
For the Respondents : Ms. M. Choudhury,
Advocate.
Date of Hearing : 29.08.2023.
Date of Judgment : 07.09.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. G. Bokalial, learned counsel representing the cross-objectors as well as Ms. M. Choudhury, learned counsel appearing for the respondents.

- 2.** This cross-objection pertains to MAC Appeal No.231/2018 that was withdrawn by the appellant Insurance Company.
- 3.** On 17.08.2012, there was an accident involving a 407 TATA Vehicle bearing Registration No.AS-04-AC- 1576. In that accident, one person died. The Tribunal awarded a compensation of ₹6,73,000/- to be paid by the Insurance Company of the vehicle.
- 4.** The Tribunal held that the driver of the said 407 TATA Vehicle bearing Registration No.AS-04-AC- 1576 did not have driving licence having the "Transport" endorsement. The Tribunal further held that the aforesaid fact is a violation of policy condition and therefore, gave the liberty to the Insurance Company to proceed further for recovery of the compensation amount from the registered owner of the vehicle.

5. Mr. Bokalial has submitted that the endorsement "Transport" is not a requirement for a person driving a commercial vehicle, which comes within the definition of light commercial vehicle as defined under Section 2(21) of the Motor Vehicles Act. Mr. Bokalial has relied upon a judgment of a Supreme Court that was delivered in *Jagdish Kumar Sood v. United India Insurance Co. Ltd.*, (2018) 3 SCC 697. Paragraph 4 of the judgment is quoted as under:

"4. The issue which arises before the Court is not res integra and is covered by a judgment of three Judges of this Court in *Mukund Dewangan v. Oriental Insurance Co. Ltd.* [*Mukund Dewangan v. Oriental Insurance Co. Ltd.*, (2017) 14 SCC 663] in which it has been inter alia held as follows : (SCC pp. 709-10, paras 60.1 & 60.2)

"60.1. "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 Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of light motor vehicle by virtue of Amendment Act 54 of 1994."

"60.2. 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 roadroller, "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 roadroller, 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 of 1994 and 28-3-2001 in the form."

6. I have considered the submissions made by the learned counsels of

both sides.

7. From the Insurance Policy, it is found that the concerned vehicle i.e. 407 TATA Vehicle bearing Registration No.AS-04-AC- 1576 is below 7500 kilograms and therefore, it is a light motor vehicle within the definition of Section 2(21) of the Motor Vehicles Act and therefore, separate “Transport” endorsement is not required for driving such a vehicle.

8. Under the aforesaid circumstances, this Court is of the opinion that the Tribunal has erred while giving liberty to the Insurance Company to proceed further for recovery of the compensation amount from the owner of the vehicle. That part of the judgment of the Tribunal dated 27.01.2017 passed in MAC Case No.1/2013 by MACT, Sivasagar stands modified. The Insurance Company shall not have the liberty to proceed further for recovery of the compensation amount from the owner of the aforesaid vehicle.

9. The Cross-Objection is allowed and disposed of accordingly.

JUDGE

Comparing Assistant