



GAHC010115552016

Page No.# 1/5



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

Case No. : MACApp./203/2016

SMTI BHAGYALATA BORA and 2 ORS
W/O LATE KAMAL BORA, R/O CHAPORI GAON, WARD NO. 12, P.S. NORTH
LAKHIMPUR, DIST. LAKHIMPUR, ASSAM.

2: MASTER PAPU BORA

3: MISS LAKHI PRABHA BORA

BOTH ARE REPRESENTED BY NATURAL GUARDIAN AND MOTHER SMTI
BHAGYALATA BORA
ALL ARE R/O CHAPORI GAON WARD NO. 12
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM

VERSUS

NATIONAL INSURANCE COMPANY LTD
REPRESENTED BY ITS CHIEF REGIONAL OFFICER, HAVING ITS OFFICE AT
THIRD FLOOR, LOHIA MANSION, G.S. ROAD BHANGAGARH, PIN 781005,
GUWAHATI.

Advocate for the Petitioner : MR.B BARUAH

Advocate for the Respondent : MR.R GOSWAMI



B E F O R E
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date of Hearing : **17-03-2022**
Date of Judgment & Order : **17-03-2022**

JUDGMENT & ORDER (ORAL)

- (1) Heard Mr. B. Baruah, learned counsel for the appellants as well as Mr. R. Goswami, learned counsel for the Insurance Company.
- (2) The issue raised is whether the definition of Light Motor Vehicle (in short, LMV) as provided under Section 2(21) of the Motor Vehicle Act, 1988 would include an Auto Rickshaw, which is a transport vehicle. The further question that has to be decided is as to whether the deceased, who is allegedly the owner of the Auto Rickshaw fulfills all the conditions required under the package policy provided by the Insurance Company, to enable the claimants to receive compensation under personal accident cover amounting to Rs.2,00,000/-.
- (3) This appeal has been filed against the judgment dated 17.05.2013 passed by the learned Member, MACT, Lakhimpur, North Lakhimpur by which the MACT Case No. 32/2012 was dismissed.
- (4) The case of the appellants/claimants is that the husband of the appellant No. 3 died in a motor vehicular accident on 21.03.2012, when he lost control of the three wheeler Auto Rickshaw, which he was driving and hit a tree. The claim petition was filed by the appellants under Section 166 of the Motor Vehicle Act, 1988.
- (5) The case of the appellants before the learned Tribunal was that the deceased was the owner cum driver of the three wheeler Auto Rickshaw bearing Registration No. AS07/C-2815(AR). The said vehicle was passenger carrying Auto Rickshaw which was covered by a Package Policy, wherein the personal accident cover payable to the owner cum driver was Rs. 2 Lakhs. The premium for the said personal accident cover was also paid and as such,

compensation of Rs. 2 Lakhs should have been awarded.

(6) The learned Tribunal dismissed the claim petition, which was registered as MACT Case No. 32/2012, vide judgment dated 17.05.2013, on the ground that the deceased did not have a valid and effective driving licence to drive a transport vehicle. The learned Tribunal thus held that while the deceased had a driving licence to drive a light motor vehicle, there was no endorsement made upon the said driving licence to show that the deceased was permitted to drive a transport vehicle.

(7) The learned counsel for the appellants submits that the licence issued to the deceased for driving a Light Motor Vehicle (LMV) is inclusive of a three wheeler Auto Rickshaw, which the deceased was driving at the time of the accident. He accordingly submits that the claimants are entitled to be given compensation as per the personal accident cover provided in the insurance policy. In support of his submission, the learned counsel for the appellants has relied upon the judgment of the Apex Court in the case of *Mukund Dewangan Vs. Oriental Insurance Company Limited*, reported in (2017) 14 SCC 663.

(8) Mr. R. Goswami, learned counsel for the Insurance Company submits that the judgment passed by the 3 Judges Bench in *Mukund Dewangan (supra)* has been referred to a larger Bench.

(9) I have heard the learned counsels for the parties.

(10) Section 2(21) of the M.V. Act, 1988 includes a transport vehicle, the unladen weight of which does not exceed 7,500 kg, within the definition of a Light Motor Vehicle (LMV). As per the notification Vide S.O. 1248(E), dated 05.11.2004 issued by the Central Government, under Section 41 (4) of the M.V. Act, 2008, a three wheeler vehicle used for transport of passengers/goods is a transport vehicle. The insurance policy of the Auto Rickshaw, under the head "class of vehicle" states that the said vehicle is a A/R passenger. In the case of *Mukund Dewangan (supra)*, the Apex Court held at Para 60.1 as follows: - 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 the light motor vehicle by virtue of Amendment Act 54 of 1994.



(11) The Apex Court in *Mukund Dewangan (supra)* has clearly held that LMV as defined in Section 2(21) of the MV Act, 1988 would include the transport vehicle as per weight prescribed therein. As Section 2(21) states that the transport vehicle with unladen weight not exceeding 7500/- kgs would also come within the definition of LMV, the Auto Rickshaw has to be considered to be a LMV.

(12) Section 14 of the MV Act, 1988 provides that the driving licence for a transport vehicle would be valid for 3 years. However, in the present case, the driving licence of the deceased was for a period of 5 years, thereby implying that the driving licence had been given for a non-transport vehicle. However, as per the judgment of the Hon'ble Apex Court in para-51 of *Mukund Dewangan (supra)*, it was held that the presumption that the licence which had been granted for a period of 20 years was meant only for driving a vehicle other than a transport vehicle, was overruled. A reading of Section 2(21) read with Sections 2(15) and 2(48) of the MV Act, 1988, shows that the definition of LMV includes an Auto Rickshaw and though the driving licence issued to the deceased was for 5 years, by taking into consideration the decision of the Hon'ble Apex Court in para-51 of *Mukund Dewangan (supra)*, the driving licence given to the deceased for 5 years can be said to be a driving licence to drive even a transport vehicle.

(13) With regard to whether the deceased fulfills the 3 conditions required under the package policy, to enable the claimants to receive compensation under the personal accident cover, it is clear from the documents on record that the deceased was a policy holder. He was also the registered owner of the Auto Rickshaw and as per para-51 in *Mukund Dewangan (supra)* his licence was a valid licence, which enabled him to drive a LMV, which includes a transport vehicle i.e., Auto Rickshaw.

(14) Accordingly, in view of the reasons stated above, the issues raised in this appeal are decided in the affirmative.

(15) The Insurance Company is accordingly directed to release the personal accident cover of Rs.2,00,000/- to the appellants, by depositing the said amount in the Registry of this Court within a period of 4 weeks from today. The Registry shall thereafter disburse the said amount to the appellant No.1 after proper verification.



(16) Consequently, the judgment dated 17.05.2013 passed by the learned Member, MACT, Lakhimpur, North Lakhimpur in MACT Case No.32/2012 is hereby set aside.

(17) Send back the LCR.

JUDGE

Comparing Assistant