

HIGH COURT OF GUJARAT**UNITED INDIA INSURANCE CO LTD***Versus***DURGABHAI SATNARAYANBHAI YADAV & 4 OTHER(S)****Date of Decision:** 23 February 2021**Citation:** 2021 LawSuit(Guj) 830**Hon'ble Judges:** [R M Chhaya](#)**Case Type:** First Appeal**Case No:** 336 of 2014**Subject:** Motor Vehicle**Acts Referred:**[Motor Vehicles Act, 1988 Sec 173](#)**Final Decision:** Appeal dismissed**Advocates:** [G C Mazmudar](#), [H G Mazmudar](#), [Nanavati Associates](#), [Nisarg Desai](#)**Cases Referred in (+): 1****R.M.Chhaya, J.**

[1] Being aggrieved and dissatisfied by the judgment and award dated 04.03.2013 passed by the Motor Accident Claims Tribunal (Aux), Rajkot, in MACP No. 137 of 2005, the insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act").

[2] The following facts emerge from the record of the appeal -

2.1 That the accident took place on 10.01.2005. In the evening at 6.00 PM, when the deceased was walking on Jamnagar road near Wankaner Society Main Road, the driver of the rickshaw bearing registration No. GJ- 3X-9848 who was driving the vehicle in rash and negligent manner with excessive speed, dashed with the deceased. The deceased Durgabhai received serious injuries due to the said accident and ultimately succumbed to the injuries.

2.2 The claim petition was filed by the claimants for compensation of Rs. 4,00,000/-. The original claimant was examined at exhibit 22. Various documentary evidences were relied upon such as copy of the FIR at exhibit 23, Panchnama of the place of incident at exhibit 24, Copy of the driving license at exhibit 25, RC Book of Rickshaw at exhibit 26, Rickshaw contract permit at exhibit 27, PM Note at exhibit 28. The Tribunal after appreciation of the evidence, was pleased to award a sum of Rs. 3,49,000/- with 8% interest. Being aggrieved by the same, the insurance company has preferred the present appeal.

[3] Heard Mr. H.G. Mazmudar, learned advocate for the appellant and Mr. Nisarg Desai, learned advocate for Nanavati Associates for original claimants-respondents no.1 to 4. Though served, no one appears for respondent no.5.

[4] I have perused the copies of the relevant evidence, which were supplied by the learned advocates appearing for the parties.

[5] Mr. Mazmudar, learned advocate for the appellant insurance company contended that though the vehicle involved in the accident was a transport vehicle, the driver of the rickshaw was not holding an effective driving license to drive transport vehicle and no endorsement to that effect is there in the license to drive transport vehicle. On the aforesaid ground, Mr. Mazmudar contended that the appeal deserves to be allowed and the appellant insurance company deserves to be exonerated.

[6] Mr. Desai, learned advocate appearing for the original claimants has supported the impugned award. It was submitted by Mr. Desai that the issue as regards endorsement of transport vehicle is concerned, is covered by the judgment of the Apex Court in the case of [Mukund Dewangan vs. Oriental Insurance Co. Ltd.](#), 2017 14 SCC 663. Mr.Desai contended that the appeal being meritless, deserves to be dismissed.

[7] No other or further submissions have been made by the learned advocates appearing for the parties.

[8] The contention of Mr. Mazmudar to the effect that the license of the driver of the rickshaw had no endorsement of driving transport vehicle is concerned, the said issue is covered by the judgment of the Apex Court in the case of Mukund Dewangan (supra), wherein the Hon'ble Apex Court has observed thus -

"60. Thus we answer the questions which are referred to us thus:

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 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.

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 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.

60.3 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.

60.4 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."

[9] Thus, the ground raised by Mr. Mazmudar fails and the appeal deserve to be dismissed and is hereby dismissed.