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KARNATAKA HIGH COURT
Before: Mr. Justice M.I.Arun and Mr. Justice Umesh M Adiga
KUMAR OMKAR S/O. SOMANATH BASHETTI And Others – Appellants,
Versus
M/S. P.B. IBRAHIM And Others – Respondents.
Miscellaneous First Appeal No. 102474 of 2017 (Mv-I) C/W; Miscellaneous First Appeal No. 102063 of 2017 (Mv-I); Miscellaneous First Appeal No. 102064 of 2017 (Mv-I); Miscellaneous First Appeal No. 102473 of 2017 (Mv-D) and In MFA No.102474 of 2017

Motor Vehicles Act, 1988 (IV of 1988) Section 10(2)(j) and 173(1) - Central Motor Vehicle Rules, 1989 Rule 2(cab) - Driving licence - Bulldozer - Licence to drive a light motor vehicle if its unladen weight is less than 7,500 kgs – Can drive a bulldozer (construction equipment vehicle) - A person authorised to drive light motor vehicle can drive any type of motor vehicle, unladen weight of which is less than 7,500 kgs. Respondent - insurer did not lead evidence to show that unladen weight of bulldozer was more than 7,500 kgs - Driver/operator of bulldozer had licence to drive light motor vehicle - A person holding driving licence of a category, can drive different types of the motor vehicles of that category - Construction equipment vehicle is treated as non transport vehicle - Held, driver had valid licence to drive bulldozer

(ii) Motor Vehicles Act, 1988 (IV of 1988) Section 173(1) - Insurer cannot deny liability on technical grounds regarding driver licenses since the Motor Vehicles Act's compensation provision is a benevolent legislation.

Held,

40. Copy of the driving licence (notarized copy) of the driver/operator of bulldozer is produced at Ex.P.10. The driver was authorised to drive motorcycle with gear and light motor vehicle and the said light motor vehicle licence is valid up to 19.07.2024. This fact is not in dispute. During the course of trial before the Tribunal, insurer has contended that accident had taken place due to rash and negligent riding of the scooter by its rider. In the counter filed by the insurer, it has not contended that driver of bulldozer was not having valid and effective driving licence to drive that class of the vehicle.

41. The insurer though examined the RTO, but did not elicit from R.W.2 regarding unladen weight of the said vehicle. At present, after passing of the judgment by the Hon'ble Apex Court, in the case of *Mukund Dewangan* , unladen weight of the vehicle is very much important to ascertain authority of driver to drive that category of vehicle. Burden lies on the respondent No.2 insurer to show that driver of bulldozer was not authorised to drive bulldozer. It is also burden on the respondent No.2 to lead the evidence, to show that the unladen weight of bulldozer was more than 7,500 kgs.

45. A person authorised to drive light motor vehicle can drive any type of motor vehicle, unladen weight of which is less than 7,500 kgs. Respondent - insurer did not lead evidence to show that unladen weight of bulldozer was more than 7,500 kgs. Admittedly, the driver/operator of bulldozer had licence to drive light motor vehicle. In view of law laid down in *Mukund Dewangan's* case the driver had valid licence to drive bulldozer.

46. Interpreting the amended provisions of Motor Vehicles Act, 1988, the Hon'ble Apex Court in the case of *Mukund Dewangan* (supra), it is held that types of vehicles are different from category of the driving licence required. A person holding driving licence of a category, can drive

different types of the motor vehicles of that category.

47. A person holding driving licence to drive light motor vehicle can drive motor car or tractor or road roller, etc., the unladen weight of which does not exceed 7,500 kgs. It may be true that operating systems and knowledge required to drive different types of vehicle may be different. But only on that count insurer can't disown its liability to pay compensation to third party - victims or legal heirs and dependents of a person, who died in the accident by involvement of such vehicle.

48. Rules 2(cab) of the Central Motor Vehicles Rules, 1989 reads as under :

> "2(cab) "construction equipment vehicle" means rubber tyred, (including pneumatic tyred), rubbed padded or stell drum wheel mounted, selfpropelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer for lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.
>
> *Explanation.*- A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main offhighway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power." (emphasis supplied)

49. As per the explanation referred above, construction equipment vehicle is treated as non transport vehicle. If weight of the said vehicle is less than 7,500 kgs then a driver authorised to drive light motor vehicle can drive such vehicle.

50. Section 2(47) of the Motor Vehicles Act, 1988 defines 'Transport Vehicle' which means a public service vehicle, goods carriage, an educational institution bus or a private service vehicle. After amendment to Section 10 of Motor Vehicles Act, 1988, next category after the light motor vehicle, is 'transport vehicle'. There is no other category of vehicle in between them. The category could be differentiated by the unladen weight of the concerned vehicle. The construction equipment vehicle does not fall under the category of transport vehicle. As held in the case of *Mukund Dewangan* (supra), if unladen weight of said motor vehicle is less than 7,500 kgs, then a person authorized to drive light motor vehicle can drive construction equipment vehicle. There is no reference regarding licence required to drive the construction equipment vehicle in Section 10 of the Motor Vehicles Act, 1988 and hence it can be concluded that though it may be different class of vehicle, but falls under category of Light Motor Vehicle.

54. In view of the law laid down in the case of *Mukund Dewangan* (supra), the law laid down in the cases of *Shivaramayya* and *Sadashiva* referred supra may not prevail.

55. Coming to the facts of the present case, as rightly submitted by learned counsel for the claimant, during the trial of the case insurer has contended that accident had taken place due to rash and negligent riding of scooter by the deceased. Nowhere, insurer has made out a case that driver of the bulldozer had no skill and knowledge to drive the said class of vehicle, because of which accident had taken place. Even it is not the case of investigating agency while submitting the charge sheet. The investigating agency have also not charge sheeted driver of the offended vehicle, alleging that he was not holding valid and effective driving licence. Under such circumstances, now the insurer cannot contend that driver of offended bulldozer did not have

valid driving licence to drive bulldozer and hence, it is not liable to pay compensation.

56. Looking to the discussions made in the case of *Mukund Dewangan* by the Hon'ble Apex Court, the object of the Motor Vehicles Act is to protect the interest of victims of an accident and awarding just and reasonable amount of compensation. The insurer cannot disown its liability to pay compensation to victims of accused on the ground that driver of offended vehicle had no valid and effective driving licence or other technical reasons since the provision of Motor Vehicles Act pertaining to compensation is benevolent legislation. Therefore, in this case also, insurer cannot deny its liability on technical ground that driver of the offended bulldozer had no valid driving licence to drive that class of vehicle.

Sri Vittal S.Teli, for the Appellant; *Sri S.R. Kamate,* for Respondent No. 1. *Sri R.R.Mane,* for Respondent No. 2.

JUDGMENT

M.I.Arun and Umesh M Adiga, JJ. – *(31st May, 2024)* - Both, claimants as well as insurer have filed these appeals challenging the impugned judgment and award passed by the XI Addl. Dist and Sessions Judge and Addl. M.A.C.T., Belagavi, (hereinafter referred to as "Tribunal" for short) in M.V.C.No.1127/2016 and MVC.No.1514/2016 dated 15.02.2017.

2. Brief facts of the case of both the parties are as under:

On 07.05.2016, deceased Basavappa Totagi along with his wife, claimant No.1 - Smt.Girijavva and his grandson by name Omkar (claimant in MVC.No.1514/2016) were going on Honda Activa scooter (hereinafter referred to as 'scooter' for short) bearing registration No.KA-22/EA-5477, on the road going from Sericulture Office towards Shree Nagar Garden, situated in Channammanagar of Belagavi. When they reached near by the house of one Hogarati, at 04:30 p.m., the driver of bulldozer bearing registration No.KA-22/Z-1530, came from opposite direction in a rash and negligent manner and dashed against the scooter of the deceased. As a result of which, rider of the scooter- Basavappa and Omkar had sustained grievous injuries and both of them were shifted to hospital for treatment. While undergoing treatment, Basavappa succumbed to injuries on 08.05.2016.

3. It is further contention of the claimants that deceased Basavappa was aged about 64 years at the time of his death. He was a retired Post Master and was getting pension of Rs.24,000/- per month and he was also an agriculturist and he was earning Rs.3,00,000/- per annum from agriculture. Claimants are his wife, son and daughter. They were depending upon his earnings. With these reasons, they prayed to award compensation of Rs.70,00,000/-.

4. It is a case of claimant in MVC.No.1514/2016 that due to the accident he sustained fracture of upper shaft of right femur. He underwent few surgeries, however he could not fully recover. He has been suffering from permanent disability. He was aged about 06 years at the time of accident. With these reason prayed to award compensation of Rs.50,00,000/-.

5. The respondent No.1 - owner of the vehicle has denied all the contents of the claim petition. He has stated that accident had taken place due to rash and negligent riding of scooter by Basavappa and amount of compensation claimed is exorbitant. Therefore, prayed to dismiss the claim petition.

6. Respondent No.2 - insurer has also denied all the contents of claim petition. It has further stated that accident had taken place due to rash and negligent riding of scooter by the deceased Basavappa. Claim petition is bad for non-joinder of necessary parties. The driver of the bulldozer was not having valid and effective driving licence to drive the said category of the vehicle, which is breach of conditions of the insurance policy.

Therefore, respondent No.2 is not liable to pay the compensation. With these reasons, respondent No.2 prayed to dismiss the claim petitions.

7. From the rival contentions of the parties, the Tribunal had framed necessary issues for determination in both claim petitions.

8. In this case, legal heirs of the deceased Basavappa as well as guardian of the injured Omkar have filed claim petitions in M.V.C. Nos.1127 and 1514 of 2016 respectively. Both the petitions arose out of common accident. Therefore, Tribunal has clubbed both the matters; recorded common evidence and disposed off by impugned common judgment.

9. The claimants on their behalf, examined P.Ws.1 to 3 and got marked Exs.P.1 to P.19 and closed their evidence. Respondent No.2 examined R.Ws.1 and 2 and got marked Exs.R.1 to Ex.R.4.

10. The Tribunal, after hearing the parties and appreciating the pleadings and evidence on record, awarded the following amount of compensation in M.V.C.No.1127 of 2016:

1.	Loss of dependency.	Rs.4,51,440/-
2.	Loss of consortium to petitioner Nos.2 and 3	Rs.1,00,000/-
3.	Loss of consortium to petitioner -claimant No.1.	Rs.1,00,000/-
4.	Medical expenses.	Rs.65,901/-
5.	Funeral expenses.	25,000/-
Total Rounded off to		Rs.7,42,341/- Rs.7,42,400/-

11. Following amount of compensation awarded in M.V.C.No.1514 of 2016:

Loss of physical disability	Rs.1,00,000/-
Pain and suffering	Rs.30,000/-
Medical expenses	Rs.4,60,067/-
Future medical expenses	Rs.15,000/-
Loss of food, nutrition and attendant charges	Rs.10,000/-
Total	Rs.6,15,100/-

12. The Tribunal had fastened the entire liability on the insurer of bulldozer to pay the compensation.

13. Being aggrieved by the said judgment and award passed by the Tribunal, both the claimant and insurer have filed these Miscellaneous First Appeals. Claimant challenged the impugned judgment for enhancement of the compensation and the insurer challenged on the ground that it is not liable to pay the compensation since there was breach of terms of policy conditions i.e., not holding of valid and effective driving licence by the driver of bulldozer. 14. We have heard the arguments of learned Advocates appearing for both the parties.

15. Following questions arises for our determination:

"i) Whether the Tribunal is justified in holding that accident had taken place due to negligence of the driver of the bulldozer?

ii) Whether claimants are entitled for enhancement of compensation?

iii) Whether the driver authorised to drive light motor vehicle can drive bulldozer (construction equipment vehicle)?"

16. P.W.1 is an eyewitness to the incident and she is claimant in M.V.C. No.1127/2016. In her evidence, she has reiterated contents of the claim petition and has stated that accident had taken place due to rash and negligent driving of the bulldozer by its driver. Both owner and insurer of bulldozer have thoroughly cross-examined her, but nothing was brought out to discard her evidence. Respondents have not examined any of the eyewitnesses to the incident, to rebut her evidence and to show that accident had taken place due to negligence of Basavappa. It is pertinent to note that on the complaint of P.W.1,

the concerned Police investigated the matter and charge sheeted the driver of the bulldozer. The claimants proved before the Tribunal that accident had taken place due to negligence of driver of the bulldozer and there are no reasons to interfere in the said findings of the Tribunal. Accordingly, question No.1 is answered in the affirmative.

17. Let us consider question No.2 in M.V.C.No.1127/2016; Tribunal has taken the age of deceased as 66 years on the basis of post-mortem report and inquest panchanama. It is not seriously disputed by the claimants. The Tribunal did not accept the case of claimants that deceased had agriculture lands and he was earning Rs.3,00,000/- per annum from agriculture. The said findings of the Tribunal are based on materials placed before it. There are no reasons to interfere in the said findings.

18. Claimants have contended that deceased was getting pension of Rs.24,000/- as pleaded in the petition. Claimants have produced Ex.P.8 "Pension Certificate" of the deceased. It shows that Rs.22,573/- per month was paid as a family pension. This point is not disputed by the claimants in the present appeal. In fact, Ex.P.8 pertains to family pension of Smt.Girijavva B. Totagi i.e., claimant No.1, issued to her after the death of her husband-Basavappa Totagi, with effect from 08.05.2016. Therefore, it is not "pension certificate" of the deceased. However, in the claim petition itself, it is mentioned that deceased was getting pension of Rs.24,000/- and during the course of argument, the learned advocate for claimants did not dispute regarding amount of pension taken by the Tribunal. Hence same is taken as income of deceased.

19. Main grievance of the learned advocate for claimants that Tribunal deducted 50% of the pension amount on the ground that after death of Basavappa, claimant No.1 would get 50% of the said pension amount as family pension to her. Therefore, she was not entitled for the said amount of 50% of the pension since it would continue even after the death of Basavappa. The learned advocate for claimants has relied on a Judgment of Hon'ble Apex Court in the case of *Sebastiani Lakra and others vs. National Insurance Company Limited and another,* 2019 AAC 122 (SC). In the above said case, Hon'ble Apex Court held as under :

> "The law is settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relation entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants / dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death. As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. These amounts are also payable on death, whatever be the cause of death. Therefore, applying the same principles, the said amount cannot be deducted."

20. The learned advocate appearing for

claimants also relied on the judgment of the Hon'ble Apex Court, in the case of Vimal Kanwar and others v. Kishore Dan and others, (2013) 7 SCC 476. In the above said case also it is held as under:

> "Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case the employee dies in harness i.e. while in service leaving behind the dependants, one of the dependants may request for compassionate appointment to maintain the family of the deceased employee, who dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accident death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate appointment but that cannot be termed as "pecuniary advantage" that comes under the periphery of the Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act."

21. Law laid down in the above said judgments by the Hon'ble Apex Court is applicable to the facts of the present case. Therefore, deduction of 50% in the pension amount by the Tribunal on the premises that after the death of Basavappa, his wife would get 50% of his pension as a family pension is not tenable. Pension of the deceased is taken as Rs.22,573/- per month on the basis of Ex.P.8. There is no dispute that multiplier applicable to the case on hand is 5.

22. It is true that claimant Nos.2 and 3 are not dependent on the income of deceased. The deceased left behind him his wife, who is claimant No.1. In view of law laid down in the case of Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (6) SCC 121 and National Insurance Company Limited v. Pranay Sethi and others, 2017 ACJ 2700, 1/3rd of income of deceased needs to deducted towards personal expenses. On the basis of said calculations, compensation needs to be recalculated towards loss of dependency.

23. Tribunal has awarded Rs.65,901/- towards medical expenses on the basis of Ex.P.9 and the same does not call for any interference.

24. The Tribunal has awarded Rs.2,00,000/- towards love and affection and consortium and Rs.25,000/- towards funeral expenses. The said amount is to be re-calculated in view of the law laid down by the Hon'ble Apex Court in the case of Pranay Sethi (supra). Accordingly, amount of compensation awarded under the conventional heads have been recalculated.

25. Claimants are entitled for following amount of compensation:

1.	Loss of dependency (Rs.22,573 - 1/3 X 5 X 12)	Rs.9,02,920/-
2.	Medical expenses	Rs.65,901/-
3.	Loss of consortium	Rs.1,20,000/-
4.	Loss of estate	Rs.15,000/-
5.	Funeral expenses	Rs.15,000/-
	Total	Rs.11,18,821/-

26. Claimants are entitled for enhancement of Rs.3,76,421/-. Accordingly, this question is answered, partly in the affirmative.

Assessment of compensation in MVC No.1514/2016.

27. In this case, claimant was aged about 06 years at the time of accident. He sustained fracture of upper shaft of right femur. Looking to the medical records produced by the claimant, it

appears he underwent surgery thrice in that tender age and according to the evidence of P.W.3, he is suffering from permanent disability to an extent of 18% to the right lower limb.

28. The learned counsel for the claimant has submitted that amount of compensation awarded by the Tribunal on all heads are on lower side. He further submits that during pendency of this appeal, certain medical bills were produced along with an application and the said application was allowed by this Court and accordingly additional evidence is recorded. Claimant has produced receipts for taking further treatment for the injuries sustained in the accident. The total amount of the said medical expenses is Rs.83,812/-. He submits that claimant is resident of Belagavi; for treatment purpose, he came to Bengaluru and taken treatment. Since he is minor, his parents had to come for attending him to provide him treatment and they also incurred expenses. Considering the same, a reasonable amount of compensation under the head medical expenses as well as incidental expenses needs to be enhanced.

29. The learned counsel for respondent submits that the said medical bills are created; therefore claimant is not entitled for enhancement on the basis of additional evidence produced before this Court. Therefore, prayed for rejection of the same.

30. Mother of the claimant has been examined and additional evidence was lead and records are produced before this Court which are marked as Ex.P.20 to 23. Ex.P.20 and 22 reveal that due to injuries sustained in the accident, claimant was suffering from severe pain, therefore he had to undergo another surgery in the Sparsha Hospital at Bengaluru on 24.01.2017. As per Ex.P.22, he once again admitted in the hospital for treatment for two days and taken treatment. In the cross examination of P.W.2, nothing was brought out to show that the said documents were created for claiming more amount of compensation. Therefore, the said evidence is believable. The total amount of inpatient bills of the said hospital is Rs.83,812/-.

31. As per the address given in the cause title of the claim petition, minor claimant is resident of Belagavi. As per Ex.P.20 and 22, he had taken treatment at Bengaluru. Therefore, claimant might have spent some amount towards incidental expenses, i.e., travelling from Belagavi to Bengaluru and staying in Private Lodge etc.,. Since he is a minor, along with him his parents might have also come to Bengaluru to provide him treatment. Considering all these facts some amount of compensation is to be awarded towards incidental expenses.

32. The Tribunal has awarded just and reasonable amount of compensation on all the heads relying on the Judgments of Hon'ble Apex Court. The claimant was aged about 5 to 6 years as on the date of the accident. Considering these facts, he is not entitled for enhancement under the other heads except under the head medical and incidental expenses, which he had incurred as per Ex.P.22 and 23.

33. Considering the above said documents at Ex.P.22 and 23 and also the miscellaneous expenses, an amount of Rs.1,00,000/- is enhanced towards medical and incidental expenses in addition to compensation awarded by the Tribunal and claimant is also entitled for interest on the enhanced amount of compensation at the rate of 6% per annum from the date of petition till its realization. Accordingly, question No.2 is answered.

34. Question No.3: Whether the driver authorised to drive light motor vehicle can drive bulldozer (construction equipment vehicle) does it amount to breach of terms and conditions of policy.

35. The learned Advocate for insurer has vehemently contended that the driver of bulldozer had no valid and effective driving licence to drive the said class of the vehicle. As

per Section 2(cab) of the Central Motor Vehicles Rules, 1989, bulldozer is considered as "construction equipment vehicle" and the driver ought to have specified licence to drive the said class of the vehicle. Section 10(2)(j) of the Motor Vehicles Act, 1988 deals with category of licences, pertaining to "such class of the vehicle". Hence, the driver had no valid and effective driving licence. However, the Tribunal did not consider this point and directed the insurer to pay the compensation on the ground that there are no fundamental breach of conditions of policy. At the most, Tribunal could have directed the insurer to pay the amount of compensation and recover the same from owner of the vehicle.

36. The learned advocate for the claimants has submitted that the driver had licence to drive light motor vehicle. The bulldozer is considered as construction equipment vehicle and according to the Section 2(cab) of the Central Motor Vehicles Rules, 1989, Explanation, show that it does not come under the category of transport vehicle. Moreover, bulldozers are not used to transport or movement of goods or passengers. It will be taken on road only to take it to the place of operation/work/construction. In the present case, unladen weight of said vehicle was less than 7500 kg. Therefore, the driver authorised to drive light motor vehicle can drive the bulldozer and there is no need that it would require specified licence to drive that class of vehicle.

37. The learned advocate for claimant would further submit that the driver of the offended bulldozer was not charge sheeted for driving of vehicle without valid and effective driving licence to drive the said class of vehicle. He further submitted that it was not the case of insurer that accident had taken place due to not having special skill or knowledge to drive the said class of vehicle, by the driver of the bulldozer. All the while, insurer has contended before the Tribunal that accident had taken place due to rash and negligent riding of scooter by deceased Basavappa and when the Tribunal did not accept the said contention, on the basis of materials available on record, insurer started contending that the Tribunal did not consider that the driver of the bulldozer was not having effective driving licence.

38. The learned advocate for claimants has further submitted that in this regard, he would rely on the judgment of Co-ordinate Bench of this Court in the case of Reliance General Insurance Company Limited v. Smt.Yallawwa and others[1] and also relied on the judgment of Hon'ble Apex Court in the case of Mukund Dewangan v. Oriental Insurance Company Limited, (2017) 14 SCC 663.

[1] MFA 100570/2019 c/w MFA 102543/2019 dated 17.03.2023

39. The learned counsel for respondent in reply has submitted that the judgment passed by the co-ordinate bench of this Court in the case of Smt.Yallawwa (supra), is per incuriam. At the time of passing of the said judgment by the Division Bench, judgment of this Court in the case of Sadashiv and others vs. Dyavakka and others[2] as well as in the case of M/s. United India Insurance Co. Ltd., vs. Shri R.S. Shivaramayya and another, 2011 Kant. M.A.C. 632 (Kant) are not considered. Hence it is not applicable.

[2] MFA 23085/2012 and MFA 24405/2010

40. Copy of the driving licence (notarized copy) of the driver/operator of bulldozer is produced at Ex.P.10. The driver was authorised to drive motorcycle with gear and light motor vehicle and the said light motor vehicle licence is valid up to 19.07.2024. This fact is not in dispute. During the course of trial before the Tribunal, insurer has contended that accident had taken place due to rash and negligent riding of the scooter by its rider. In the counter filed by the insurer, it has not contended that driver of bulldozer was not having valid and effective driving licence to drive that class of the vehicle.

41. The insurer though examined the RTO, but did not elicit from R.W.2 regarding unladen weight of the said vehicle. At present, after

passing of the judgment by the Hon'ble Apex Court, in the case of Mukund Dewangan (supra), unladen weight of the vehicle is very much important to ascertain authority of driver to drive that category of vehicle. Burden lies on the respondent No.2 insurer to show that driver of bulldozer was not authorised to drive bulldozer. It is also burden on the respondent No.2 to lead the evidence, to show that the unladen weight of bulldozer was more than 7,500 kgs.

42. In the case of Mukund Dewangan, (supra) the Hon'ble Apex Court relied on its earlier judgment in the case of Skandia Insurance Co. Ltd. vs. Kokilaben Chandravandan, (1987) 2 SCC 654 and the Hon'ble Apex Court extracted part of the said judgment, which reads as under:

> "13. In order to divine the intention of the legislature in the course of interpretation of the relevant provisions there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the legislature insisted on a person using a motor vehicle in a public place to insure against third-party risk by enacting Section 94? Surely the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the courts would be recoverable from the persons held liable for the consequences of the accident. A court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. To overcome this ugly situation the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force. To use the vehicle without the requisite third party insurance being in force is a penal offence (Section 94 of the Motor Vehicles Act). The legislature was also faced with another problem. The insurance policy might provide for liability walled in by conditions which may be specified in the contract of policy. In order to make the protection real, the Legislature has also provided that the judgment obtained shall not be defeated by the incorporation of exclusion clauses other than those authorised by Section 96 and by providing that except and save to the extent permitted by Section 96 it will be the obligation of the insurance Co. to satisfy the judgment obtained against the persons insured against third party risk (vide Section 96). In other words, the legislature has insisted and made it incumbent on the user of a motor vehicle to be armed with an insurance

policy covering third party risks which is in conformity with the provisions enacted by the legislature. It is so provided in order to ensure that the injured victims of automobile accidents or the dependants of the victims of fatal accidents are really compensated in terms of money and not in terms of promise. Such a benign provision enacted by the legislature having regard to the fact that in the modern age the use of motor vehicles notwithstanding the attendant hazards, has become an inescapable fact of life, has to be interpreted in a meaningful manner which serves rather than defeats the purpose of the legislation. The provision has therefore to be interpreted in the twilight of the aforesaid perspective. "

43. In the above Judgment the Hon'ble Apex Court discussed noble intentions of legislature in enacting certain provisions of Motor Vehicles Act, 1988 dealing with payment of compensation to the victims of motor vehicle accident. The Tribunal, therefore interpret the provisions to the benefit of the victim.

44. In the Mukund Dewangan's case (supra), the Hon'ble Apex Court after considering its previous judgments as well as interpreting the provisions of Motor Vehicles Act held as under:

"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was preamended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(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 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 54/1994 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."

45. In view of law laid down in the case of the Mukund Dewangan (supra), now it is no more res integra that a person authorised to drive light motor vehicle can drive any type of motor vehicle, unladen weight of which is less than 7,500 kgs. Respondent - insurer did not lead evidence to show that unladen weight of bulldozer was more than 7,500 kgs. Admittedly, the driver/operator of bulldozer had licence to drive light motor vehicle. In view of law laid down in Mukund Dewangan's case the driver had valid licence to drive bulldozer.

46. Interpreting the amended provisions of Motor Vehicles Act, 1988, the Hon'ble Apex Court in the case of Mukund Dewangan (supra), it is held that types of vehicles are different from category of the driving licence required. A person holding driving licence of a category, can drive different types of the motor vehicles of that category.

47. A person holding driving licence to drive light motor vehicle can drive motor car or tractor or road roller, etc., the unladen weight of which does not exceed 7,500 kgs. It may be true that operating systems and knowledge required to drive different types of vehicle may be different. But only on that count insurer can't disown its liability to pay compensation to third party - victims or legal heirs and dependents of a person, who died in the accident by involvement of such vehicle.

48. Rules 2(cab) of the Central Motor Vehicles Rules, 1989 reads as under :

"2(cab) "construction equipment vehicle" means rubber tyred, (including pneumatic tyred), rubbed padded or stell drum wheel mounted, selfpropelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer for lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.

Explanation.- A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main offhighway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public

roads on their own power." (emphasis supplie

49. As per the explanation referred above, construction equipment vehicle is treated as non transport vehicle. If weight of the said vehicle is less than 7,500 kgs then a driver authorised to drive light motor vehicle can drive such vehicle.

50. Section 2(47) of the Motor Vehicles Act, 1988 defines 'Transport Vehicle' which means a public service vehicle, goods carriage, an educational institution bus or a private service vehicle. After amendment to Section 10 of Motor Vehicles Act, 1988, next category after the light motor vehicle, is 'transport vehicle'. There is no other category of vehicle in between them. The category could be differentiated by the unladen weight of the concerned vehicle. The construction equipment vehicle does not fall under the category of transport vehicle. As held in the case of Mukund Dewangan (supra), if unladen weight of said motor vehicle is less than 7,500 kgs, then a person authorized to drive light motor vehicle can drive construction equipment vehicle. There is no reference regarding licence required to drive the construction equipment vehicle in Section 10 of the Motor Vehicles Act, 1988 and hence it can be concluded that though it may be different class of vehicle, but falls under category of Light Motor Vehicle.

51. Considering the law on this point as well as provisions of the Motor Vehicles Act regarding definition of 'construction equipment vehicle' and explanation given in the said definition etc., in the case of Yallawwa (supra), it is held by Co-ordinate Bench of this Court (authored by one of the Member of this Bench Mr.Justice Umesh Adiga), that a person holding licence to drive light motor vehicle can drive the JCB/construction equipment vehicle as defined under Section 2(cab) of the Central Motor Vehicle Rules, 1989. Moreover, it is not held in the case of R.S.Shivaramayya (supra) that the person holding licence to drive light motor vehicle cannot drive construction equipment vehicle. That question was not at all considered in that case. And principle of law laid down in the case of Yallawwa is different. Whether driver authorised to drive light motor vehicle can to drive JCB (construction equipment vehicle) was the question involved in that case. Hence, the Judgment in the case of Yallawwa is not contrary to the Judgment in the case of R.S. Shivaramayya (supra).

52. The learned counsel for respondent No.1 has also relied on the judgment rendered by learned Single Judge in the case of Sadashiv (supra). In that case, it is considered that the driver of the JCB did not have special category, special knowledge and skill to drive that class of the vehicle. Therefore, it is held that driving licence held by him was not proper and sufficient.

53. In the following cases, the Co-ordinate Bench of this Court as well as the learned Single Judge held that a driver authorized to drive light motor vehicle can drive JCB / road roller, if its uladen weight is less than 7500 kgs.

i) Shabeena Banu vs. Shriram General Insurance Company Limited, LAWS (KAR) 2020 2 139

ii) Reliance General Insurance Company Limited vs. S. Ramya and Others MFA.No.6789/2010 dated 09.11.2020,

iii) The Divisional Manager vs. Rangappa S/o. Vaggappa Rathod MFA No.24489/2012 c/w MFA No.22114/2012 dated 31.08.2020

54. In view of the law laid down in the case of Mukund Dewangan (supra), the law laid down in the cases of Shivaramayya and Sadashiva referred supra may not prevail.

55. Coming to the facts of the present case, as rightly submitted by learned counsel for the claimant, during the trial of the case insurer has contended that accident had taken place due to rash and negligent riding of scooter by the deceased. Nowhere, insurer has made out a case that driver of the bulldozer had no skill and knowledge to drive the said class of vehicle, because of which accident had taken place. Even

it is not the case of investigating agency while submitting the charge sheet. The investigating agency have also not charge sheeted driver of the offended vehicle, alleging that he was not holding valid and effective driving licence. Under such circumstances, now the insurer cannot contend that driver of offended bulldozer did not have valid driving licence to drive bulldozer and hence, it is not liable to pay compensation.

56. Looking to the discussions made in the case of Mukund Dewangan by the Hon'ble Apex Court, the object of the Motor Vehicles Act is to protect the interest of victims of an accident and awarding just and reasonable amount of compensation. The insurer cannot disown its liability to pay compensation to victims of accused on the ground that driver of offended vehicle had no valid and effective driving licence or other technical reasons since the provision of Motor Vehicles Act pertaining to compensation is benevolent legislation. Therefore, in this case also, insurer cannot deny its liability on technical ground that driver of the offended bulldozer had no valid driving licence to drive that class of vehicle.

57. For aforesaid discussions, we answer the above question No.3 in the affirmative and it is held that insurer of the said vehicle is liable to pay the compensation on behalf of the owner of the vehicle.

58. For aforesaid discussions, we pass the following:

ORDER

(i) Appeals are disposed off.

(ii) The impugned Judgment and Award dated 15.02.2017 passed in MVC.No.1127/2016 and MVC.No.1514/2016 by the XI Additional District and Sessions Judge and Additional MACT, Belagavi is modified:

(a) Claimants in MVC.No.1127/2016 are entitled for compensation of Rs.11,18,821/- as against Rs.7,42,400/- awarded by the Tribunal and claimants are entitled for enhancement of Rs.3,76,421/- with interest at the rate of 6% per annum on the enhanced amount of compensation from the date of petition till its realization.

(b) Claimant in MVC.No.1514/2016 is entitled for enhanced compensation of Rs.1,00,000/- in addition to the amount of compensation awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till its realization.

(iii) Remaining operative portion of the impugned Judgment is not disturbed.

(iv) The amount deposited by the insurer shall be transmitted to the Tribunal forthwith for disbursement of the amount to the claimants, if it is already not paid.

R.M.S. -

Appeal disposed of.