

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 20025-20028/2017
(arising out of SLP(C) Nos. 887-890/2013)

The Managing Director, Sudhakar
Polymers Ltd.

Appellant

VERSUS

Divisional Manager, the Oriental
Insurance Co. Ltd. & Ors. Etc.

Respondents

WITH

Civil Appeal No. 20023/2017
(arising out of SLP(C) No. 3302/2015)

Civil Appeal Nos. 20021-20022/2017
(arising out of SLP(C) Nos. 8709-8710/2014)

SLP(C) No. 20072/2015

SLP(C) Nos. 8712-8713/2014

SLP(C) Nos. 8704-8706/2014

Civil Appeal No. 20024/2017
(arising out of SLP(C) No. 13008/2014)

Civil Appeal Nos. 20019-20020/2017
(arising out of SLP(C) Nos. 15759-15760/2014)

O R D E R

Civil Appeal Nos. 20025-20028/2017
(arising out of SLP(C) Nos. 887-890/2013)

Leave granted.

The present appeals by special leave call in question the legal tenability of the orders passed by the Division Bench of the High Court of Karnataka at Bangalore, dated 28.11.2011 in MFA No. 444/2008 (MV), 28.11.2011 in MFA No. 446/2008 (MV), 6.7.2012 in RP No. 197/2012 and 10.8.2012 in

RP No. 199/2012, whereby it has overturned the award passed by the Motor Accident Claims Tribunal, Kadur, Karnataka on the ground that the insurer is not liable, however, it may pay and recover.

On a perusal of the order passed by the High Court, we find that the High Court has not ascribed any reason why the insurer is not liable.

Learned counsel for the respondents would submit that the present controversy is no more *res integra*, insofar as the same is covered by the decision of this Court in *Mukund Dewangan vs. Oriental Insurance Company Limited, 2017 (7) SCALE 731*. She has drawn our attention to paragraph 45 of the said judgment, which is reproduced hereunder:-

"45. Transport vehicle has been defined in Section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in Section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in Section 2 (14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he

can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994."

Having considered the aforesaid, we think that the High Court should consider the matter afresh on the basis of the evidence brought on record, keeping in view the decision rendered by this Court in *Mukund Dewangan* (supra).

Resultantly, the appeals are allowed, and the orders passed by the High Court are set aside. The matters are remanded back to the High Court. There shall be no order as to costs.

Civil Appeal No. 20023/2017
(arising out of SLP(C) No. 3302/2015)

Leave granted.

In the course of hearing, a suggestion was given to Mr. Manjunath Meled, learned counsel appearing for the appellants whether enhancement of compensation granted by the Tribunal and further enhanced by the High Court, should be further enhanced by Rs.2,00,000/- (Rupees two lacs only). The learned counsel accepted the same.

Be it noted that the High Court has fastened the liability on respondent nos. 2 and 4. Considering the negligence by both the drivers, who were insured with two different insurance companies, the High Court has fastened 70% liability on the respondent no. 2 and 30% liability on the respondent no. 4. We do not intend to disturb the

fastening of liability. We would only say that the amount would be enhanced by aggregate Rs.2,00,000/- (Rupees two lacs only) and the same shall proportionally be paid by respondent nos. 2 and 4 to the legal representatives/legal heirs, and for the same purpose, the amount shall be deposited before the Tribunal within three months hence, failing which interest at the rate of 10% per annum from the date of application before the Tribunal shall be payable.

With the aforesaid modification in the award passed by the Tribunal, which has been further modified by the High Court, the appeal stands disposed of. There shall be no order as to costs.

Civil Appeal Nos. 20021-20022/2017
(arising out of SLP(C) Nos. 8709-8710/2014)

Leave granted.

In view of the order passed by us in Civil Appeal No. 20023/2017 (arising out of SLP(C) No. 3302/2015), the present appeals stand disposed of.

SLP(C) Nos. 20072/2015, 8712-8713/2014 and 8704-8706/2014

None appears for the petitioner.

The special leave petitions are dismissed for want of prosecution.

Civil Appeal No. 20024/2017
(arising out of SLP(C) No. 13008/2014)

Leave granted.

The present appeal by special leave calls in question

the legal tenability of the order dated 19.9.2011 passed by the High Court of Karnataka at Bangalore in MFA No. 9774/2008, whereby it has overturned the award passed by the Motor Accident Claims Tribunal, Bangalore, on the ground that the insurer is not liable, however, it may pay and recover.

Learned counsel for the respondents would submit that the present controversy is no more *res integra*, insofar as the same is covered by the decision of this Court in *Mukund Dewangan vs. Oriental Insurance Company Limited, 2017 (7) SCALE 731*. He has drawn our attention to paragraph 45 of the said judgment, which is reproduced hereunder:-

"45. Transport vehicle has been defined in Section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in Section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in Section 2 (14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle.

It is what is intended by the provision of the Act, and the Amendment Act 54/1994."

Having considered the aforesaid, we think that the High Court should consider the matter afresh on the basis of the evidence brought on record, keeping in view the decision rendered by this Court in *Mukund Dewangan* (supra).

Resultantly, the appeal is allowed, and the order passed by the High Court is set aside. The matter is remanded back to the High Court. There shall be no order as to costs.

Civil Appeal Nos. 20019-22020/2017
(arising out of SLP(C) No. 15759-15760/2014)

Leave granted.

The present appeals by special leave call in question the legal justifiability of the order dated 18.2.2014 passed by the High Court of Karnataka at Bangalore in MFA Nos. 4430/2012 (MV) and 6418/2012 (MV), whereby it has fastened the liability on the owner on the ground that the owner of the car, who was driving the vehicle, did not have any driving license.

We do not think that the finding of the High Court is incorrect. However, we feel appropriate at the case at hand, that the respondent no. 2 shall pay the amount to the appellants and recover it from the owner of the vehicle. We may hasten to clarify that we have passed the direction under Article 142 of the Constitution of India. The amount shall be deposited alongwith interest as granted by the

High Court, within twelve weeks hence. After the deposit is made, the same shall be disbursed in favour of the appellants after keeping in view the judgment of this Court in *General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma thomas (Mrs.) & Ors., (1994) 2 SCC 176.*

In view of the aforesaid, the appeals are disposed of with no order as to costs.

.....CJI.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

.....J.
[Dr. D.Y. Chandrachud]

New Delhi;
November 30, 2017.

ITEM NO.1

COURT NO.1

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION FOR SPECIAL LEAVE TO APPEAL (C) Nos. 887-890/2013

The Managing Director, Sudhakar
Polymers Ltd.

Petitioner

VERSUS

Divisional Manager, the Oriental
Insurance Co. Ltd. & Ors. Etc.

Respondents

WITH

SLP(C) No. 3302/2015 (IV-A)
SLP(C) No. 8709-8710/2014 (IV-A)
SLP(C) No. 20072/2015 (IV-A)
SLP(C) No. 8712-8713/2014 (IV-A)
SLP(C) No. 8704-8706/2014 (IV-A)
SLP(C) No. 13008/2014 (IV-A)
SLP(C) No. 15759-15760/2014 (IV-A)

Date : 30-11-2017 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s)

Ms. Kiran Suri, Sr. Adv.
Mr. S.J. Amith, Adv.
Dr. (Mrs.) Vipin Gupta, AOR

Mr. Manjunath Meled, Adv.
Mr. Anil Kumar, AOR

Ms. Sakshi Mittal, AOR (N/P)

Mr. V. N. Raghupathy, AOR
Mr. Balaji Srinivasan, AOR
Mr. H. K. Chaturvedi, AOR
Mr. P. K. Jain, AOR
Mr. Jay Kishor Singh, AOR
Mr. Uday B. Dube, AOR
Mr. Ardhendumauli Kumar Prasad, AOR

For Respondent(s)

Ms. Meenakshi Midha, Adv.

Mr. Akhil Roy, Adv.
Mr. Chander Shekhar Ashri, AOR

Mr. Rohit K. Sinha, Adv.
Mr. Sanjay Kumar Singh, AOR

Mr. G. Balaji, AOR

Mr. C. K. Rai, AOR
Dr. Meera Agarwal, AOR
Mr. Anis Ahmed Khan, AOR
Mr. Varinder Kumar Sharma, AOR
Mr. M. K. Dua, AOR
Mr. Javed Mahmud Rao, AOR

Mr. Manish Pratap Singh, Adv.
Dr. Nafis A. Siddiqui, AOR

Ms. Nidhi, AOR

Ms. Sakshi Mittal, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) Nos. 887-890/2013

Leave granted.

The appeals are allowed in terms of the signed order.

SLP(C) No. 3302/2015

Leave granted.

The appeal is disposed of in terms of the signed order.

SLP(C) Nos. 8709-8710/2014

Leave granted.

The appeals stand disposed of in terms of the signed order.

SLP(C) Nos. 20072/2015, 8712-8713/2014 and 8704-8706/2014

None appears for the petitioner.

The special leave petitions are dismissed for want of prosecution.

SLP(C) No. 13008/2014

Leave granted.

The appeal is allowed in terms of the signed order.

SLP(C) No. 15759-15760/2014

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending interlocutory applications in all the above appeals/special leave petitions, if any, stand disposed of.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)