

IN THE SUPREME COURT OF INDIA

~~CRIMINAL~~/CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(~~CR.~~ /CIVIL) NO. OF 2017

[Against the final impugned final judgment & order dated
04.08.2017 passed by Hon'ble High Court of Judicature for
Rajasthan at Jodhpur in S. B. Civil Misc. Appeal
No.5127/2011]

IN THE MATTER OF:

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD. ...Petitioner

VERSUS

SMT. RAMBHA DEVI & ORS ...Respondents

WITH

I.A. NO. OF 2017

An Application for exemption from filing official
translation of Annexures

PAPER - BOOK

16/1/18

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR THE PETITIONER: ARCHANA PATHAK DAVE

Filed on: 15.09.2017

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IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(CRL. /CIVIL) NO. _____ OF 2017

IN THE MATTER OF:

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD.

...Petitioner

VERSUS

SMT. RAMBHA DEVI & ORS

...Respondents

OFFICE REPORT ON LIMITATION

1. The petition is/are **within** time.
2. The petition is barred by time and there is delay of _____ days in filing the same against the order dated _____ and the petition for condonation of _____ days delay has been filed.
3. There is delay of _____ days in refiling this petition and the petition for condonation of _____ days delay in refiling has been filed.

New Delhi

(Section Officer)

Date .09.2017

A-1

PROFORMA FOR FIRST LISTING
SECTION -II

The case pertains to (Please tick/check the correct box):

Central Act: Code of Civil Procedure , Motor Vehicles Act,1988

Section: Order 41 Rule 33 of CPC, Section-2, Section-9, Section-10, Section-11, Section 149,Section 175 of the Motor Vehicles Act, 1988

Central Rule; (Title) – NA

Rule No(s): NA

State Act: (Title)- NA

Section: NA

State Rule: (Title) – NA

Rule No(s): - NA

Impugned Interim Order: (Date) –NA

Impugned Final Orders / Decree : 04.08.2017

High Court: Judicature for Rajasthan at Jodhpur

Name of Judges: Hon'ble Mr. Justice Arun Bhansali

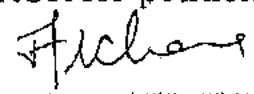
Tribunal / Authority :

1. Nature of matter: Civil
2. (a) Petitioner/appellant: BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.
 - (b) e-mail ID: _ NA
 - (c) Mobile Phone number: _ NA
3. (a) Respondent : SMT. RAMBHA DEVI & ORS
 - (b) e-mail ID: _ NA
 - (c) Mobile Phone number: _ NA
4. (a) Main category classification:
 - (b) Sub classification:

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- 5. Not to be listed before: NA
- 6. Similar/Pending matter: NA
- 7. Criminal Matters: NA
 - (a) Whether accused / convict has surrendered:
 - (b) FIR No. _NA Date: _NA
 - (c) Police Station: _NA
 - (d) Sentence Awarded: NA
 - (e) Sentence Undergone: NA
- 8. Land Acquisition Matters: NA
 - (a) Date of Section 4 notification: _NA
 - (b) Date of Section 6 notification: _ NA
 - (c) Date of Section 17 notification: _ NA
- 9. Tax Matters: State the tax effect: _NA
- 10. Special Category (first petitioner/appellant only):
 - Senior citizen > 65 years SC/ST
 - Woman/Child Disabled
 - Legal Aid case In custody
- 11. Vehicle Number (in case of Motor Accident Claim matter):
RJ-24-PA-0866
- 12. Decided cases with citation: NA

AOR for petitioner(s)



ARCHANA PATHAK DAVE
Registration No. 2049

Date: 15 . 09.2017
archana.p.dave@gmail.com

SYNOPSIS

The instant SLP is being filed by the Insurance Company since the Hon'ble High Court has wrongly dismissed the Appeal filed by the Insurance Company while wholly relying on the Judgment of this Hon'ble Court in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors. : C.A.5826/2011 which has defeated its objective and has lead to ambiguity towards the definition of the Light Motor Vehicle (LMV) as per section 2(21) of the Motor Vehicle Act, 1988 as well as in regards of the amended section 10(2) of said Act,1988 as the two stands contradicting other provisions of the Act in a way making them infructuous. That the Insurance Company has challenged the passing of the pay and recover directions such as this one after appreciating the contentions and circumstances of the petitioner herein would out-rightly defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of the MV Act but Hon'ble High Court without appreciating the merit of the matter, set aside the directions vide exercising the power under Order XLI Rule 33 Civil Procedure Code (C.P.C).

The said judgment while deciding the very essential proposition as to whether driver having LMV license required endorsement (Hon'ble Supreme Court has failed to differentiate the terms 'Addition' and 'Endorsement' in light of Section 11 and 24 read with 25 of said Act) to drive transport vehicle has undermined the value of 'Endorsement' in driving license whereas the same is being

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used for disqualification by courts or authority in section 24 and section 25 to be read with Section 3 (Necessity for driving license) & section 14 (2)(a)(proviso) of the said act.

Further Section 3 is providing exclusion to motor cab and motor cycle. From the term "specifically entitled to do so" iterated in the provision pertaining to the additions to driving license as prescribed under section 11 of the said Act, the clarification towards the same is left untouched in the Mukund Dewangan's judgment of this Hon'ble Court while ruling on the endorsement (without differentiate the concept of addition to driving license as per section 11 and endorsement as per section 24 & 25 of the said Act) not being required for a person holding a license to drive "light motor vehicle" and driving 'transport vehicle'.

A driver is issued a licence as per the class of the vehicle whether LMV or transport vehicle and further additional addition to drive any new class of vehicle by filling Form 8 as provided for in the Central Motor Vehicles Rules, 1989 which distinctly mentions 'LMV' and Transport Vehicle and Further, the other important restrictions imposed under Section 7 of M. V. Act, 1988 is that no person shall be granted a learner's license to drive a transport vehicle unless he has held a driving license to drive a light motor vehicle for at least one year.

Also, if the intention of parliament is to allow all LMV driving license holder to drive LMV Transport vehicles, then there is no need of sub-section (1) of 2A which is a proviso to sub-section (1) of section 7 and sub-section 10 of section

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9 are not applicable for E-cart and e-rickshaw although it falls under definition of transport vehicle. Also, As per section 4 (3) of the act no Learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application, unless he is eligible to drive that class of vehicle under this Section.

The very reason for such a classification is the driving skill and mechanism involved in varied classes of motor vehicles, if a person holding LMV driving licence is permitted to drive road roller, he may not be able to manage the same to secure the safety of road users.

This Hon'ble High Court has not turned it's back towards the impact of Section 66 of M. V. Act, 1988 while deciding the said judgment of LMV driving licence. This Hon'ble Court has not even considered the impact of proviso attached sub section (2) of Section 14 which reads as follows.

"Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

Rule 129 of Central Motor Vehicles Rules, 1989 deals with transportation of goods of dangerous or hazardous nature to human life. Under Rule 91(c) dangerous or hazardous goods are defined. There are primary and secondary risks involved in carriage of hazardous goods. Further, it is

pertinent to note that Section 190(3) of M. V. Act deals with punishment to those carrying dangerous or hazardous goods and whoever violates the provisions of the Act. By virtue of the Order passed in the case of Mukund Dewangan vs. Oriental Insurance Co. Ltd., & Others, a goods carriage weighing less than 7500 kg can transport hazardous goods and other provisions including Section 193 of M. V. Act becomes redundant. Description of vehicle necessarily means the various types of vehicles as provided in Form No 4 & 8.

The word used while defining light motor vehicle is not properly considered because the legislature thought it fit to consider a transport vehicle also as light motor vehicle for the purposes of classification.

The Hon'ble High Court without going to the merits of the case, have passed the impugned judgment while blindly relying on Mukund Dewangan's Judgment without comprehending the legal issues that were raised by the petitioner before the Hon'ble High Court and the same have not been addressed to at all. Following are the points that have not been addressed in Mukund Devangan's case and therefore needs a reconsideration.

1. *Sec 3. Necessity for driving licence.* - (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than 7[a motorcab or motor cycle] hired for his own use or rented under any scheme made

under sub - section (2) of section 75] unless his driving licence specifically entitles him so to do.

Section 3 of MV Act prescribes two rules as under :-

- I. Person holds an effective driving licence- authorization to drive the vehicle- as per Sec 10 of MV Act.
- II. To drive "Transport vehicle"-Specific entitlement is mandatory. As per Section 10 read with Section 11 of MV Act read with Section 41 and No S.O. 1248 (E), dated 5th November, 2004. Appendix X.

Exception to above Rule:-

- Motor Cycle (Transport) or Motor Cab (Transport) hired for own use or rented under any scheme made under sub - section (2) of section 75]
- 2. As per Section 4 of M. V. Act, which is with regard to the age limit in connection with driving of motor vehicles:

"(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

Meaning thereby, the legislature had in mind different age limit while granting licenses in different categories.

3. Further as per Section 6 of M. V. Act, no person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of Section 18 or a document authorizing in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle and sub section(3) of Section 6 would empower the licensing authority to add to the classes of vehicles which the driving license authorizes the holder to drive.

4. The other important restrictions imposed under Section 7 of M. V. Act is that no person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.

5. Sub section (2) of Section 7 mandates that no person under the age of eighteen years shall be granted a learner's licence to drive a motorcycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.

6. Licence could be grant as per Section 8 of M. V. Act to

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any person who is not disqualified under Section 4 and who is not for the time being disqualified for holding or obtaining a driving licence subject provisions of Section 7. However, proviso to sub section (3) of Section 8 indicates that no such medical Certificate is required for licence to drive a vehicle other than a transport vehicle.

7. Driving licence would not be granted to a person who is suffering from any disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorized by the learner's licence applied for to drive to be a source of danger to the public.

8. As per Section 9 various provisions are made for grant of driving licence. Proviso attached to Sub section (3) of Section 9 reads as follows.

“ Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub section, if the applicant possesses a driving Certificate issued by any institution recognized in this behalf by the State Government.”

Sub section (4) reads as follows.

“ (4) Where the Application is for a licence to drive a transport vehicle, no such authorization shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving Certificate issued by a

school or establishment referred to in Section 12."

9. Sub section (6) of Section 9 indicates that the test of competence to drive shall be carried out in a vehicle of the type to which the application refers.

10. Section 11 gives an indication that it is only that addition to the driving licence could be made and the word endorsement is not at all applicable under the new Act. If a person is holding driving licence to drive any class or description of motor vehicle can make an application for the addition of such other class or description of the motor vehicles to the licence.

11. Section 14 of M. V. Act deals with currency of licences to drive motor vehicles. As per Sub section (2) of Section 14, licence to drive a transport vehicle be effective for a period of three years and the proviso would indicate that if a driver having driving licence to drive transport vehicle wishes to drive a vehicle carrying goods of dangerous and hazardous nature is effective for a period of one year and renewal thereof shall be subject to condition that he undergoes one day refresher course. In the case of any other licence, licence would be granted for a period of twenty years, if the person is below the age of 50 years. If the person has attained the age of 50 years, the renewal thereof be effective for a period of five years from the date of such issue or renewal.

12. Registration of vehicle assumes paramount importance to determine the particulars required to be included in the

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Certificate of registration. As per sub section(4) of Section 41, it shall also specify the type of motor vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by Notification in the Official Gazette, specify. The Central Government has notified as per Appendix X, the specifications of type of motor vehicles. It has specified the type of motor vehicle one falling under transport vehicle and other falling under non-transport vehicle. Motorcycle with trailer to carry goods could be either transport vehicle or non-transport vehicle. Likewise, Motor cab and Luxury cabs are notified as transport vehicles, whereas Motor car is notified as non-transport vehicle. Maxi cab, Educational Institution bus, private service vehicle and other vehicles are classified as transport vehicles. This classification and types of motor vehicles would amply prove and establish that a vehicle could be either transport vehicle or non-transport vehicle. It depends on the design, construction and use of the motor vehicle. It is worth noticing the definitions of non-transport vehicle as stated in Rule 2(h) of Central Motor Vehicles Rules.

“Rule 2(h) - “Non-transport vehicle” means a motor vehicle which is not a transport vehicle.”

It is important to note the class of vehicle, type of vehicle, description and category of vehicles. Private vehicle cannot be used for hire or reward. However, if a private vehicle is registered as a transport vehicle with a permit, it could be used for hire or reward.

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13. The Central Government under Section 112 of M. V. Act has prescribed the maximum speed or below the maximum speed fixed for the vehicles and Appendix XI is notified which would make a clear distinction between light motor vehicle transport and light motor vehicle non-transport vehicle. While referring to the class of vehicles, it indicates that if the vehicle is a light motor vehicle, other than transport vehicle, there is no speed limit. However, if the vehicle is a light motor vehicle and a transport vehicle, the maximum speed is fixed at 65 kms.

14. The defense given to an Insurer in so far as driving licenses are concerned is that the driver is required to be duly licensed. This necessarily means that the Insurer can take up a defense to the effect that the driver was not duly licensed at the relevant point of time. The dictionary meaning of duly licensed gives a clear indication that after following all the rules and procedures required, the person can be termed as duly licensed. The other examples that could be cited are 'duly registered', 'duly appointed' and 'duly stamped'. If any one of the rules is not followed, the same cannot be termed as duly effected.

15. The Apex Court has not considered the impact of Section 66 of M. V. Act while deciding LMV driving licence. The Supreme Court has not even considered the impact of proviso attached sub section (2) of Section 14 which reads as follows.

"Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be

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effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

16. Rule 129 of Central Motor Vehicles Rules deals with transportation of goods of dangerous or hazardous nature to human life. Under Rule 91(c) dangerous or hazardous goods are defined. There are primary and secondary risks involved in carriage of hazardous goods. Further, it is pertinent to note that Section 190(3) of M. V. Act deals with punishment to those carrying dangerous or hazardous goods and whoever violates the provisions of the Act. By virtue of the Order passed in the case of Mukund Dewangan vs. Oriental Insurance Co. Ltd., & Others, a goods carriage weighing less than 7500 kg can transport hazardous goods and other provisions including Section 193 of M. V. Act becomes repugnant.

17. Provisions of M. V. Act indicate the class of vehicles or description of the vehicle as per Section 2(10) of M. V. Act and Section 10 of M. V. Act deals with class of vehicles and a separate class is made for light motor vehicle. A light motor vehicle if it is tendered for registration it would be registered as a light motor vehicle(Non-transport). Until and unless a light motor vehicle is registered as a transport vehicle, question of payment of additional road tax would not arise.

18. Appendix X of M. V. Act indicates the types of motor vehicles. A motor vehicle could be either transport or non-transport vehicle depending on the type, use and

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construction. Category of vehicles are defined under Rule 2(i) to (r) of Central Motor Vehicles Rules.

19. Description of vehicle necessarily means the various types of vehicles produced by each Company.

20. The definition of light motor vehicle means a transport vehicle or omnibus, the gross vehicle weight of either of which is considered for the purposes of classifying the vehicle as a light motor vehicle.

It is pertinent to note that the word used 'or' will have a lot of meaning as omnibus will have carrying capacity of more than six persons excluding the driver. However, omnibus cannot be used for hire or reward. This necessarily means that the vehicle could be either transport or non-transport vehicle.

21. It is pertinent to note that road roller is not defined. It is a separate class of vehicle under Section 10 of M. V. Act. However, the said road roller is also included under definition of motor vehicles. The driving skill and mechanism of road roller is entirely different. If a person holding LMV driving licence is permitted to drive road roller, he may not be able to manage the same to secure the safety of road users.

It is further stated here that the Hon'ble High Court vide its Impugned order has overlooked that at the time of the accident the driver/respondent no.10 herein did not have a valid Driving License thus it was an illegal act and therefore in the light of the same the Insurance Company

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is exonerated from its liability as the same not only amounts to violation of policy conditions but also amounts to breach of laws of land.

In the present matter the petitioner cannot be saddled with a liability to indemnify a claim amount arising out of the illegal act which is duly observed by the MACT, Sirohi in its order. When the deceased Bhanwarlal was riding the Autorickshaw bearing registration no. RJ-24-PA-0866 which was driven by Respondent no.10 herein in a rash and negligent manner due to which the autorickshaw turned turtle while driving passengers resulting in Bhanwarlal sustaining certain injuries and later death against which the claim was brought.

The Hon'ble High Court without going to the merits of the case, have passed the impugned judgment while blindly relying on Mukund Dewangan's Judgment without comprehending the legal issues that were raised by the petitioner before the Hon'ble High Court which have not been addressed to at all.

That the petitioner has challenged the impugned award on the ground that directions to pay to claimant and recover it from Insured is bad in law and against the basic principles/provisions of MV Act, e.g. Sec 149 read with section 147 of MV Act in particular. But The Hon'ble High Court without going to the merits of the case, have passed the impugned judgment while blindly relying on Mukund Dewangan's Judgment without comprehending the legal issues that were raised by the petitioner before the Hon'ble

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High Court which have not been addressed to at all.

That Hon'ble Court has failed to appreciate that the present case was one where the pay and recover direction ought not to have been issued as in the case as there was breach of the policy's terms and conditions as mentioned under section 149 (2) by plying the offending vehicle without valid & effective driving license.

Therefore, it is most respectfully prayed by the petitioner to allow the present SLP and set aside the order dated 04/08/2017 passed by Hon'ble High Court of judicature for Rajasthan at Jodhpur.

LIST OF DATES

10.02.2008 Deceased Bhanwarlal was riding the Autorickshaw bearing registration no. RJ-24-PA-0866 which was driven by Respondent no.10 herein in a rash and negligent manner due to which the autorickshaw turned turtle while driving passengers resulting in Bhanwarlal sustaining certain injuries and later death. against which the claim was brought.

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2008

Claim petition no.81/2008 was preferred before the Motor Accident Claims Tribunal, Sirohi.

Dated nil

The Petitioner herein filed a reply in the claim petition denying the averments made therein, stating that the driver of the insured vehicle did not have a valid Driving License to ply the said vehicle at the time of accident, it was also made clear that Insured Vehicle did not have a valid permit to ply the said vehicle on the route where it was at the time of the accident.

22.07.2011

The Ld. Motor Accident Claims Tribunal, Sirohi in Claim no. 81/2008 awarded the compensation of Rs.5,02,800/- in favor of Claimants/Respondents herein. A copy of the order dated 22.07.2011 in 81/2008 is annexed as Annexure-P/1 (pg 23 - 66).

2011

Aggrieved by the Ld. MACT, Sirohi, order dated 22.07.2011 the petitioner herein preferred S.B. Civil Misc. Appeal No. 5127/2011 before the

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Hon'ble High Court of Judicature for Rajasthan at Jodhpur on the grounds that the Tribunal has failed to rightly appreciate the facts and circumstances of the present case. A copy of S.B. Civil Misc. Appeal No. 5127/2011 is annexed herein as Annexure-P/2 (pg 67 to 71).

22.02.2012 Notice was issued by the Hon'ble High Court and the award amount was deposited in the Tribunal which was later disbursed to the claimants upon an undertaking filed. A copy of the order dated 22.02.2012 passed by the Hon'ble High Court in S.B. Civil Misc. Appeal No. 5127/2011 is annexed herein as Annexure-P/3 (pg 72).

04.08.2017 The Hon'ble High Court was pleased to dismiss the S.B. C. M. A. No. 5127/2011 vide the impugned final judgment & order in the light of this Hon'ble Court's Judgment in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors.

15.09.2017 Hence the present Special Leave Petition is being filed.

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**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 5127 / 2011

Bajaj Allianz General Insurance Company Limited through its
Divisional Manager, Lokkala Mandal Ke Pass, Udaipur.

----Appellant

Versus

1. Smt. Rambha Devi W/o late Shri Tarachand aged [REDACTED]
2. Smt. Feniya Devi @ Sita W/o late Shri Bhanwarlal aged [REDACTED]
3. Ajay Kumar S/o late Shri Bhanwarlal aged [REDACTED]
4. Dheeraj Kumar S/o late Shri Bhanwarlal aged [REDACTED]
5. Gaurav Kumar S/o late Shri Bhanwarlal aged [REDACTED]
6. Arun Kumar S/o late Shri Bhanwarlal aged [REDACTED]
7. Pradeep Kumar S/o late Shri Bhanwarlal [REDACTED]
8. Praveen S/o Shri Heeralal aged [REDACTED]
9. Chaggan Lal S/o Tarachand aged [REDACTED]
10. Shri Ranchod S/o Saadal Ji aged [REDACTED]

----Respondents



राष्ट्रीय प्रतिनिधि

प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय
जोधपुर

For Appellant(s) : Mr. Vinay Kothari

For Respondent(s) : Mr. J.P. Bhardwaj

-8 AUG 2017

HON'BLE MR. JUSTICE ARUN BHANSALI

Judgment

04/08/2017

This appeal is directed against judgment and award dated 22.07.2011 passed by Motor Accident Claims Tribunal, Sirohi ('the Tribunal'), whereby, the Tribunal has awarded a sum of

Rs. 5,02,800/- as compensation in favour of claimants and though the appellant Insurance Company has been exonerated, has directed for first paying and then recovering the same from the owner.

The Tribunal while deciding the issue pertaining to the liability of the Insurance Company came to the conclusion that as the driver was in possession of driving licence authorized to drive light motor vehicle and the vehicle in question being an Auto, was a transport vehicle and, therefore, there was violation of policy conditions and the Insurance Company was not liable and, consequently, ordered for pay and recover.

The Insurance Company had filed the appeal challenging the direction to pay and recover.

When the appeal came up for admission, it was directed that the amount as ordered by the Tribunal may be deposited in the Tribunal and the amount shall be disbursed to the claimants, upon undertaking by the claimants that in the event of passing of adverse order in appeal, the claimants shall refund the said amount.



राज्य प्रतिनिधि
प्रशासनिक अधिकारी न्यायिक
राजस्थान राज्य न्यायालय
जोधपुर

The issue of requirement of licence for driving a Light Transport Vehicle now stands concluded by Larger Bench judgment of Hon'ble Supreme Court in *Mukund Dewangan v. Oriental Insurance Company Limited & Ors.* : C.A. 5826/2011 decided on 03.07.2017 and, therefore, the finding recorded by the Tribunal for exonerating the Insurance Company and ordering for pay and recover cannot be sustained.

- 8 AUG 2017

In view thereof, though there is no cross-objection filed by

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(3 of 3)

[CMA-5127/2011]

the owner of the vehicle, exercising powers under Order XLI, Rule 33 CPC, the finding recorded by the Tribunal on issue No.3 deserves to be and is set aside.

Consequently, the appeal filed by the appellant Insurance Company is dismissed. It is further ordered that the Insurance Company would be liable for payment of compensation alongwith owner and driver of the vehicle and the direction of the Tribunal pertaining to pay and recover shall stand set aside.

(ARUN BHANSALI)J.

A.K. Chouhan/-111

T.C.



सही प्रतिलिपि
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय
जोधपुर

12
08.08.17

8 AUG 2017

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FORM No. 28
IN THE SUPREME COURT OF INDIA
(Under Order XXI Rule 3 (1) (a) of Supreme Court Rules, 2013)
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2017
(Under Article 136 of the Constitution of India)

BETWEEN IN THE HIGH COURT IN THIS COURT
In the matter of:-

1. M/s Bajaj Allianz General Insurance Co. Ltd.
Through Divisional Manager,
Lokkala Mandal Ke Pass, Udaipur, Rajasthan.
...Appellant ...Petitioner

VERSUS

1. Smt. Rambha Devi [REDACTED]
[REDACTED]
...Claimant/Respondent No. 1 Respondent No. 1

2. Smt. Feniya Devi @ Sita [REDACTED]
[REDACTED]
....Claimant/Respondent No.2 ...Respondent No. 2

3. Ajay Kumar [REDACTED]
[REDACTED]
...Respondent No. 3 ...Respondent No. 3

4. Dheeraj Kumar [REDACTED]
[REDACTED]
...Respondent No.4...Respondent No. 4

5. Gaurav Kumar [REDACTED]
[REDACTED]
...Respondent No.5...Respondent No. 5

6. Arun Kumar [REDACTED]
[REDACTED]
...Respondent No.6...Respondent No. 6

7. Pradeep Age [REDACTED]
[REDACTED]
...Respondent No.7...Respondent No. 7

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Respondent no. 3 to 7 [REDACTED] respondent through their natural mother Smt. Feniya Devi @ Sita (Respondent No.2)

8. Praveen Kumar Age [REDACTED]
[REDACTED]

...Respondent No.8...Respondent No.8

9. Chaggan Lal Age [REDACTED]
[REDACTED]

...Respondent No.9...Respondent No. 9

10. Shri Ranchod aged [REDACTED]
[REDACTED]

...Respondent No.10 ...Respondent No.10

ALL ARE CONTESTING RESPONDENTS.

TO,

**THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED**

MOST RESPECTFULLY SHOWETH:

1. That the petitioner above-named respectfully submits the present petition seeking Special Leave to Appeal under Article 136 of the Constitution of India against the impugned final judgment & order passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur dated 04.08.2017 in S.B. Civil Misc. Appeal No. 5127/2011, vide which the Hon'ble High Court was pleased to dismiss the appeal on the grounds of being time barred.

2. QUESTIONS OF LAW:

The following questions of law, of substantial

importance, arise for the consideration of this Hon'ble Court in the present Special Leave Petition:

- (I) Whether the Hon'ble High Court ought not to have decided the appeal on the merits of the case while serving justice to the petitioner who has been falsely looped into the present matter.
- (II) Whether Hon'ble High Court ought not to have wrongly dismissed the Appeal while wholly relying on the Judgment of this Hon'ble Court in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors. : C.A.5826/2011 which has defeated its objective has led to more ambiguity towards the definition of the Light Motors Vehicle (LMV) as per section 2(21) of the Motors Vehicle act, 1988 as well as in regards of the amended section 10(2) of said Act, 1988 as the two stands contracting other provisions of the act in a way making them infructuous. That the passing of the pay and recover order such as this one after appreciating the contentions and circumstances of the petitioner herein would out rightly defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of the MV Act.
- (III) Whether the Hon'ble High Court ought not to have considered the fact that the said vehicle was not having the valid permit or license to carry the passengers as was engaged in on the day of the accident.
- (IV) Whether the Hon'ble High Court ought not to have

considered the merits of the case, and the legal issues that were raised by the petitioner?

- (V) Whether the Hon'ble High Court ought not to have considered Section 3 and Section 4 of M. V. Act, which is with regard to the necessity of Driving licence and Section 4 of M. V. Act, which is with regard to the age limit in connection with driving of motor vehicles: Section 4:

"(1) No person under the age of eighteen years shall drive a motor vehicle in any public place;

Provided that a motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years.

(2) Subject to the provisions of section 18, no person under the age of 20 years shall drive a transport vehicle in any public place.

(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section."

- (VI) Whether the Hon'ble High Court ought not to have considered that as per Section 6 of M. V. Act, no person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of Section 18 or a document authorizing in accordance with the rules made under Section 139, the person specified therein to drive a motor vehicle and sub section(3) of Section 6 would empower the licensing authority to add to the

classes of vehicles which the driving license authorizes the holder to drive.

- (VII) Whether the Hon'ble High Court ought not to have considered that the other important restrictions imposed under Section 7 of M. V. Act is that no person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year.
- (VIII) Whether the Hon'ble High Court ought not to have considered that Sub section (2) of Section 7 mandates that no person under the age of eighteen years shall be granted a learner's licence to drive a motorcycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence,
- (IX) Whether the Hon'ble High Court ought not to have considered that Licence could be grant as per Section 8 of M. V. Act to any person who is not disqualified under Section 4 and who is not for the time being disqualified for holding or obtaining a driving licence subject provisions of Section 7. However, proviso to sub section (3) of Section 8 indicates that no such medical Certificate is required for licence to drive a vehicle other than a transport vehicle.
- (X) Whether the Hon'ble High Court ought not to have considered that Driving licence would not be granted to a person who is suffering from any disease or disability which is likely to cause the driving by him of a motor vehicle of the class

which he would be authorized by the learner's licence applied for to drive to be a source of danger to the public.

- (XI) Whether the Hon'ble High Court ought not to have considered that as per Section 9 various provisions are made for grant of driving licence. Proviso attached to Sub section (3) of Section 9 reads as follows.

"Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub section, if the applicant possesses a driving Certificate issued by any institution recognized in this behalf by the State Government."

Sub section (4) reads as follows.

"(4) Where the Application is for a licence to drive a transport vehicle, no such authorization shall be granted to any applicant unless he possesses such minimum educational qualification as may be prescribed by the Central Government and a driving Certificate issued by a school or establishment referred to in Section 12."

- (XII) Whether the Hon'ble High Court ought not to have considered that sub section (6) of Section 9 indicates that the test of competence to drive shall be carried out in a vehicle of the type to which the application refers.

- (XIII) Whether the Hon'ble High Court ought not to have

considered that Section 11 gives an indication that it is only that addition to the driving licence could be made and the word endorsement is not at all applicable under the new Act. If a person is holding driving licence to drive any class or description of motor vehicle can make an application for the addition of such other class or description of the motor vehicles to the licence.

(XIV) Whether the Hon'ble High Court ought not to have considered that Section 14 of M. V. Act deals with currency of licences to drive motor vehicles. As per Sub section (2) of Section 14, licence to drive a transport vehicle be effective for a period of three years and the proviso would indicate that if a driver having driving licence to drive transport vehicle wishes to drive a vehicle carrying goods of dangerous and hazardous nature is effective for a period of one year and renewal thereof shall be subject to condition that he undergoes one day refresher course. In the case of any other licence, licence would be granted for a period of twenty years, if the person is below the age of 50 years. If the person has attained the age of 50 years, the renewal thereof be effective for a period of five years from the date of such issue or renewal.

(XV) Whether the Hon'ble High Court ought not to have considered that the Registration of vehicle assumes paramount importance to determine the particulars required to be included in the Certificate of registration. As per sub section (4) of Section 41, it shall also specify the type of motor

vehicle, being a type as the Central Government may, having regard to the design, construction and use of the motor vehicle, by Notification in the Official Gazette, specify. The Central Government has notified as per Appendix X, the specifications of type of motor vehicles. It has specified the type of motor vehicle one falling under transport vehicle and other falling under non-transport vehicle. Motorcycle with trailer to carry goods could be either transport vehicle or non-transport vehicle. Likewise, Motor cab and Luxury cabs are notified as transport vehicles, whereas Motor car is notified as non-transport vehicle. Maxi cab, Educational Institution bus, private service vehicle and other vehicles are classified as transport vehicles. This classification and types of motor vehicles would amply prove and establish that a vehicle could be either transport vehicle or non-transport vehicle. It depends on the design, construction and use of the motor vehicle. It is worth noticing the definitions of non-transport vehicle as stated in Rule 2(h) of Central Motor Vehicles Rules.

“Rule 2(h) “Non-transport vehicle” means a motor vehicle which is not a transport vehicle.” It is important to note the class of vehicle, type of vehicle, description and category of vehicles. Private vehicle cannot be used for hire or reward. However, if a private vehicle is registered as a transport vehicle with a permit, it could be used for hire or reward.

(XVI) Whether the Hon'ble High Court ought not to have considered that the Central Government under Section 112 of M. V. Act has prescribed the maximum speed or below the maximum speed fixed for the vehicles and Appendix XI is notified which would make a clear distinction between light motor vehicle transport and light motor vehicle non-transport vehicle. While referring to the class of vehicles, it indicates that if the vehicle is a light motor vehicle, other than transport vehicle, there is no speed limit. However, if the vehicle is a light motor vehicle and a transport vehicle, the maximum speed is fixed at 65 kms.

(XVII) Whether the Hon'ble High Court ought not to have considered that the defense given to an Insurer in so far as driving licenses are concerned is that the driver is required to be duly licensed. This necessarily means that the Insurer can take up a defense to the effect that the driver was not duly licensed at the relevant point of time. The dictionary meaning of duly licensed gives a clear indication that after following all the rules and procedures required, the person can be termed as duly licensed. The other examples that could be cited are 'duly registered', 'duly appointed' and 'duly stamped'. If any one of the rules is not followed, the same cannot be termed as duly effected.

(XVIII) Whether the Hon'ble High Court ought not to have considered that the Apex Court has not considered the impact of Section 66 of M. V. Act

while deciding LMV driving licence. The Supreme Court has not even considered the impact of proviso attached sub section (2) of Section 14 which reads as follows.

"Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus."

(XIX) Whether the Hon'ble High Court ought not to have considered that Rule 129 of Central Motor Vehicles Rules deals with transportation of goods of dangerous or hazardous nature to human life. Under Rule 91(c) dangerous or hazardous goods are defined. There are primary and secondary risks involved in carriage of hazardous goods. Further, it is pertinent to note that Section 190(3) of M. V. Act deals with punishment to those carrying dangerous or hazardous goods and whoever violates the provisions of the Act. By virtue of the Order passed in the case of Mukund Dewangan vs. Oriental Insurance Co. Ltd., & Others, a goods carriage weighing less than 7500 kg can transport hazardous goods and other provisions including Section 193 of M. V. Act becomes repugnant.

(XX) Whether the Hon'ble High Court ought not to have considered that the Provisions of M. V. Act indicate the class of vehicles or description of the vehicle as per Section 2(10), of M. V. Act and

Section 10 of M. V. Act deals with class of vehicles and a separate class is made for light motor vehicle. A light motor vehicle if it is tendered for registration it would be registered as a light motor vehicle(Non-transport). Until and unless a light motor vehicle is registered as a transport vehicle, question of payment of additional road tax would not arise.

- (XXI) Whether the Hon'ble High Court ought not to have considered that appendix X of M. V. Act indicates the types of motor vehicles. A motor vehicle could be either transport or non-transport vehicle depending on the type, use and construction. Category of vehicles are defined under Rule 2(i) to (r) of Central Motor Vehicles Rules.
- (XXII) Whether the Hon'ble High Court ought not to have considered that the description of vehicle necessarily means the various types of vehicles produced by each Company.
- (XXIII) Whether the Hon'ble High Court ought not to have considered that the definition of light motor vehicle means a transport vehicle or omnibus, the gross vehicle weight of either of which is considered for the purposes of classifying the vehicle as a light motor vehicle.
- (XXIV) Whether the Hon'ble High Court ought not to have considered that it is pertinent to note that the word used 'or' will have a lot of meaning as omnibus will have carrying capacity of more than six persons excluding the driver. However, omnibus cannot be used for hire or reward. This

necessarily means that the vehicle could be either transport or non-transport vehicle.

(XXV) Whether the Hon'ble High Court ought not to have considered that it is pertinent to note that road roller is not defined. It is a separate class of vehicle under Section 10 of M. V. Act. However, the said road roller is also included under definition of motor vehicles. The driving skill and mechanism of road roller is entirely different. If a person holding LMV driving licence is permitted to drive road roller, he may not be able to manage the same to secure the safety of road users.

(XXVI) Whether the Hon'ble High Court ought not to have considered that it is further stated here that the Hon'ble High Court vide its Impugned order has overlooked that at the time of the accident the driver/respondent no.10 herein did not have a valid Driving License thus it was an illegal act and therefore in the light of the same the Insurance Company is exonerated from its liability as the same not only amounts to violation of policy conditions but also amounts to breach of laws of land.

(XXVII) Whether the Hon'ble High Court ought not to have considered that in the present matter the petitioner cannot be saddled with a liability to indemnify a claim amount arising out of the illegal act which is duly observed by the MACT, Sirohi in it's order. When the deceased Bhanwarlal was riding the Autorickshaw bearing registration no. RJ-24-PA-0866 which was driven by Respondent

no.10 herein in a rash and negligent manner due to which the autorickshaw turned turtle while driving passengers resulting in Bhanwarlal sustaining certain injuries and later death against which the claim was brought.

3. DECLARATION IN TERMS OF RULE 3 (2):

That the petitioner states that no other or similar petition seeking leave to appeal has been filed by him against the impugned final judgment and order dated 04.08.2017 of the Hon'ble High Court.

4. DECLARATION IN TERMS OF RULE 5 :

That the Annexures P/1 to P/3 produced alongwith the present Special Leave Petition are true copies of their respective originals and were a part of the pleadings and the records of the case in the High Court below, against whose order the leave to appeal is sought for, in the present Special Leave Petition.

5. GROUND S :

That the petitioner crave for the indulgence of this Hon'ble Court to grant Special Leave to Appeal, against the impugned final judgment & order, inter-alia, on following amongst other grounds :

- A. Because the Hon'ble High Court has wrongly dismissed the Appeal while wholly relying on the Judgment of this Hon'ble Court in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors. : C.A.5826/2011 which has defeated its objective has lead to more ambiguity towards the definition of the Light Motors Vehicle

(LMV) as per section 2(21) of the Motors Vehicle act, 1988 as well as in regards of the amended section 10(2) of said Act, 1988 as the two stands contracting other provisions of the act in a way making them infructuous. That the passing of the pay and recover order such as this one after appreciating the contentions and circumstances of the petitioner herein would out rightly defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of the MV Act.

- B. Because the Hon'ble High Court has overlooked the glaring error committed by the Ld. MACT, Sirohi vide its order dated 22.07.2011 in MJC. No. 81/2008 directing the petitioner herein to pay and recover a compensation of Rs. 5,02,800/- while ironically explicitly admitting in its order that at the time of the accident the driver/respondent no.10 herein did not have a valid Driving License thus it was an illegal act and therefore in the light of the same the Insurance Company is exonerated from its liability as the same not only amounts to violation of policy conditions but also amounts to breach of laws of land.
- C. Because the Hon'ble High Court ought to have considered the fact that the learned Tribunal erred in holding that the deceased as the third party as the same was a gratuitous passenger which was also stated in the claim petition itself and is a matter of record. This fact was specifically pleaded by the petitioner. Before the learned Tribunal as

well but was overlooked.

- D. Because the Hon'ble High Court ought to have considered the fact that the autorickshaw at the time of the accident was not having the valid permit or license to carry the passengers.
- E. Because the petitioner is challenging the impugned award on the ground that directions to pay to claimant and recover it from Insured is bad in law and against the basic principles/provisions of MV Act, e.g. Sec 149 read with section 147 of MV Act in particular.

6. GROUND FOR INTERIM RELIEF : NA

7. MAIN PRAYER :

In the premises set forth above, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (i) GRANT Special Leave to Appeal against the impugned final judgment & order dated 04.08.2017 passed by Hon'ble High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Misc. Appeal No. 5127/2011;
- (ii) PASS such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

8. PRAYER FOR INTERIM RELIEF: NA

AND FOR THIS ACT OF KINDNESS THE PETITIONER
SHALL EVER PRAY AS DUTY-BOUND

DRAWN & FILED by:

(ARCHANA PATHAK DAVE)

Advocate for Petitioner

DATE OF DRAFTING: 05.09.2017

PLACE : New Delhi

FILED ON: 15.09.2017

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2017

In the matter of :

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD. ...Petitioner
VERSUS
SMT. RAMBHA DEVI & ORS ...Respondents

CERTIFICATE

It is hereby certified that the above Special Leave Petition is confined only to the pleadings before the Courts whose order is being challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the above Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the above Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the above Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioner whose affidavit is filed in support of this Special Leave Petition.

Filed by :

(ARCHANA PATHAK DAVE)
Advocate for the Petitioner

Filed on : 15.09.2017
NEW DELHI

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO _____ OF 2017



In the matter of :

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD. ...Petitioner

VERSUS

SMT. RAMBHA DEVI & ORS ...Respondents

AFFIDAVIT

I, YOGITA SHARMA, 


1. That I am the representative of the petitioner in the Special Leave Petition and well acquainted with the facts and circumstances of the present case and competent to swear the present affidavit.
2. That the facts stated in the Special Leave Petition in paras 1 to 8 paragraph in pages no. 4 to 19, Synopsis and List of Dates in pages B to O, and I.A. for Exemption from filing Official Translation in Paras 1 to 4, in pages 73 to 74, are true to my knowledge and belief the rest are humble submissions before this Hon'ble Court and the Annexures P/1 to P/3 are true copies of their respective originals.
3. That the contents of instant Affidavit Paras 1, 2 and 3 are correct to the best of my knowledge and belief and nothing has been concealed therefrom

DEPONENT

VERIFICATION

Verified at *New Delhi* on this *15th* day of September, 2017 that the facts stated in the above affidavit are true to my knowledge and belief. No part of the same is false and nothing material has been kept concealed therefrom.

DEPONENT

APPENDIX

MOTOR VEHICLE ACT, 1988

Section 2 - Definitions

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description

(15) "gross vehicle weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle

(16) "heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which, exceeds 12,000 kilograms;

(17) "heavy passenger motor vehicle" means any public service vehicle or private service vehicle or educational institution bus or omnibus the gross vehicle weight of any of which, or a motor car the unladen weight of which, exceeds 12,000 kilograms

(21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 2 [7500] kilograms

(23) "medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle

(49) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

(9) "driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;

(10) "driving licence" means the licence issued by a competent authority under Chapter II authorising the person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or description;

(11) "educational institution bus" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities;

TRUE COPY

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Annexure P/1

TRANSLATION FROM HINDI TO ENGLISH

MOTOR ACCIDENT CLAIM TRIBUNAL

(ADDITIONAL DISTRICT AND SESSION COURT)

AABU ROAD, DISTRICT SIROHI (RAJASTHAN)

Presiding Officer:

Shri Yogesh Kumar Sharma

R.H.J.S.

Original Claim Petition No. 81/2008

1. Smt. Rambha Devi

2. Smt. Feniya Devi

3. Ajay Kumar

4. Dheeraj Kumar [REDACTED]

5. Gaurav Kumar [REDACTED]

6. Arun Kumar [REDACTED]

7. Pardeep Kumar [REDACTED]

8. Parveen [REDACTED]

All minors applicants through Smt.
Feniya Devi, Applicant No. 2.

9. Chhagan Lal [REDACTED]

.....Applicants

VERSUS

1. Shri Ran Chhod [REDACTED]

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2. Bajaj Alainz General Insurance
Company Limited through Divisional
Manager, Near Lok Kala Mandan,
Udaipur.

.....Respondents

PETITION UNDER SECTION 166, 140 M.V.

ACT REGARDING ACCIDENT DEATH

COMPENSATION RS.35,82,000/-

Present :-

1. Shri Lokesh Banjara, Advocate on
behalf of (all) applicants.
2. Shri Sanjay Chaudhary, Advocate on
behalf of respondent no. 1.
3. Shri Parveen Kumar Shah, Advocate
on behalf of respondent no. 2.

JUDGMENT

DATED 22ND JULY 2011

1. In brief, the relevant pleading
of the petition filed on

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18.02.2008 under Section 166, 140 of Motor Vehicle Act against applicants Smt. Rambha Devi and other against Respondents Ran Chhod and others are as follows that on 10.02.2008 respondent no. 1, through driving vehicle / auto riksha number R.J. 24-PA-0866 of his ownership in fast speed and carelessly, drove the same on road in the boundary of village Maval, due to this reason, auto overturned and due to causing serious injuries on the head and chest of the son of applicant no. 1 and husband of applicant no. 2 Bhanwar Lal, who had been riding in the auto, he died on the date of the accident on 10.02.2008 in the evening at

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4.00 O'clock. Case no. 26/2008 of this accident was registered in Police Station Aabu Road Sadar. At the time of the accident, deceased Bhanwar Lal was a hale and healthy person of 29 years old and through doing work of machine operator and earning Rs.6,000/- monthly income, he was maintaining applicants. Driver and owner of the autorickshaw involved in the accident was respondent no.1 and above mentioned auto had insured with respondent no.2. Therefore request was made for getting providing compensation amount of Rs.35,82,000/-, in accordance with the paragraph no. 22 of the petition for the death of

Bhanwar Lal in the vehicle accident from the respondents jointly and severally.

2: Through filing reply of the petition on behalf of the respondent no. 1, stating the pleadings described in the most paragraphs of the petition have been unaccepted in the lack of information and stating them wrong and accepting that the vehicle has been insured with the respondent no. 2 and respondent no.1 is driver and owner of the vehicle, it was stated that any accident has not been caused due to the mistake of respondent no.1 and in the end, request was made for

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dismissing the petition against respondent no.1.

3. Through also filing reply of the petition on behalf of the respondent no. 2, stating the pleadings described in the most paragraphs of the petition have been unaccepted in the lack of information and stating them wrong and accepting that the vehicle No. R.J 24-PA-0866 has been insured in the name of respondent no. 1 from dated 22.09.2007 till 21.09.2008, it was stated that the claim amount has been mentioned with dishonest intention, in an excessive manner. In the special statements of the petition, it was stated that at

the time of the accident, respondent no.1 had no valid and effective permit. The vehicle involved in the accident is a commercial vehicle and driver had no badge for driving the same. Vehicle was being driver without valid permit and fitness. There was no mistake of the vehicle driver in the accident. Post Mortem examination of the deceased was not got done from which causing death of the deceased in the accident has not been verified. In the end request was made for dismissing the petition against respondent no.2.

4. On the ground of the pleadings of the parties, for the judgment

of the petition, under mentioned issues were framed:-

(i) Whether on 10.02.2008 at about 10.00 o'clock respondent no.1 Ran Chood drove vehicle tempo R.J. 24- PA - 0866 fast speed and carelessly, consequently tempo overturned and deceased Bhanwar Lal Meena died due to the injuries came in the accident,?

.....Applicant

(ii) Whether applicants have right for obtaining compensation amounting to Rs.35,82,000/- plus interest from respondents jointly and severely for the loss of income and for

other items which have caused due to the injuries came in the accident deceased Bhanwar Lal Meena died?Applicants

(iii) Whether on the ground of the objections which have submitted in the special statement made by the respondent no.2, in its reply to the application; it is not responsible for making payment of the compensation to the applicants?

....., Respondent
Insurance Company

(iv) Relief?

5. On behalf of the respondent insurance company applicant was

submitted under Section 170 of Motor Vehicle Act and accepting the same, permission has been given to the insurance company for contesting the petition on all issues.

6. In support of the petition, on behalf of the applicants, those affidavits were submitted on the ground of the chief statement and affidavit of the applicant Feniya Devi alias Sita AW-1 and Chhagan AW-2 and the same have been verified by these witnesses through presenting themselves before this Tribunal and in the documentary evidence, documents from Exhibit-1 till Exhibit-12 related with the vehicle accident, documents from

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exhibit-13 till exhibit-16 related with the treatment of the deceased before the death and police statement of AW-2 in the shape of Exhibit-17 have been filed. Cross examination was completed from these witnesses by the learned advocates of the applicants.

7. No evidence was filed on behalf of the respondent no.1. While on the behalf of respondent no.2 Insurance Company, chief statement of N.A.W.-1 Nishant on the ground of affidavit was submitted and this witness through presenting himself before this Tribunal, verifying the same, got exhibited insurance policy of the vehicle,

in the shape of Exhibit-A-2 and application filed under Section 134 M.V. Act in the shape of Exhibit-A-2. Cross examination was completed from this witness by the learned advocate of the applicant's side.

8. In connection with the petition, final argument of the learned advocates of the parties was heard. Perusal of the material available on the file was done carefully. According to the issue, judgment of the Tribunal is in the under mentioned manner:-

9. ISSUE NUMBER ONE:-

The burden of proving this issue has remained on the applicant's

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side. In this connection, from the learned advocate on behalf of the applicants this logic that the fact related to the causing death of deceased Bhanwar Lal in the vehicle accident has been verified by the applicants from the oral and documentary evidence. After the investigation, Police has filed charge sheet in the competent court under Section 279, 337, 338, 304-A IPC against respondent no. 1, for this vehicle accident. Therefore issue no.1 be decided in favor of applicants.

10. Contradictory to it, from the learned advocate on behalf of the respondent insurance company, this logic has been

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given that the post mortem report of the deceased has not been filed; therefore causing death of the deceased due to the injuries which came in this vehicle accident can not be accepted. In support of the logic, judicial citation 2011(2) T.A.C. Page 403 (A.P.) was filed.

11. Opposing the logics of the respondent insurance company, again this logic was given by the learned advocate of the applicant side that through accepting verified the fact of causing death of Bhanwar Lal in the vehicle accident, police has filed charge sheet against respondent no.1. Therefore from

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the documentary evidence submitted on the file, on account of having verified the fact of causing death of deceased Bhanwar Lal due to the vehicle accident and in lack of the post mortem report; importance should not be given to the logic for not causing death of deceased Bhanwar Lal from the vehicle accident. In support of his this logic, on behalf of the applicant side, the dependency upon judicial citation 2003 R.A.R. Page 21 (Raj.) and 2003 R.A.R. Page 187 Rajasthan was taken.

12. Argument of the both parties was considered. Perusal of the principles In the Honorable

judicial citations was done with honor. In connection with issue number one, A.W.-1 wife of deceased Feniya Devi alias Sita has done repetition of the pleadings of the petition in her chief statement and she has accepted it in the cross examination that the accident has not taken place before her and she cannot state that how accident has caused? Thus witness A.W.-1 is not eye witness of the accident. While other witness of the applicant side A.W.-2 Chhagan has stated in his chief statement that on dated 10.02.2008 in the morning at 10.00 o'clock near Maval Dargah, on Ghoom (mod), Tempo

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driver Chhagan, through driving vehicle R.J. 24 - PA - 0866 with fast speed and carelessly, tempo was overturned by him and serious injuries came to Bhanwar Lal who was sitting in the tempo due to pressing down under the tempo. Bhanwar Lal was brought in the hospital in the injured condition. Bhanwar Lal died on the same day at about 4.00 o'clock. This witness filed copy of his police statement in the shape of Exhibit-17. In the cross examination, this witness has accepted this fact as correct that he was at home at the time of the accident. He cannot state that due to whose mistake accident has caused.

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Thus only the document filed in the chief statement of the witness A.W.-1 has remained available in the shape of the best evidence for verifying the fact of death of Bhanwar Lal in this vehicle accident.

13. It is worthy to mention that report of this vehicle accident caused on 10.02.2008 in the morning at about 10.00 o'clock was submitted in the Government Hospital, Aabu Road by a person namely Bhoormal; on whose ground case no. 26/2008 was registered under Section 279, 337 IPC in Police Station Sadar Aabu Road. Police statement of the complainant Bhoormal of the above mentioned police case has

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been filed in the shape of Exhibit-4; from whose perusal it has appeared that vehicle auto number R.J.24-PA-0866 involved in the accident and at the time of the accident, Bhanwar Lal S/o Tara Chan Meena R/o Indra Colony, Aabu Road was also riding in the tempo and driver of the above mentioned tempo was respondent no.1. In this case, Police Investigating Officer has filed map of the place of accident and site map of the condition in the shape of Exhibit-2; according to which place of incident is National Highway No.14, where Dargah Maval has been shown in the west side of the place of incident

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and place of accident has been mentioned from place "X" in the east side of the Highway which is wrong side of the driving of the respondent no.1 because at the time of the accident, auto was coming from Maval towards Aabu Road. Jump has also be shown at the place of accident, from which it has appeared that the respondent no.1 has driven the vehicle with high speed and carelessly in the wrong side of the road on the mod and due to this reason respondent has not remained his balance on the vehicle on the speed breaker (jump) which has been built up on the middle of the road and auto has overturned and

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consequently this accident has caused. After the complete investigation, after holding guilty to the respondent no.1 for this vehicle accident, police has filed the charge sheet Exhibit-1 in the court of the Judicial Magistrate, Aabu Road which has also been filed for the offence committed under Section 304-A IPC. According to the injury representation of the deceased Exhibit-3, coming of total seven injures on the body of the deceased has been shown and advice has been given to refer to the Nero Surgeon on the High Health Center for getting done investigation in respect of injury numbers six and seven. It

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is statement of the applicant side that at the time of bringing deceased Bhanwar Lal for the treatment, he has died; which fact also appears from the Certificate Exhibit-8.

14. It is also worthy to mention that any statement has not been given by Nishant N.A.W.-1 in his chief examination submitted in evidence on behalf of the respondent insurance company in connection with not causing death of Bhanwar Lal in this vehicle accident. Therefore in the background of the documentary evidence submitted on the side of the applicant and statements of the witnesses in connection with the vehicle

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accident this facts stands
verified in the reasonable
manner that on 10.02.2008 in the
morning about 10.00 o'clock on
National Highway, on the mod
situated on the Maval Dargah,
vehicle autorickshaw no. R.J.
24-PA-0866 was driven by the
respondent no.1 with fast speed
and carelessly, due to this
reason auto overturned and due
to coming serious injuries on
the body of Bhawar Lal who has
been sitting in it, Bhanwar Lal
died at the time of bring him
for the treatment. In this
connection, in the light of the
principles predicated in the
judicial citations filed on
behalf of the applicant, fact of

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the death of Bhanwar Lal stands proved from document related with the investigation conducted in the police case and from the charge sheet which was filed after holding the respondent no.1 guilty for the vehicle accident. Therefore on account having not filed only the post mortem report of deceased Bhanwar Lal, the fact of causing death of Bhanwar Lal in the vehicle accident can not be denied on the ground of the evidence submitted. Resultantly issue no. one is decided in favor of the applicants. The judicial citations filed on behalf of the insurance company due to having remained different

from the fact, the same do not help it.

15. ISSUE NUMBER TWO:-

The burden of proving this issue has also remained on the applicant side. It has been stated in the petition and in the Chief Statement of A.W.-1 of Smt. Feniya Devi that the age of deceased Bhanwar Lal was 29 years and his monthly income was Rs...000/- at the time of the accident. Admittedly any document has not been filed for showing the certain age of deceased Bhanwar Lal and his monthly income. Age of deceased Bhanwar Lal has mentioned 30 years in the injury representation Exhibit-3, Charge sheet Exhibit-1 extra document.

Therefore in the lack of evidence, on the ground of the documents filed, it is fixed that the age of the deceased was more than 30 years and less than 35 years. Thus in lack of the certain evidence, monthly income of the deceased is fixed at Rs.3,000/-.

16. During the course of argument, from the learned advocate on behalf of the applicants this logic was given that the number of the dependants on the deceased is 03 therefore any personal deduction of the deceased out of the income of the deceased should not be done. In support of his

this logic; he took dependency upon of judicial citation 2009 D.N.J. (Supreme Court) Page 684 Smt. Sarla Verma and others versus Delhi Transport Corporation and others.

17. Contradictory to it, this logic was given from the learned advocate on behalf of the respondent insurance company that it has been admitted in the cross examination by the applicants side that the applicant number 08 Parveen Kumar is son of the brother of the deceased and applicant number 09 is brother of the deceased. Amongst the legal dependants/ successors, brother of the deceased and son of the

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brother can not be accepted as dependants for getting provided compensation according to the law. Therefore it is possible according to law to calculate compensation after deducting 1/3 share of the income of the deceased according to the law.

18. The argument was considered. It is an admitted position in the petition that applicant number 08 Parveen is son of the brother of the deceased and applicant number 09 Chhagan is brother of the deceased. The above mentioned applicants cannot be included in the legal dependants of the deceased. But on behalf of the applicant side, in the judicial citation

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submitted, in accordance with the principle predicated through the bench of two members of the Honorable Supreme Court, the number of the dependants of the deceased is seven. Therefore after deducting personal expenses of the deceased as 1/5 share of the income of the deceased, it is justified for getting provided to the applicants the remaining income in the shape of the compensation. Therefore applicants have right for obtaining compensation in different items as under:-

01	In the item of the loss of income, after deducting personal	Rs.4,60,800/-
----	---	---------------

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	expenses of the deceased 1/5 share of $3000 \times 12 \times 16 = 5,76,000/-$ remaining income, in the shape of loss of income	
02	For having deprived from the love and affection of the deceased	Rs.35,000/-
03	For having deprived the wife of the deceased from the sahchrya	Rs.5,000/-
04	In the item of the cremation of the deceased	Rs.2,000/-
	Total compensation amount	Rs.5,02,800/-

Therefore issue number 02 is decided in favor of the

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applicants for obtaining compensation of Rs.5,02,800/- in the partial shape.

19. ISSUE NUMBER THREE:-

The burden for proving this issue has responsibility of the respondent number 03 insurance company. In this connection, witness of the insurance company N.A.W.-1 has stated that it is necessary to have the vehicle R.J.24-PA-0866 involved in the accident insured with them through insurance policy Exhibit A-1, to drive the vehicle under the valid and effective permit according to conditions number A to B of the insurance policy and

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to have the valid and effective license for driving the above mentioned vehicle and he has given this statement that at the time of the accident, vehicle was being driven in Maval village far from Municipality area Aabu Road. On behalf of the respondent insurance company under Section 134 of M.V. Act the application was submitted for giving instruction to the respondent no. 1 for filing permit and license but he did not file the same. Therefore due to having violated the conditions of the insurance policy, the insurance policy is not responsible for making payment of the compensation. In the cross examination, this

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witness through showing ignorance in connection with this fact that from where till where is the territorial jurisdiction of the Municipality Aabu Road, has shown his ignorance also from this fact that half portion of Maval comes within municipality territory. This witness has accepted that vehicle involved in the accident was vehicle of light motor car category and in Exhibit-10, the weightless loading of the vehicle was 430 Kilogram.

20. This logic was given from the learned advocate on behalf of the respondent insurance company that the vehicle operated by the respondent no.1 is a commercial vehicle, for which there is

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essential condition of the insurance to have the valid and effective permit. Respondent no.1 has done violation of the above mentioned condition; therefore, insurance company is under responsibility for the payment of the compensation. In support of his logic, he has filed judicial citation 2005

R.A.R. Page 01 (Supreme Court).

21. Contradictory to it, this logic was given from the learned advocate on behalf of the applicants that at the time of the accident, vehicle was insured. Deceased is third party therefore insurance company is responsible for making payment of the compensation. In support

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of his logic, he has filed
judicial citation 2008 R.A.R.
Page 58 (Supreme Court).

22. The argument of the parties
was considered. According to
the registration certificate of
vehicle autorickshaw number R.J.
24-PA-0866 filed on behalf of
the applicant, which has been
filed in the shape of Exhibit-
10, the above mentioned vehicle
has been registered in the
category of light passenger
vehicle, in other words, vehicle
is that vehicle which is
used/operated in the shape of
commercial vehicle; while from
the photo copy of the driving
license filed on behalf of the
respondent no.1 which has been

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enclosed in reply of application Exhibit-A2 of the respondent side, it appears that the respondent no.1 was not authorized on the date of the accident for driving transport vehicle and his license was valid only for driving light motor car while vehicle involved in the accident is a vehicle of the commercial category. In the shape of Exhibit-18, the permit of the vehicle has been filed on behalf of the applicant side, in which the Musicality Aabu Road area has been shown for operating the vehicle. The witness of the respondent insurance company N.A.W.-1 has stated in his cross examination

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that he has no knowledge that the half portion of Maval is within the boundary of Municipality Aabu Road. While other documentary evidence has not been filed on behalf of the insurance company, from which it may appear that the place of accident situated in front of Maval Dargah is not area of Aabu Road municipality. Thus insurance company has remained unsuccessful to prove this fact that the respondent no.1 has no valid and effective license for driving the vehicle involved in this vehicle accident, from which commission of violation of the conditions of the insurance policy has been viewed. But

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deceased Bhanwar Lal is third party and respondent no.2 itself has admitted that the vehicle involved in the accident has been insured with it. Therefore in compliance of the principle predicated in the judicial citation 2008 R.A.R. Page 58 (Supreme Court) filed on behalf of the applicant side, respondent insurance is responsible for the payment of the amount of compensation fixed in the petition. But it will have the right for recovering the complete amount of the compensation which had been paid from the respondent no.1 - vehicle driver/ owner, in accordance with the rules.

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Therefore issue number three is decided in accordance with it, against the respondent insurance company.

23. RELIEF

According to the decision from issue number one to three, petition of the applicants is liable for passing award for the payment of compensation amounting to Rs.5,02,800/-. Applicants will have the right for obtaining interest at the rate of 06 per cent on the above mentioned award amount from the date of filing the petition till the date of award and insurance company will have the right for recovering the compensation amount which has been

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paid, from the respondent no.1, in accordance with the rules.

AWARD (ORDER)

After accepting the petition under Section 166, 140 of Motor Vehicle Act which was filed by the applicants Smt. Rambha Devi and others against the respondents Ran Chhod and others, award for Rs.5,02,800/- is passed in favor of the applicant in partial manner and petition is dismissed for the remaining claim. On 09.06.2009 applicants have obtained Amount of Rs.50,000/- as amount of interim compensation in Miscellaneous petition no. 25/2008 under Section 140 of Motor Vehicle Act, after adjusting the same, applicants will

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have the right for obtaining the simple interest at the rate of 06 per cent from the date of filing the petition till the date of award. Respondent no.2 insurance company submit cheque of the remaining award amount without interest, in the name of this Tribunal, within the period of two months otherwise interest will be due at the rate of 09 per cent. Insurance company will have the right for recovering from the respondent no.1 vehicle driver/ owner, the complete compensation amount which had been paid, in accordance with the rules. On submission the cheque of the compensation amount by the insurance company, an amount of Rs.50,000/- be got deposited in the name of each minor applicant from

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number 03 till 07 in the fixed deposit account, till the period of becoming their major, under the guardianship of applicant/ natural guardian mother Smt. Feniya Devi alias Sita. Thus in the name of the applicant/ wife Smt. Feniya of the deceased Rs.50-50 thousand (total one and half lakh only) for the period of three years, five years and seven years be go deposited in the fixed deposit account. Payment of Rs.40,000/- be given through saving account to the applicant Rambha Devi - mother of the deceased and payment of the reaming amount be given to the applicant Smt. Feniya through saving account. Award be prepared.

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Signed

22.7.11

(Yogesh Kumar Sharma)

Motorcar Accident Claim

Tribunal

(Additional District and

Session Court)

Aabu Road, District Sirohi

After getting written the
judgment/ award (order) today on
22.07.2011, it was pronounced in the
open Tribunal.

Signed

22.7.11

(Yogesh Kumar Sharma)

Motorcar Accident Claim

Tribunal

(Additional District and

Session Court)

Aabu Road, District Sirohi

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S.B.C.M.A. No. _____/2011
Bajaj Allianz v/s. Rambha Devi & Ors.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. CIVIL MISC. APPEAL. NO. 5127/2011

APPELLANT:

Bajaj Allianz General Insurance Company Limited, through its
Divisional Manager, Lokkala Mandal ke pass, Udaipur.

VERSUS

RESPONDENTS:

1. Smt. Rambha Devi [REDACTED]
2. Smt. Feniya Devi [REDACTED]
3. Ajay Kumar [REDACTED]
4. Dheeraj Kumar [REDACTED]
5. Gaurav Kumar [REDACTED]
6. Arun Kumar [REDACTED]
7. Pradeep Kumar [REDACTED]
8. Praveen [REDACTED]

All minors are represented through Smt. Feniya Devi Claimant
no.2.

9. Chaggan Lal [REDACTED]

...CLAIMANTS

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S.B.C.M.A. No. _____/2011
Bajaj Allianz v/s. Rambha Devi & Ors.

10. Shri Ranchod s/o Saadal ji aged major by caste Rebari r/o
Rebariwas, Santpur Aburoad.

...NON-CLAIMANTS

APPEAL UNDER SECTION 173 OF THE MOTOR
VEHICLE ACT, 1988 AGAINST THE JUDGMENT
AND AWARD DTD.22.7.2011 PASSED BY SHRI
YOGESH KUMAR SHARMA, LEARNED JUDGE,
MOTOR ACCIDENT CLAIMS TRIBUNAL, SIROHI IN
MOTOR ACCIDENT CLAIM CASE NO.81/2008 -
RAMBHA DEVI & ORS. V/S. RANCHOD AND ORS.
WHEREBY THE LEARNED TRIBUNAL HAS
AWARDED A SUM OF RS.5,02,800/- ALONGWITH
INTEREST @ 6% FROM DATE OF FILING OF
CLAIM PETITION AS COMPENSATION WHICH
WOULD INCREASE TO 9% IF THE
COMPENSATION AMOUNT IS NOT DEPOSITED IN
2 MONTHS.

...
VALUATION OF THE APPEAL: Rs.5,02,800/-
COURT FEES PAID: Rs.10/-

TO,
THE HON'BLE CHIEF JUSTICE AND HIS OTHER
COMPANION JUDGES OF THE RAJASTHAN HIGH COURT AT
JODHPUR.

MAY IT PLEASE YOUR LORDSHIPS :

On behalf of the appellant, it is most respectfully submitted as under: .

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1. That the brief facts of the case are as follows; that on 10.2.2008 Bhanwarlal was going in Autorickshaw bearing registration no. RJ-24-PA-0866 which was driven by defendant no.1 which because of rash and negligent overturned as a result of which Bhanwarlal suffered certain injuries and later died.
2. That the notices were issued to the parties. Defendant no. 1 filed a reply denying the averments made in the claim petition. The appellant / defendant No.3 also filed a reply to the claim petition denying the averments made therein, stating that the driver of the Insured Vehicle did not have a valid Driving License to ply the said vehicle at the time of accident, it was also stated that the Insured Vehicle did not have a valid permit to ply the said vehicle on the route where it was at the time of accident. That on the basis of pleadings of the parties, the learned Trial Court framed 4 issues.
3. That on behalf of the claimant statement of A.W.1 Feniya Devi, A.W.2 Chaggan and on behalf of the appellant Insurance company statement of N.A.W.1 Shri Nishant were recorded and some documents were exhibited.
4. That after recording evidence of the parties, the learned Judge, Motor Accident Claims Tribunal, Sirohi awarded Rs.5,02,800/- as compensation in favour of the claimants and against the Insurance Company which in separate proceedings was recoverable from the Owner of the Vehicle.

Aggrieved by the impugned judgment and award dtd.22.7.2011 passed by the learned Judge, Motor Accident Claims Tribunal, Sirohi, the appellant prefers this appeal inter alia on the following grounds:

GROUNDS

- A. That the impugned judgment and award passed by the learned Tribunal is ex facie illegal, invalid, and erroneous. The learned

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S.B.C.M.A, No. _____/2011
Bajaj Allianz v/s. Rambha Devi & Ors.

Tribunal has not examined the material on record in its entirety and objectivity. The findings arrived at by the learned Tribunal are contrary to the material on record and perverse. The impugned judgment and award deserves to be quashed and set aside.

- B. That the learned Tribunal has grossly erred in passing the impugned award and fastening the liability on the Appellant Insurance Company to ***first pay and then recover the claim amount*** from the owner. That the Hon'ble Supreme Court has time and again reiterated the law laid down relating to 'pay and recover' and has stated that in certain cases where the person at the time of driving the vehicle when the accident took place did not have a valid driving licence, in those facts and circumstances too, it is not appropriate to set aside the impugned award and remand the matter for fresh consideration, there too the Hon'ble Court has held that such awards ***may also be satisfied by the insurance company subject to their right to recover the same from the owners of the vehicles***. But the Hon'ble Court has very specifically held that such order to pay and recover ***shall not be considered as a precedent***. That such orders have been passed sparingly by invoking the power conferred by way of Art.142 of the Constitution of India and therefore by no stretch of imagination the subordinate Courts are empowered to pass such an order of pay and recover knowing fully well that at the time accident took place the driver did not have valid Driving License thus it was an illegal act on the fact of it for which the Insurance Company cannot at all be held liable. Therefore the direction of the Tribunal in the present case to pay and recover despite the finding that the Driver did not possess a valid license is wholly erroneous and contrary to the settled position of law. Therefore in light of the above the

Impugned judgment and award deserves to be quashed and set aside.

C. That it is humbly submitted that the non-possession of a valid license not only amounts to violation of policy conditions but also amounts to breach of laws of the land and therefore in such circumstances the appellant insurance could be not saddled with a liability to indemnify a claim amount arising out of an illegal act. Therefore the impugned judgment and award is totally perverse and deserves to be quashed and set aside.

D. That the passing of the pay and recover order after appreciating the contentions of the insurance company would defeat the mandate as prescribed and intention of the legislature in incorporating the provisions of Section 149 of the MV Act.

D-E. That other grounds shall be raised at the time of argument.

It is, therefore, respectfully prayed that this appeal may kindly be allowed and the Impugned judgment and award dtd.22.7.2011 passed by the learned Judge, Motor Accident Claims Tribunal, Sirohi may kindly be quashed and set aside. The claim petition of the respondents – claimants may kindly be dismissed. In the alternative, if this Hon'ble Court comes to the conclusion that the driver of the vehicle insured by the appellant insurance company has contributed in the accident, then its contribution may kindly be assessed on the basis of evidence on record and compensation awarded may kindly be reduced accordingly. Any other relief as deemed just and proper in the facts and circumstances of the case may also be granted in favour of the appellant and in addition or/in alternative.

VINAY KOTHARI
<kotharivinay@gmail.com>
COUNSEL FOR THE APPELLANT

True Copy

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Ammezumep/3

S.B. CIVIL MISC. APPEAL NO.5127/2011

Date of Order :: 22.02.2012

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vinay Kothari, for the appellant.

Issue notice to the respondents. Issue notice of stay petition as well. Both the notices are made returnable within a period of two weeks.

In the meanwhile, the amount as ordered by the impugned award may be deposited in the Tribunal and that amount shall be disbursed to the claimants, upon filing undertaking by the claimants that in the event of passing adverse order in appeal, the claimants shall refund the said amount.

Put up alongwith SBCMA NO. 4222/2011.

(GOPAL KRISHAN VYAS) J.

True Copy

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I. A. NO. _____ OF 2017

IN
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2017

In the matter of:

BAJAJ ALLIANZ GENERAL
INSURANCE COMPANY LTD. ...Petitioner

VERSUS

SMT. RAMBHA DEVI & ORS ...Respondents

AN APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION OF ANNEXURES UNDER ORDER
XLVII OF SUPREME COURT RULES, 2013.

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA
THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioner has filed a Special Leave Petition before this Hon'ble Court against the impugned final judgment & order passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur dated 04.08.2017 in S.B. Civil Misc. Appeal No. 5127/2011.
2. That the Annexure-P/1 are in Vernacular language for which translation in English has to be filed in this Hon'ble Court.
3. That due to paucity of time, the official Translation of Annexures could not be arranged and the matter is urgent. The petitioner will suffer irreparable loss by delay that is bound to be cause in obtaining official translation.

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4. That in the premises the said Annexures have been duly translated into English by an Advocate practicing in this Hon'ble Court and the same is a true and correct version of it's origin.

P R A Y E R

In the premises set forth above, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to :

- (i) EXEMPT the petitioner from filing the Official translation of Annexure-P/1; and
- (ii) PASS such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

AND FOR THIS ACT OF KINDNESS THE PETITIONER
SHALL EVER PRAY AS DUTY-BOUND

Drawn and Filed by:

ARCHANA PATHAK DAVE
Advocate for Petitioner

DATE OF DRAFTING : 05.09.2017

PLACE : New Delhi

FILED ON : 15.09.2017

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Special Leave Petition (Civil) No. Of 2017

IN THE MATTER OF :

Bajaj Allianz General Insurance Com Ltd

APPELLANT

Versus

Rambha Devi

d

RESPONDENTS

YAKALATNAMA

I, Jagdish Solanki Manager (Legal) in the above Petition do hereby appoint and retain **Archana Pathak Dave** Advocates Supreme Court of India to act and appear for me/ us in the above Petition/ Appeal and on my/ our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review to file and obtain return of documents and to deposit and receive money on my/ our behalf in the said Petition/ Appeal and in applications for Review, and to represent me/ us to withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case. To appoint and instruct any other Legal Practitioner authorizing him to exercise the powers and authorities hereby conferred upon the Advocates whenever he may think fit to do so and to sign the power of attorney on my/ our behalf and to take all necessary steps on my/ our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid Advocates in pursuance of this authority. I/We agree to pay all the fees etc. as per Supreme Court Rules.

Dated this the _____ day of the _____, 2016

Accepted/Identified & Certified by:

Archana

For BAJAJ ALLIANZ GENERAL INSURANCE Co. LTD.

(Client)

AUTHORISED SIGNATORY

Jagdish Solanki manager

MEMO OF APPEARANCE

The Registrar
Supreme Court of India
New Delhi

Sir,

Please enter our appearance for the above named Petitioner(s)/Respondent(s) in the above mentioned matter.

Yours faithfully,

Archana

Archana Pathak, Dave

Code No - 2049

Dated