



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947

MACA NO. 521 OF 2019

AGAINST THE AWARD DATED 13.03.2015 IN O.P(MV) NO.252 OF 2012 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM

APPELLANT/2ND RESPON

SIVASANKARAN, AGED 70 YEARS, S/O AMMINI AMMA, VALIYAMADATHIL
HOUSE, VARODE P.O.OTTAPALAM TALUK, PALAKKAD DISTRICT (OWNER
OF KL-51/A -1990 -AUTORIKSHAW.)

BY ADVS.
SRI. P.JAYARAM
SRI.SARATH CHANDRAN K.B.

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 3:

- 1 REJIN, AGED 32 YEARS,
S/O RAVEENDRAN, AIKATHIL HOUSE, AMBALAVATTAM P.O.679 501,
OTTAPALAM TALUK, PALAKKAD DISTRICT.
- 2 PRASAD K, S/O GOPALAN, THATHANOOR HOUSE,
AKALLOOR P.O - 679 302, PAZHAYA LAKKIDI, OTTAPALAM TALUK,
PALAKKAD DISTRICT (DRIVER OF 51/A-1990-AUTORIKSHAW)
- 3 THE UNITED INDIA INSURANCE CO LTD.,
2ND FLOOR, PARAPPURATH TOWERS, MAIN ROAD, OTTAPALAM-679
101, PALAKKAD DISTRICT-(INSURER OF KL-51/A 1990-AUTORIKSHAW)
(POLICY NO 101203/31/10/01/00001323) (POLICY VALID FROM
25.4.2010 TO 24.4.2011)

BY ADVS.
SRI.R.SREEHARI
SRI.C.MOHANDAS
SRI.UNNIKRISHNAN.V.ALAPATT
SRI.SACHIN VYAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
04.04.2025, THE COURT ON 08.04.2025 DELIVERED THE FOLLOWING:



'CR'

JOHNSON JOHN, J.

M.A.C.A No. 521 of 2019

Dated this the 8th day of April, 2025.

JUDGMENT

The owner of the vehicle is challenging the permission granted to the insurance company to recover the award amount from the owner and driver of the vehicle after payment of the amount to the claim petitioner.

2. The claim petitioner, who sustained injuries in an accident occurred on 27.02.2011, filed the petition under Section 166 of the Motor Vehicles Act, 1988 against the driver, owner and insurer of the autorickshaw involved in the accident and the Tribunal, as per the impugned award, recorded a finding that the accident occurred because of the negligence on the part of the driver of the auto rickshaw and since the driver of the auto rickshaw was having only a licence to drive Light Motor Vehicle (LMV), the Tribunal allowed pay and recovery in favour of the respondent insurance company.

3. Heard Sri. P. Jayaram, the learned counsel for the appellant, owner of the vehicle, Sri.R. Sreehari, the learned counsel for the 1st



respondent, Sri. C. Mohandas, the learned counsel for the 2nd respondent and Sri. Unnikrishnan V. Alapatt, the learned counsel for the 3rd respondent insurance company.

4. The learned counsel for the appellant argued that the legal position is now well settled by the dictum laid down by the Honourable Supreme Court in in ***Mukund Dewangan v. Oriental Insurance Company Limited*** [(2017) 4 KHC 648 (SC)] and the subsequent decision by a Full Bench of this Court in ***Sjaji v. Pradeesh and others*** [2018 (2) KHC 342], that a licence to drive a light motor vehicle is legally sufficient to drive an auto rickshaw, which is a light motor vehicle and there is no additional requirement to obtain any separate endorsement on the licence to drive transport vehicle.

5. The learned counsel for the respondent insurance company cited the decision of a Single Bench of this Court dated 29.08.2018 in M.A.C.A No. 2055 of 2011, wherein it was held that as per Kerala Motor Vehicle Rules, 1989, auto rickshaw is a vehicle which comes under Clause 2(c) and being a motor vehicle of a specified description, the driver of an auto rickshaw requires a licence to drive that specified vehicle.



6. The learned counsel for the appellant cited the decision of the 5 Judges' Bench of the Hon'ble Supreme Court in ***Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi [(2025) 3 SCC 95]***, wherein the Honourable Supreme Court answered a reference after raising the following specific issues:

(i) Whether a driver holding an LMV licence (for vehicles with a gross vehicle weight of less than 7500 kg) as per Section 10(2)(d), which specifies "light motor vehicle", can operate a "transport vehicle" without obtaining specific authorisation under Section 10(2)(e) of the MV Act, specifically for the "transport vehicle" class;

(ii) Whether the second part of Section 3(1) which emphasises the necessity of a driving licence for a "transport vehicle" overrides the definition of LMV in Section 2(21) of the MV Act? Is the definition of LMV contained in Section 2(21) of the MV Act unrelated to the licensing framework under the MV Act and the MV Rules;

(iii) Whether the additional eligibility criteria prescribed in the MV Act and the MV Rules for "transport vehicles" would apply to those who are desirous of driving vehicles weighing below 7500 kg and have obtained a licence for LMV class under Section 10(2)(d) of the MV Act;

(iv) What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 which substituted four classes under clauses (e) to (h) in Section 10 with a single class of "transport vehicle" in Section 10(2)(e)?

(v) Whether the decision in *Mukund Dewangan (2017)* [*Mukund Dewangan v. Oriental Insurance Co. Ltd.*, (2017) 14 SCC 663] is per



incuriam for not noticing certain provisions of the MV Act and the MV Rules?

7. After analyzing the various provisions in the Motor Vehicles Act and Motor Vehicle Rules, the Honourable Supreme Court arrived at the following conclusions:

(1) A driver holding a licence for light motor vehicle (LMV) *class*, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7500 kg, is permitted to operate a “transport vehicle” without needing additional authorisation under Section 10(2)(e) of the MV Act specifically for the “transport vehicle” *class*. For licensing purposes, LMVs and transport vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

(2) The second part of Section 3(1), which emphasises the necessity of a specific requirement to drive a “transport vehicle”, does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(3) The additional eligibility criteria specified in the MV Act and the MV Rules generally for driving “transport vehicles” would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7500 kg i.e. “medium goods vehicle”, “medium passenger vehicle”, “heavy goods vehicle” and “heavy passenger vehicle”.



(4) The decision in *Mukund Dewangan (2017)* [*Mukund Dewangan v. Oriental Insurance Co. Ltd.*, (2017) 14 SCC 663] is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and the MV Rules were not considered in the said judgment.

8. It is also pertinent to note that in the above decision, the Honourable Supreme Court also considered the hypothetical example of a person desirous of driving an auto rickshaw in the year 1990 in paragraphs 59, 60 and 61 and arrived at a finding that specific authorisation should not be understood to mean that a person holding an LMV licence which covers “transport vehicle”, would be disentitled to drive a “transport vehicle”.

9. In paragraph 61 of the said judgment, the Honourable Supreme Court held thus:

“... The specific authorisation should not be understood to mean that Sri holding an LMV licence which covers “transport vehicle”, would be disentitled to drive a “transport vehicle”. A question would then arise about the purpose of explicitly mentioning “transport vehicle” in Section 3 (and other provisions as we will discuss later)? We may notice that there is no mention of the term “light goods vehicle” or a “light passenger vehicle” in Section 10 or in the definition section. On the other hand, a



separate mention of “medium *goods* vehicle”, “medium *passenger* vehicle”, “heavy *goods* vehicle” and “heavy *passenger* vehicle” as incorporated in Section 10 would suggest that it is primarily targeted towards “transport vehicles” as opposed to a “light motor vehicle”, which as earlier noticed could also be a “Non-Transport Vehicle”. The emphasis in the second part of Section 3 should therefore be understood in relation to medium and heavy vehicles in the statutory scheme even prior to the 1994 Amendment. The reasonable interpretation of the second part of Section 3 should therefore pertain to a driving licence for those driving “medium *goods* vehicle”, “medium *passenger* vehicle”, “heavy *goods* vehicle”, and “heavy *passenger* vehicle”. Such an interpretation and understanding would be logical because medium and heavy vehicles would require greater manoeuvrability and skill as compared to drivers of the LMV class. ”

10. In the light of the pronouncement of the Apex Court that the additional eligibility criteria specified in the Motor Vehicles Act and the Motor Vehicles Rules generally for driving “transport vehicles” would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7500 kg. i.e. “medium *goods* vehicle”, “medium *passenger* vehicle”, “heavy *goods* vehicle” and “heavy *passenger* vehicle”, it cannot be held that a person holding an LMV licence would be disentitled to drive an auto rickshaw.



11. The learned counsel for the insurance company argued that there is no retrospective effect for the Constitution Bench ruling of the Supreme Court in ***Bajaj Alliance General Insurance Co. Ltd.*** (supra).

12. But, the learned counsel for the appellant cited the judgment of the Honourable Supreme Court in ***Kanishk Sinha and Another v. State of West Bengal and Another*** [2025 SCC OnLine SC 443 = 2025 INSC 278), wherein it was held thus:

“...Now the law of prospective and retrospective operation is absolutely clear. Whereas a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court, or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The prospective operation of a judgment is normally done to avoid any unnecessary burden to persons or to avoid undue hardships to those who had bona fide done something with the understanding of the law as it existed at the relevant point of time. Further, it is done not to unsettle something which has long been settled, as that would cause injustice to many.”

13. It is well settled that the judgment of the Honourable Supreme Court will always be retrospective in nature, unless the judgment itself specifically states that the judgment will operate prospectively. Therefore, when it is not being specifically stated in the



judgment of ***Bajaj Alliance General Insurance Co. Ltd.*** (supra) that it will operate prospectively, the argument of the learned counsel for the respondent insurance company is not legally sustainable. Since an 'auto rickshaw' falls within the weight limit of an LMV and the driver of the auto rickshaw involved in the accident was having licence to drive an LMV as on the date of the accident, it cannot be held that there is violation of policy conditions on the part of the owner of the vehicle and therefore, I find that that the appeal is to be allowed and the direction in the impugned award permitting the respondent insurance company to recover the award amount from the owner and driver of the vehicle after payment of the amount to the claim petitioner is liable to be set aside.

In the result, the appeal is allowed and the impugned award to the extent it permits the respondent insurance company to reimburse the award amount from the owner and driver of the vehicle is set aside.

sd/-

**JOHNSON JOHN,
JUDGE.**

Rv