

(2017) AAC 598

High Court of Himachal Pradesh

Case No: FAO No. 182 of 2009

Vinod Kumar

APPELLANT

Vs

Kaulan Devi

RESPONDENT

Date of Decision: Aug. 5, 2016**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 1, Section 96
- Motor Vehicles Act, 1988 - Section 147, Section 149, Section 166, Section 166, Section 173, Section 173, Section 2(21), Section 2(35)

Citation: (2017) AAC 598**Hon'ble Judges:** Mr. Mansoor Ahmad Mir, C.J.**Bench:** Single Bench

Advocate: Mr. R.L. Chaudhary, Advocate, for the Appellant; Mr. Ajay Sharma, Advocate, for the Respondent No. 1; Mr. Ashwani K. Sharma, Senior Advocate, with Mr. Nishant Kumar, Advocate, for the Respondent No. 2

Final Decision: Allowed

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral)—Subject matter of this appeal is judgment and award, dated 18th August, 2008, made by the Motor Accident Claims Tribunal, Hamirpur, H.P. (for short "the Tribunal") in **MAC Petition No. 31 of 2007, titled as Smt. Kaulan Devi v. National Insurance Company Ltd. and another**, whereby compensation to the tune of 61,050/- with interest @ 7.5% per annum from the date of filing of the petition till its realization came to be awarded in favour of the claimant-injured and owner-cum-driver of the offending vehicle was saddled with liability (for short "the impugned award").

2. The insurer and claimant-injured have not questioned the impugned award on any count, thus, has attained finality so far it relates to them.

3. The appellant/owner-cum-driver of the offending vehicle has questioned the impugned award on the ground that the Tribunal has fallen in an error in saddling him with liability.

4. Learned counsel for the appellant/owner-cum-driver argued that the findings returned by the Tribunal on issue No. 2 so far it relates to "from whom" and issue No. 3 are not legally correct for the reason that the appellant/owner-cum-driver of the offending vehicle was having a valid and effective driving licence to drive a Light Motor Vehicle (for short "LMV") and the offending vehicle was a LMV.

5. Learned Senior Counsel appearing on behalf of the insurer argued that the appellant/owner-cum-driver has not taken these grounds in the memo of appeal, thus, cannot press these grounds.

6. The argument of the learned Senior Counsel appearing on behalf of the insurer, though attractive, is devoid of any force for the following reasons:

7. Granting of compensation is a social legislation and cannot be taken away by rigorous of procedural wrangles and tangles and the niceties, hyper-technicalities and mystic maybes have no role to play to defeat the social purpose of granting the compensation.

8. The proceedings instituted under Section 166 of the Motor Vehicles Act, 1988 (for short "MV Act") are to be taken to the logical end by following a summary procedure. Section 173 of the MV Act also provides for remedy of appeal.

9. The appeal under Section 173 of the MV Act is alike the appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, "CPC"). Therefore, the Court is under obligation to decide all issues arising in a case both on facts and law after appreciating the entire evidence.

10. The Apex Court in **U.P.S.R.T.C. v. Km. Mamta and others, reported in AIR 2016 Supreme Court 948**, held that Section 173 of the MV Act and the first appeal under Section 96 CPC are alike and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case. It is profitable to reproduce paragraph 24 of the said judgment hereunder:

"24. An appeal under Section 173 of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence."

11. It is apt to record herein that Part VII of the CPC provides for filing of appeals arising out of decrees and orders. Section 96 CPC provides for appeals from original decree. It is apt to reproduce Section 96 CPC hereunder:

"96. Appeal from original decree. 1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

12. Section 107 CPC deals with the "Powers of the Appellate Court" and subsection (2) thereof, provides specifically that the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed on the trial Court. It is apt to reproduce Section 107(2) CPC as under:

"107. Powers of appellate court.

(1)

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein."

13. Section 176 of the MV Act empowers the State Government to make rules for the purpose of implementing the provisions contained in Sections 165 to 174 of the MV Act. It is apt to reproduce Section 176 of the Act, hereunder:

"176. Power of State Government to make rules.

A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely:

a. The form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such applications;

b. The procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

c. The powers vested in a Civil Court which may be exercised by a Claims Tribunal;

d. The form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

e. Any other matter which is to be, or may be, prescribed."

14. In terms of the mandate of Section 176(c) of the MV Act, the Claims Tribunals are vested with the powers of Civil Court.

15. In a Claim Petition, summary procedure is to be adopted and all provisions of Civil Procedure Code are not applicable, rather only some provisions have been made applicable in terms of Section 169 of the MV Act read with Rule 232 of the Himachal Pradesh Motor Vehicles Rules, 1999 (for short "MV Rules"). It is apt to reproduce Rule 232 of the MV Rules herein:

"232. The Code of Civil Procedure to apply in certain cases: The following provisions of the First Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply to proceedings before the Claims Tribunal, namely, Order 5, Rules 9 to 13 and 15 to 30; Order IX; Order XIII; Rule 3 to 10; Order 16, Rules 2 to 21; Order XVII; Order 21 and Order 23, Rules 1 to 3."

16. Now, the question is whether the Appellate Court while hearing an appeal under Section 173 of the MV Act can pass such an order which ought to have been passed by the Tribunal, without there being any appeal/challenge or cross objections from the person against whom the order has been made. The answer is in the affirmative for the reasons given herein above read with the mandate of law laid down by the Apex Court and the High Courts.

17. Part VII and Order 41 CPC deal with the powers and the scope of the Appellate Court in appeal proceedings.

18. The Apex Court in **Sharanamma and others v. Managing Director, Divisional Contr., North-East Karnataka Road Transport Corporation, reported in (2013) 11 SCC 517**, has held that there are no fetters on the powers of the appellate Court to consider the entire case on facts and law, while hearing an appeal under Section 173 of the MV Act. It is apt to reproduce paragraphs 10, 11 and 12 of the said decision hereunder:

"10. When an Appeal is filed under Section 173 of the Motor Vehicles Act, 1939 (hereinafter shall be referred to as the "Act"), before the High Court, the normal Rules which apply to Appeals before the High Court are applicable to such an Appeal also. Even otherwise, it is well settled position of law that when an Appeal is provided for, the whole case is open before the Appellate Court and by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the Appellate Court to consider the entire case on facts and law.

11. It is well settled that the right of Appeal is a substantive right and the questions of fact and law are at large and are open to Review by the Appellate Court. Thus, such powers and duties are necessarily to be exercised so as to make the provision of law effective.

12. Generally, finding of fact recorded by Tribunal should not be interfered with in an Appeal until and unless it is proved that glaring discrepancy or mistake has taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award

of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available on record then as mentioned herein above, the High Court would not interfere in the Appeal. In the case in hand, nothing could be pointed out to us as to what were the glaring discrepancies or mistakes in the impugned Award of the Tribunal, which necessitated the Appellate Court to take a different view in the matter."

19. The Apex Court in the case titled as **Giani Ram v. Ramjilal, reported in 1969 (1) SCC 813**, held that Order 41, Rule 33 CPC empowers the appellate Court to pass any decree which justice may require. It is apt to reproduce paragraphs 8 and 9 of the judgment herein:

"8. Order 41, Rule 33 of the CPC was enacted to meet a situation of the nature arising in this case. In so far as it is material, the rule provides:

"The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The expression "which ought to have been passed" means "which ought in law to have been passed". If the Appellate Court is of the view that any decree which ought in law to have been passed, but was in fact not passed by the subordinate court, it may pass or make such further or other decree or order as the justice of the case may require.

9. If the claim of the respondents to retain any part of the property after the death of Jwala is negatived, it would, be perpetrating grave injustice to deny to the widow and the two daughters their share in the property to which they are in law entitled. In our view, the case was one in which the power under Order 41, Rule 33 , CPC ought to have been exercised and the claim not only of the three sons but also of the widow and the two daughters ought to have been decreed."

20. The Apex Court in the cases titled as **Narayanarao (dead) through LRs and others v. Sudarshan, reported in 1995 Supp.(4) SCC 463; Mahant Dhangir and another v. Madan Mohan and others, reported in 1987 (Supp.) SCC 528**, and **T.N. Rajasekar v. N. Kasiviswanathan and others, reported in AIR 2005 SC 3794** held that the High Court, in order to do complete justice to the parties, can invoke the powers under Order 41, Rule 33 CPC and pass orders accordingly.

21. The Apex Court in another case titled as **Delhi Electric Supply Undertaking v. Basanti Devi and another, reported in JT 1999 (7) SC 486**, while relying upon its earlier decision in Mahant Dhangir (supra), held in paragraph 19 as under:

"19. Conditions as laid in provision of Order 41, Rule 33 are satisfied in the present case. When circumstances exist which necessitate the exercise of discretion conferred by Rule

33, the Court cannot be found wanting when it comes to exercise its powers."

22. This Court in **H.P. Road Transport Corporation v. Pt. Jai Ram and etc. etc.**, reported in AIR 1980 Himachal Pradesh 16, held that under Order 41, Rule 33 CPC, wide powers have been given to the appellate Court and once it is seized of a matter in its appellate jurisdiction, it is within its power to do complete justice between all the concerned parties. It is apt to reproduce relevant portion of paras 39 and para 40 of the judgment herein:

"39.Moreover, theme of Order 41 and especially the wide powers given to the Court under Rule 33 Order 41 suggests that the intention of the Legislature is to see that "once the Court is seized of a matter in its appellate jurisdiction, it is able to do complete justice between all the concerned parties. To us, therefore, it is very clear that the provision enabling a respondent to file cross-objections made in Rule 22 is a procedural provision under which even if a respondent has not preferred any appeal, the Court is enabled to do complete justice to the parties by allowing the respondent concerned to prefer cross-objections within the period of limitation. Under these circumstances, with great respect to the learned Judges of the Allahabad High Court, we find ourselves unable to accept their view that provision enabling a respondent to file cross-objections is a substantive provision and not a procedural one.

40. In view of our finding that provision for filing cross-objections contemplated by Order 41, Rule 22 is a procedural provision, the ratio of the above referred two decisions of the Supreme Court would at once be attracted, and this Court being seized of an appellate jurisdiction conferred by Section 110D of the Motor Vehicles Act, It has to exercise that jurisdiction in the same manner in which it exercises its other appellate jurisdiction allowing the respondents in such appeals to prefer cross-objections."

23. Keeping in view the ratio of the judgment supra, it can safely be held that the appellate Court is competent to pass any order in the interest of justice.

24. The High Court of Rajasthan, while dilating upon the powers of the Appellate Court under Order 41, Rule 33 CPC, in the case titled as **United India Insurance Co. Ltd. v. Dama Ram and others**, reported in 1994 ACJ 692, held that the appellate Court can rectify the error invoking Order 41, Rule 33 CPC even in the absence of Cross Objections or appeal by the claimants. It is apt to reproduce paragraph 7 of the said decision hereunder:

"7. The Tribunal has not passed award in any case against the owner (insured) of the vehicle. It has passed awards against the appellant insurance company only. It is not in dispute that the Tribunal has categorically held that the said accident took place due to rash and negligent driving of the truck by its driver. As such his employer, namely, Mohd. Rafiq, owner of the said truck, was liable for his negligent act. Thus the Tribunal committed a serious error in not making liable the owner and driver of the offending truck

to pay the said amounts of compensation. This error can well be corrected by this court by invoking the provisions of Order 41, Rule 33, Civil Procedure Code, even if no cross-objection or appeal has been filed by the claimants-respondents. It has been observed in **Kok Singh v. Deokabai AIR 1976 SC 634**, paras 6 and 7, as follows:

(6) In **Giani Ram v. Ramji Lal AIR 1969 SC 1144**, the court said that in Order 41, Rule 33, the expression "which ought to have been passed" means "what ought in law to have been passed" and if an appellate court is of the view that any decree which ought in law to have been passed was in fact not passed by the court below, it may pass or make such further or other decree or order as the justice of the case may require.

(7) Therefore, we hold that even if the respondent did not file any appeal from the decree of the trial court, that was no bar to the High Court passing a decree in favour of the respondent for the enforcement of the charge. Reference of **Murari Lal v. Gomati Devi 1986 ACJ 316 (Rajasthan)**, may also be made here. Similar view has been taken by me while deciding **United India Ins. Co. Ltd. v. Dhali 1992 ACJ 1057 (Rajasthan)**."

25. The High Court of Orissa at Cuttack in the case titled as **M. Adu Ama v. Inja Bangaru Raja and another, reported in 1995 ACJ 670**, has laid down the same principle of law.

26. This High Court in **Himachal Road Transport Corporation v. Saroj Devi and others, reported in 2002 ACJ 1146**, held that appellate Court is not precluded from passing order which it considers just in the facts of the case, without there being any cross objection or cross appeal. It is profitable to reproduce paragraph 15 of the said decision hereunder:

"15. Keeping in view the aforesaid decisions of Supreme Court and different High Courts including this Court, we feel that there being no prohibition in law, i.e., either under Motor Vehicles Act or under the provisions of Civil Procedure Code, this Court is not precluded from passing order which it considers just in the circumstances of a case without there being either cross-objection or cross-appeal. As such we are further of the view that Order 41, Rule 33 is fully applicable to the appeals under the Motor Vehicles Act."

27. In the case titled as **National Insurance Co. Ltd. v. Mast Ram and others, reported in 2004 ACJ 1039**, the question arose before this High Court was whether the appellate Court can modify the award in the absence of cross-appeal. This High Court answered in the affirmative. It is apt to reproduce paragraph 13 of the said judgment hereunder:

"13. Because of what has been held in this judgment, it is felt necessary to exercise power vested in this court under Order 41, Rule 33 of the Civil Procedure Code to set aside the findings in the operative portion of the award requiring the appellant to pay the amount and then to recover it from the "insurer" (it should have been "insured"?). This is a direction in the impugned award that needs to be set aside. On this aspect, Mr. Sharma

had argued that there is no cross-appeal by the owner of the vehicle. To meet such a situation, legislature had enacted Order 41, Rule 33 in the Civil Procedure Code even in cases where an appeal is not filed by a party, like the owner in the present appeal. As such, this plea cannot be accepted."

28. This High Court in another case titled as **LAC Solan and another v. Bhoop Ram, reported in 1997(2) Sim.L.C. 229**, modified the awards in exercise of powers under Order 41, Rule 33 CPC.

29. Faced with the similar situation, the Jammu and Kashmir High Court, in a case titled as **State Bank of India v. M/s Sharma Provision Store and another, reported in AIR 1999 J&K 128**, held that a High Court can pass a decree which ought to have been passed by the trial Court. It is apt to reproduce relevant portion of paragraph 7 of the said decision hereunder:

"7. This is an exceptional situation which authorises this Court in the present appeal to pass such decree as ought to have been passed or as the nature of the case demands. Similarly discretion vested in this Court under the aforesaid provision of law will not be refused to be exercised simply because respondents have not either filed an appeal or cross-objections."

30. This Court in **FAO No. 203 of 2010, titled as Nati Devi and another v. Maya Devi and others, decided on 20th May, 2016, FAO No. 448 of 2011, titled as Sarita Devi & others v. Ashok Kumar Nagar & others, decided on 17th June, 2016, and FAO (MVA) No. 599 of 2008, titled as Shri Raj Pal Yadav and another v. Smt. Jamna Devi and another, decided on 24th June, 2016**, has taken the similar view.

31. Thus, it can easily be deduced that the mandate of Section 96, Section 107(2) and Order 41, Rule 33 CPC is just to rectify the errors and achieve the aim and object of the legislation. The purpose of Order 41 CPC, as discussed herein above, is to enable the appellate Court to do complete justice between the parties and to pass order which ought to have been passed while keeping in view the facts and circumstances of the case.

32. Accordingly, keeping in view the mandate of Section 146 of the MV Act and aim and object of granting compensation read with above discussion, it is held that this Court has the power to examine the question whether the Tribunal has rightly saddled the owner with the liability, even if the owner has not questioned the impugned award on that ground.

33. Having said so, I am of the considered view that the argument of the learned Senior Counsel appearing on behalf of the insurer is not tenable and the same is, accordingly, rejected.

34. Now, the question is whether the Tribunal has rightly exonerated the insurer on the ground that the driver of the offending vehicle was having a driving licence to drive

LMV and not the offending vehicle, which is a non-transport vehicle? The answer is in the negative for the following reasons:

35. Admittedly, the driver was driving the offending vehicle, i.e. Tata Sumo, bearing registration No. HP01 H 2752, at the relevant point of time, the gross vehicle weight of which is 2460 kilograms, as per the Certificate of Registration, Ext. RW1/ A, is a light motor vehicle.

36. I deem it proper to reproduce the definitions of "driving licence", "light motor vehicle", "private service vehicle" and "transport vehicle" as contained in Sections 2 (10), 2 (21), 2(35) and 2 (47), respectively, of the MV Act herein:

"2.

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

xxx xxx xxx

(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 roadroller the unladen weight of any of which, does not exceed 7,500 kilograms.

xxx xxx xxx

(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

xxx xxx xxx

(47) "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

37. Section 2 (21) of the MV Act provides that a "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 7500 kilograms. Section 2 (35) of the MV Act gives the definition of a "public service vehicle", which means any vehicle, which is used or allowed to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage. It does not include light motor vehicle (LMV). Section 2 (47) of the MV Act defines a "transport vehicle". It means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

38. At the cost of repetition, definition of "light motor vehicle" includes the words "transport vehicle" also. Thus, the definition, as given, mandates the "light motor vehicle" is itself a "transport vehicle", whereas the definitions of other vehicles are contained in Sections 2(14), 2 (16), 2 (17), 2 (18), 2 (22), 2 (23) 2 (24), 2 (25), 2 (26), 2 (27), 2 (28) and 2 (29) of the MV Act. In these definitions, the words "transport vehicle" are neither used nor included and that is the reason, the definition of "transport vehicle" is given in Section 2 (47) of the MV Act.

39. In this backdrop, we have to go through Section 3 and Section 10 of the MV Act. It is apt to reproduce Section 3 of the Act herein:

"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 a motor cab or motor cycle hired for his own use or rented under any scheme made under subsection (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which subsection (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government."

40. It mandates that the driver should have the licence to drive a particular kind of vehicle and it must contain endorsement for driving a transport vehicle. In this section, the words "light motor vehicle" are not recorded. Meaning thereby, this section is to be read with the definition of other vehicles including the definition given in Section 2 (47) of the MV Act except the definition given in Section 2 (21) of the MV Act for the reason that Section 2 (21) of the MV Act provides, as discussed herein above, that it includes transport vehicle also.

41. My this view is supported by Section 10 of the MV Act, which reads as under:

"10. Form and contents of licences to drive.

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following cases, namely:

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) transport vehicle;

(i) roadroller;

(j) motor vehicle of a specified description."

42. Section 10 (2) (d) of the MV Act contains "light motor vehicle" and Section 10 (2) (e) of the MV Act, was substituted in terms of amendment of 1994, class of the vehicles specified in clauses (e) to (h) before amendment stands deleted and the definition of the "transport vehicle" stands inserted. So, the words "transport vehicle" used in Section 3 of the MV Act are to be read viz-a-viz other vehicles, definitions of which are given and discussed herein above.

43. A Division Bench of the High Court of Jammu and Kashmir at Srinagar, of which I (Justice Mansoor Ahmad Mir, Chief Justice) was a member, in a case titled as **National Insurance Co. Ltd. v. Muhammad Sidiq Kuchey & ors., being LPA No. 180 of 2002, decided on 27th September, 2007**, has discussed this issue and held that a driver having licence to drive "LMV" requires no "PSV" endorsement. It is apt to reproduce the relevant portion of the judgment herein:

"The question now arises as to whether the driver who possessed driving licence for driving above mentioned vehicles, could he drive a passenger vehicle? The answer, I find, in the judgment passed by this court in case titled **National Insurance Co. Ltd. v. Irfan Sidiq Bhat, 2004 (II) SLJ 623**, wherein it is held that Light Motor Vehicle includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed to be used for carriage of passengers. Further held, that the authorization of having PSV endorsement in terms of Rule 41 (a) of the Rules is not required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment hereunder:

"13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkat Ahamd and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV endorsement and express authorization in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood satisfied.

.....

17. In the case of **Mohammad Aslam Khan (CIMA No. 87 of 2002)** Peerzada Nooruddin appearing as witness on behalf of Regional Transport Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our

opinion, the fact that the PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad was competent to drive a passenger vehicle. In fact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light Motor Vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle."

In the given circumstances of the case PSV endorsement was not required at all."

44. The mandate of Sections 2 and 3 of the MV Act came up for consideration before the Apex Court in a case titled as **Chairman, Rajasthan State Road Transport Corporation & ors. v. Smt. Santosh & Ors., reported in 2013 AIR SCW 2791**, and after examining the various provisions of the MV Act held that Section 3 of the Act casts an obligation on the driver to hold an effective driving licence for the type of vehicle, which he intends to drive. It is apt to reproduce paras 19 and 23 of the judgment herein:

"19. Section 2(2) of the Act defines articulated vehicle which means a motor vehicle to which a semitrailer is attached; Section 2(34) defines public place; Section 2(44) defines "tractor" as a motor vehicle which is not itself constructed to carry any load; Section 2(46) defines "trailer" which means any vehicle, other than a semitrailer and a sidecar, drawn or intended to be drawn by a motor vehicle. Section 3 of the Act provides for necessity for driving license; Section 5 provides for responsibility of owners of the vehicle for contravention of Sections 3 and 4; Section 6 provides for restrictions on the holding of driving license; Section 56 provides for compulsion for having certificate of fitness for transport vehicles; Section 59 empowers the State to fix the age limit of the vehicles; Section 66 provides for necessity for permits to ply any vehicle for any commercial purpose; Section 67 empowers the State to control road transport; Section 112 provides for limits of speed; Sections 133 and 134 imposes a duty on the owners and the drivers of the vehicles in case of accident and injury to a person; Section 146 provides that no person shall use any vehicle at a public place unless the vehicle is insured. In addition thereto, the Motor Vehicle Taxation Act provides for imposition of passenger tax and road tax etc.

20. to 22.

23. Section 3 of the Act casts an obligation on a driver to hold an effective driving license for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licenses for various categories of vehicles mentioned in subsection (2) of the said Section. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in subsection (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy

passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motorcab", "motorcycle", "omnibus", "private service vehicle", "semitrailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle".

45. The Apex Court in another case titled as **National Insurance Company Ltd. v. Annappa Irappa Nesaria & Ors., reported in 2008 AIR SCW 906**, has also discussed the purpose of amendments, which were made in the year 1994 and the definitions of "light motor vehicle", "medium goods vehicle" and the necessity of having a driving licence. It is apt to reproduce paras 8, 14 and 16 of the judgment herein:

"8. Mr. S.N. Bhat, learned counsel appearing on behalf of the respondents, on the other hand, submitted that the contention raised herein by the appellant has neither been raised before the Tribunal nor before the High Court. In any event, it was urged, that keeping in view the definition of the "light motor vehicle" as contained in Section 2(21) of the Motor vehicles Act, 1988 ("Act" for short), a light goods carriage would come within the purview thereof. A "light goods carriage" having not been defined in the Act, the definition of the "light motor vehicle" clearly indicates that it takes within its umbrage, both a transport vehicle and a non-transport vehicle. Strong reliance has been placed in this behalf by the learned counsel in **Ashok Gangadhar Maratha v. Oriental Insurance Company Ltd., [1999 (6) SCC 620]**.

9. to 13.

14. Rule 14 prescribes for filing of an application in Form 4, for a licence to drive a motor vehicle, categorizing the same in nine types of vehicles.

Clause (e) provides for "Transport vehicle" which has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries medium goods vehicle and heavy goods vehicle existed which have been substituted by transport vehicle. As noticed hereinbefore, Light Motor Vehicles also found place therein.

15.

16. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time, to cover both, "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

46. The Apex Court in the latest judgment in the case titled as **Kulwant Singh & Ors. v. Oriental Insurance Company Ltd., reported in JT 2014 (12) SC 110**, held that PSV endorsement is not required.

47. Having glance of the above discussions, I hold that the endorsement was not required.

48. The appellant/owner-cum-driver of the offending vehicle was having a valid and effective driving licence to drive LMV, as discussed by the Tribunal in para 31 of the impugned award, but, it has fallen in an error in holding that the insurer has proved that the appellant/owner-cum-driver was not having a valid and effective driving licence. The copy of the driving licence is on the file as Ext. RW1/ B, the perusal of which does disclose that the appellant/owner-cum-driver was competent to drive LMV.

49. Having said so, the findings returned by the Tribunal on issue No. 3 are set aside and it is held that the appellant/owner-cum-driver was having a valid and effective driving licence at the relevant point of time to drive the offending vehicle.

50. The factum of insurance is admitted. Thus, the insurer has to satisfy the award.

51. Having glance of the above discussions, the impugned award, so far it relates to saddling the appellant/owner-cum-driver with liability, is set aside and the insurer is saddled with liability to satisfy the impugned award.

52. The statutory amount deposited by the appellant/owner-cum-driver is awarded as costs in favour of the claimant-injured.

53. The insurer is directed to deposit the awarded amount before the Registry within eight weeks. On deposition, the same be released in favour of the claimant-injured strictly as per the terms and conditions contained in the impugned award through payee's account cheque or by depositing the same in her bank account.

54. Viewed thus, the impugned award is modified, as indicated herein above and the appeal is allowed.

55. Send down the record after placing copy of the judgment on the Tribunal's file.