

04.07.2023

Ct. no.654
Sl. Nos.3&4
sn

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

**F.M.A. 3209 of 2016
CAN 3 of 2023**

**ICICI Lombard General Insurance Co.Ltd.
Vs.**

**Smt. Shibani Bose & Ors.
With
C.O.T. 20 of 2016**

**Shibani Bose & Ors.
Vs.
ICICI Lombard General Insurance Co. Ltd.**

Mr. Parimal Kumar Pahari
... for the appellant-insurance co.
Mr. Jayanta Kumar Mondal
..for the respondents-claimants

In Re: CAN 3 of 2023

This is an application for recalling and/or modification of the order dated 9th October, 2018 passed in the present appeal for adjourning the hearing of appeal *sine die*.

In order dated 9th October, 2018, this Court has noted that the only question involved in the instant appeal is whether a person having a valid license for light motor vehicles can drive transport vehicle of that category. On the said date, the respondents referred the decision of Hon'ble Supreme Court passed in ***Mukund Dewangan vs. Oriental Insurance Company Limited*** reported in ***(2017) 4 WBLR (SC) 512***. On the contrary, the learned advocate for the appellant-insurance company drew the attention of the Court to the order

dated 3rd May, 2018 passed in **Civil Appeal No. 841 of 2018 (M/s Bajaj Alliance General Insurance Company Ltd. versus Rambha Devi & Ors.)** wherein the Division Bench of the Hon'ble Court raised certain issues with regard to findings in the judgment rendered by the larger Bench in case of *Mukund Dewangan (supra)* and referred the appeal to the Hon'ble Chief Justice of India. For such reasons, this Court adjourned the appeal *sine die* with liberty to the learned advocate for the appellant to pray for its disposal after the larger Bench answers the said issue.

Mr. Jayanta Kumar Mondal, learned advocate for the respondents-claimants submits that by order dated 9th October, 2018, the appeal was adjourned *sine die* on the ground that the findings of the three-judge Bench of the Hon'ble Supreme Court in *Mukund Dewangan (supra)* was referred to the larger Bench by an order dated 3rd May, 2018 passed by the Hon'ble Supreme Court in *Rambha Devi (supra)*. However, in subsequent decision of the Hon'ble Supreme Court passed in **M.S. Bhati versus National Insurance Company Limited** reported in **2019 (2) T.A.C. 357 (S.C.)**, the Hon'ble Court held that the law laid down in *Mukund Dewangan (supra)* continues to hold the field. In the light of his aforesaid submissions, he prays for recalling and/or modifying the order dated 9th October, 2018 adjourning the appeal *sine die*.

Mr. Parimal Kumar Pahari, learned advocate for the appellant-insurance company submits that since in subsequent decision of the Hon'ble Supreme Court in *M.S. Bhati (supra)* holding that proposition in *Mukund Dewangan (supra)* still holds the field, there is no bar in hearing the appeal.

On 29th March, 2019, the Hon'ble Supreme Court in *M.S. Bhati (supra)* observed as follows :-

"12. Learned Counsel further submitted on the alternative plea that the decision of Mukund Dewangan (Supra) has been reserved for reconsideration by a larger Bench in M/s. Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi & Ors., Civil Appeal No. 841 of 2018, by a two-judge Bench of this Court on 3rd May, 2018.

13. The law which has been laid down by a three-judge Bench of this Court in Mukund Dewangan (Supra) binds this Court. As a matter of judicial discipline, we are duty bound to follow that decision which continues to hold the field."

Bearing in mind the aforesaid observations of the Hon'ble Supreme Court, the order dated 9th October, 2018 adjourning the appeal *sine die* is hereby recalled.

The application bearing CAN 3 of 2023 stands disposed of.

In Re: F.M.A.3209 of 2016

By order dated 26th July, 2016, lower court records were called for.

The department concerned is directed to tag the lower court records upon examination, if already received,

and further shall serve notice of arrival of the lower court records upon the learned advocate for the appellant in terms of the order dated 26th July, 2016.

The department concerned is also directed to furnish report with regard to the service of notice of appeal upon the respondent no.5, owner of the offending vehicle.

Let the matter appear after two weeks under the heading "*Hearing*".

(Bivas Pattanayak, J.)