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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **MAC.APP.47/2009**

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Date of decision: 20th August, 2009

VED PAL BHATIA Appellant
Through : Mr. Narender Kumar Singh, Adv.

versus

BALBEER JOSHI & ORS. Respondents
Through : Mr. Pradeep Gaur, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT (Oral)

CM No.1171/2009

1. For the reasons stated in the application and also noting that the appellant has very good case on merits, the delay in filing of this appeal is condoned.
2. CM stands disposed of.

MAC.APP. 47/2009

1. The appellant has challenged the award of the learned Tribunal whereby the award for Rs.10,00,000/- has been passed

in favour of the claimants and against respondent No.6. Respondent No.6 has been given right to recover the award amount from the owner/driver of the offending vehicle which is under challenge in this appeal by the owner of the offending vehicle.

2. Respondent No.6 has paid the award amount to the claimants and has initiated the recovery proceedings against the appellant.

3. The accident dated 18th January, 2000 resulted in the death of Kapil Dev Joshi. The accident was caused by tractor bearing No.HR-10-C-4807 which was driven by respondent No.5 and owned by the appellant. Respondent No.5 appeared in the witness box as R1W1 and deposed that he was holding a valid driving licence – Ex.PW1/11. Ex.PW1/11 is the certified copy of the driving licence No.T-2969 which is valid to drive Motorcycle and LMV (Transport Vehicle).

4. Respondent No.6 filed the written statement before the learned Tribunal in which a preliminary objection was raised that they have been informed by the authority that driving licence issued to respondent No.5 was for driving Motorcycle and LMV (Transport Vehicle) only and not tractor trolley. Respondent No.6 produced their record clerk before the learned Tribunal as R3W1 who deposed that the offending vehicle was validly insured with them vide policy – Ex.R3W1/1. However, respondent No.6 did not lead any evidence to substantiate the preliminary objection raised in the written statement. The statement of R3W1 is

reproduced hereunder:-

“R3W1, Dhruv Nanda, Record Clerk,
National Insurance Co., DRO – II, Jhandewalan,
Delhi.

On SA.

I have brought the office copy of insurance
policy of vehicle No.HR 10 C 4807 – tractor which
was issued by our company valid from 15.4.99 to
4.4.2000 in the name of Ved Pal Bhatia. The
copy of the policy is Ex.R3W1/1.

XXXXXXXXXby Sh. Gaurav counsel for petitioner.

Nil (opp. Given).

RO & AC.

Judge/MACT/28.3.2005”

5. Although respondent No.6 did not lead any evidence in the matter to prove that respondent No.5 was not competent to drive the tractor, the learned Tribunal surprisingly accepted the objection raised by respondent No.6 and gave a finding in para 14 of the award that respondent No.5 was not authorized to drive the tractor.

6. The learned counsel for the appellant submits that respondent No.5 was authorized to drive LMV (Light Motor Vehicle).

7. The Light Motor Vehicle defined in Section 2(21) of the Motor Vehicles Act, 1988 is reproduced hereinunder:-

“Section 2(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 7,500 kilograms.”

8. According to Section 2(21) of the Motor Vehicles Act, 1988, Light Motor Vehicle includes a tractor whose unladen weight does not exceed 7,500kgs.

9. The learned counsel for the appellant has placed on record a certificate of registration of the tractor which shows that the unladen weight of the tractor is 1,650kgs.

10. It is thus clear that the tractor in question is light motor vehicle within the definition of Section 2(21) of the Motor Vehicles Act and respondent No.5 is authorized to drive the same.

11. The learned counsel for respondent No.6 submits that the driving licence – Ex.PW1/11 contains a column giving the description of various types of motor vehicles in which the Motorcycle and Light Motor Vehicle have been ticked whereas the word tractor has been crossed and, therefore, respondent No.5 was not authorized to drive the offending vehicle in terms of Section 10(2)(j) of the Motor Vehicles Act which provides that a licence holder should hold a licence to drive a motor vehicle of a specified description. It is submitted that since the tractor has been specifically scored out on the licence, respondent No.5 was not authorized to drive the tractor with trolley. The learned counsel for respondent No.6 refers to and relies upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Kusum Rai, 2006 ACJ 1336** where the driving licence to drive the light motor vehicle was held to be invalid to drive the commercial vehicle. The judgment referred to by the learned counsel for respondent No.6 is not applicable to

the present case.

12. This Court is of the view that by virtue of Section 2(21) of the Motor Vehicles Act, respondent No.5 was authorized to drive the tractor having unladen weight of less than 7,500kgs. In the present case, admittedly the unladen weight of the tractor was 1,650kgs and, therefore, respondent No.5 was authorized to drive the tractor. It is also noted that although respondent No.6 raised a preliminary objection before the learned Tribunal but it did not lead any evidence whatsoever on the preliminary objection raised and, therefore, the finding of the learned Tribunal accepting the plea on which no evidence was led by respondent No.6 is clearly erroneous.

13. For all the aforesaid reasons, the finding of the learned Tribunal that respondent No.5 was not authorized to drive the tractor in question is set aside.

14. The appeal is allowed and the award of the learned Tribunal in so far as respondent No.6 has been given the right to recover the award amount from the appellant and respondent No.5 is set aside. No costs.

CM No.1170/2009

1. Since the appeal has been allowed, the stay application has become infructuous.

2. CM is dismissed as infructuous.

J.R. MIDHA, J

AUGUST 20, 2009

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