

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 6374 of 2011 (O&M)

Date of decision: September 2, 2015

Hanuman Singh

...Appellant

Versus

Sona Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. Vivek Khatri, Advocate,
for the appellant.

Mr. Vishal Aggarwal, Advocate,
for for the respondents.

K. KANNAN, J. (Oral)

1. The owner of a pick van called as Jeep was fastened with a liability for recovery by the insurance company by the order of the tribunal. The owner of the vehicle is aggrieved and hence in appeal.

2. According to the learned counsel, the weight of the Mahendra pick up van is less than 7500 kgs and it qualifies as light motor vehicle. He held a light motor vehicle licence and at the time when the accident took place. There were no goods being carried and hence the possession of light motor vehicle licence itself, according to him, was sufficient to secure to the owner full indemnity. The counsel's argument is that it is the manner of use at the relevant time which will govern the liability and the issue of entitlement to indemnity or not. The counsel would place reliance on a judgment of this court in Balbir Singh and another Versus Ralla Singh and

others 2013 (1) PLR 735 as squarely governing the issue. That was a case of tractor and trolley where the driver was holding licence to driver light motor vehicle. There were no goods loaded at the relevant time of the accident and since the gross weight of the tractor was less than 7500 kgs, it found that light motor vehicle licence was sufficient to secure full indemnity from the insurance company. I will make no comments on the above judgment except to state that the issue is squarely governed through judgments of the Supreme Court hereinafter discussed of what could qualify as a transport vehicle and when a driver could be stated to be duly licenced.

3. The definition contained in the Motor Vehicles Act 1988 (for short '**the Act**') for the 'light motor vehicle' under Section 2 (21) and 'transport vehicle' under Section 2 (47) are not mutually exclusive. A light motor vehicle could just as well be a transport vehicle, if it is put to such use as the definition requires. Section 2 (44) that defines "tractor" by itself is not a transport vehicle or a goods carrying vehicle. If its weight is less than 7500 kgs it still qualifies as the light motor vehicle. Consequently, Section 2 (44) defining "a tractor" and Section 2 (21) that defines a light motor vehicle still overlaps. But if the tractor is attached to a trailer, which is defined in Section 2 (46), it shall be treated as a single unit. A light motor vehicle attached to a trailer may or may not carry goods. If it is tractor attached to trailer and insured as a transport vehicle or a goods carrying vehicle, the manner of insurance will govern the issue, irrespective of whether goods were transported at that time or not.

4. The judgment in **Balbir Singh**, referred to above, does not actually confront an issue of how the insurance had been taken for the vehicle, which was involved in the accident. It cannot, therefore, be taken

as a precedent for our case where there are definite details available about the manner of how the vehicle was treated and how the insurance had been taken.

5. I had on the previous hearing directed the insurance company also to furnish the details of the insurance and how the owner had applied for coverage of risk for the said vehicle. I have seen through the copy of the insurance policy which describes the vehicle type to be “goods carrying—Public carrier”. The insurance product is qualified as “commercial vehicle—package policy”. This means that the owner has taken a package policy that covers for own damage risk as well as third party and also cover the risk for personal accident of owner and driver as well. A premium paid at Rs. 8464/- allows for use of the vehicle as set out in the policy for carriage of goods falling under Section 66 of the Act. The limitation as to use includes a policy coverage for use under a permit or any of the circumstances mentioned in Section 66 (3) that sets out circumstances when permit is not necessary. The model of the vehicle as described in the policy is also a “pick up”.

6. If a vehicle which is weighing less than 75600 kgs and hence would be a 'light motor vehicle' and used as a public service vehicle or a goods carriage directly covered under Section 2 (47), then we have to look to Section 3 for the necessity of the driving licence in the manner contemplated under Section 3. Section 3 of the Act reads thus:-

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

(2) The conditions subject to which sub-section (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.”

This sections makes it clear that no person would drive a transport vehicle other than a motor cab or a motor cycle hired or for his own use or rented, unless the licence authorizes him to do so. The manner of such authorization obtains through the form of licence issued under Section 16 read with form 6. Form 6 contains categories of several vehicles and the former categorization as 'passenger vehicles' and 'goods vehicles' have been removed by the notification issued on 5.10.1999 under GSR 684 (E) effective from 22.10.1999 with expression 'transport vehicle'. The form requires a special authorization to drive a transport vehicle. Unlike the period of licence that would be granted to drive ordinary vehicles under Section 14 for a period of 5 years upwards, Section 14 (2) states that the driving licence issued or renewed under the Act in case of a transport vehicle be effective only for a period of three years and if it is a transport vehicle carrying goods of dangerous or hazardous nature, it shall be effective for a period of one year. There is also a further rigor in the matter of test to be carried out before grant of licence for a transport vehicle carrying a transport vehicle endorsement, as required in the Form 6. All this discourse becomes necessary now and then only because there are several times when these provisions are misunderstood or misinterpreted and underestimate the requirement of transport vehicle licences. The counsel

for the appellant in all his earnestness cites before me cases which do not directly answer the issue which we have now. A Full Bench of this Court in National Insurance Co. Ltd. Versus Parveen Kumar and others 2005 (1) RCR (Civil) 485 dealt with an issue of the nature of licence that a person must possess. It was a case of person having a licence for driving a motor cycle but driving a tempo. The court was relying on a judgment in National Insurance Company Limited V. Swaran Singh 2004 (2) RCR (Civil) 114 that was dealing with the effect of a fake driving licence or instances where even possession of licence would be irrelevant. Swaran Singh's cases (supra), explains also situation where the driver of the vehicle itself did not cause the accident but there were other factors that contributed it such as when vehicle was parked safely or when there was mechanical failure. Then non-possession of licence itself would be immaterial. The reliance on Swaran Singh's case was also in the context of treating the Motor Vehicles Act as a social welfare legislation. Beyond these observations I can draw no inference to hold in favour of the appellant. Driving of a tempo or an auto rickshaw which belongs to the same category, which is a light motor vehicle, cannot immediately give us a clue about the nature of driving licence that is required. If it was a light motor licence and an auto rickshaw which is insured as such to carry passenger, it would qualify requirement of a permit in the manner contemplated under Section 66 and a driver must also have a transport vehicle endorsement. This law was laid down in the National Insurance Co. Ltd. Versus Challa Bharathamma (2004) 8 SCC 517. This point was subsequently re-emphasized by the Supreme Court in New India Assurance Co. Ltd. Versus Prabhu Lal 2008 ACJ 627. These two decisions reiterates what the section patently provides, namely, section 3

requirement of transport vehicle endorsement read with relevant rules which we have referred to above. In the light of the bare provisions of the Act and the decisions of the Supreme Court there can be no space left for the owner to contend that a vehicle which is insured as a goods carrying public carrier could be driven by a person merely having LMV driving licence, if at the relevant time the goods were not being carried. It is the nature of the vehicle that is being driven and how the vehicle is insured that will govern the licence requirement. It will lead to absurd consequences, if any other meaning is attributed, viz that if the goods were being transported to a place and offloaded at the particular place, the driver who drives to the place till the goods are loaded would require a transport vehicle endorsement in his licence but after the goods are offloaded and drives the vehicle it could be even driven by a person who did not have the transport vehicle licence. This interpretation would lend violence to a plain reading of Section 3 which contemplates the necessity of a driving licence with the transport endorsement, if he drives a transport vehicle. We have already seen the definition of two classes of transport vehicles which only means that it is a goods carriage. Goods Carriage again is defined under Section 2 (14) thus:-

“2. Definition.—In this Act, unless the context otherwise require,—

xx xx xx

(14) “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;”.

There are two components: One, when it is constructed or adapted to carry

goods and two, when not so constructed or adapted, and when it actually carries goods. Goods carriage is a carriage which is meant to carry goods and not necessarily as a carriage which only actually carries goods. It will be, therefore, obvious that a vehicle which is designed to do a particular act and intended for a particular purpose must be assigned to that category irrespective of whether the goods are carried at that time or not. A pick up van insured as a goods carrying vehicle and public carrier cannot lose that character by the fact that it was not carrying goods at the relevant time. Learned counsel also refers me to the judgment of the Supreme Court in National Insurance Company Ltd. Versus Sri Annappa Irappa Nesaria and others 2008 (3) SCC 464, that dealt with the case of a motor van that was involved in an accident. It had goods carriage permit. The driver possessed a light motor vehicle and was authorized to drive a light goods carriage as well. I cannot see from the facts of the case the nature of endorsement made therein. The court was however, setting out the Form 6 and held that it was evident that a person who had a valid licence to drive a light motor vehicle was authorized to drive light goods vehicle as well. It is again not clear from this judgment whether the Court was holding that a transport vehicle endorsement is unnecessary, if it turned out to be a light motor vehicle. Such understanding is not possible from the reading of the provision under Section 3 of the Act and the understanding of the definition of light motor vehicle and transport vehicle which we have already observed are not necessarily mutually exclusive and they can even overlap. The transport vehicle cannot dispense with a requirement of licence to drive without such endorsement and if it does so and the owner allows a driver without such endorsement to handle his goods carrier, he exposes himself the danger of

allowing for recovery from the insurer.

7. I find no error in the order passed providing for right of recovery for the insurer. I decline to make any interference in favour of the appellant. The appeal is dismissed. The amount which is deposited by the appellant is directed to be paid to the insurer and it will be treated as part satisfaction of the entitlement for recovery which has been provided.

September 2, 2015
prem

(K.KANNAN)
JUDGE