IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2969 of 2012
Date of Decision: 18.02.2015

Jagdev Sharma

... Appellant

vs.

United India Insurance Company and others

... Respondents

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by:- **Mr. Rahul Rampal, Advocate for the appellant.**

Mr. Paul S. Saini, Advocate for respondent No.1.

ANITA CHAUDHRY, J.

The driver and owner are disputing the liability of payment of compensation awarded by the Motor Accident Claims Tribunal, Ludhiana (for brevity, the 'Tribunal') dated 14.02.2012.

An award of Rs.3,65,000/- was passed by the Tribunal in favour of the claimants. A plea had been raised by the insurance company that respondent No.1 did not possess a valid and effective driving licence. The vehicle which caused the accident was a canter. Licence Ex.R-2 entitled the driver to drive LMV whereas the vehicle driven by the driver was a MTV. The national permit Ex.R-3 revealed that the type of the vehicle as MTV and it was a goods carrier. The Tribunal noted that for MTV type of vehicle, a distinct licence was required. A finding was returned in favour of the insurance company on issue No.5.

The only dispute that is under consideration, is whether a person having a licence to drive LMV can drive a MTV. The Tribunal relied upon **Oriental Insurance Company Ltd. Vs. Angad Kol 2009 (2) Apex Court Judgments 641** and returned the findings in favour of the insurance company. The insurance company was given the right to recover the amount from the owner and the driver.

The submission made on behalf of the appellant, while relying upon **National Insurance Co. Ltd. Vs. Swaran Singh & Ors., 2004(2) RCR(Civil) 114, Oriental Insurance Company Ltd. Vs. Smt. K. Sundaramma @ Sundara & Ors. 2004(3) RCR(Civil) 840, National Insurance Company Ltd. Vs. Shankarlal & Anr. 2005(1) RCR(Civil) 550** and **New India Assurance Co. Ltd. Vs. Balakrishnan 2011(4) KLT 412,** was that in Swaran Singh's case (supra) it was held that if the driver is possessing a licence for one type of vehicle and was found driving another type of vehicle, then in each case evidence has to be led before the Tribunal whether the accident was caused solely because of some other intervening causes and having no nexus with the driver possessing requisite type of licence and considering the issues, a finding was returned that the insurance company cannot avoid its liability only because the driver was found to be driving another type of vehicle. It was urged that even in the case of an accident caused by a person having a learner's licence, the insurance company were directed to satisfy the award. It was urged that merely because the driver had a different category of licence would not amount to breach of the condition of the policy.

The submission, on the other hand, was that in Swaran Singh's case (supra) the issue was not exhaustively examined and later in Angad Kol's case (supra) the Apex Court faced a similar issue which had arisen in this case and it was held that since the driver had no licence to drive a transport vehicle, the insurance company could not be saddled with liability. It was urged that framers of law had made a distinction between Light Motor Vehicle (LMV) and Medium Transport Vehicle (MTV) and for each category a special endorsement is required as can be noticed from the provisions of the Act.

The offending vehicle is owned by a transport company. The vehicle is registered as a MTV. The driver was found driving the vehicle having a licence to drive LMV only. No endorsement had been made. The owner did not step into the witness box to say that he had seen the licence nor could have said so. The accident had taken place after the amendment was made in the Motor Vehicles Act, 1998.

The Motor Vehicle Act, 1988 was enacted to consolidate and amend the laws relating to motor vehicles. Light motor vehicle has been defined in Section 2(21) of the Act:-

> *"2.(2) '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."*

Although the definition of the light motor vehicle brings within its umbrage both transport vehicle or omnibus, indisputably, as would be noticed infra, a distinction between an effective licence granted for transport vehicle and passenger motor vehicle exists.

Section 9 provides for grant of driving licence. Section 10 prescribes the form and contents of licences to drive which is to the following effect :

> *"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 classes, namely:-*
>
> *(a) -(c)*
>
> *(d) light motor vehicle;*
>
> *(e) transport vehicle;*
>
> *(i) road Roller;*
>
> *(j) motor vehicle of a specified description."*

The distinction between a `light motor vehicle' and a `transport vehicle' is, therefore, evident. A transport vehicle may be a light motor vehicle but for the purpose of driving the same, a distinct licence is required to be obtained.

The distinction between a `transport vehicle' and a `passenger vehicle' can also be noticed from Section 14 of the Act. Sub-section (2) of Section 14 provides for duration of a period of three years in case of an effective licence to drive a `transport vehicle' whereas in case of any other licence, it may remain effective for a period of 20 years.

In terms of the rules, the owner of a vehicle has a responsibility to see that the vehicle is driven by a person who satisfies the provisions of Section 3 or 4 of the Act. In case the driver is not holding the licence to drive a particular type of vehicle, the owner could not have handedover the vehicle to him and the insurer is thus entitled to succeed in its defence and avoid the liability. The owner, in this case, has consciously allowed the driver to drive a vehicle who did not have the proper licence and the owner of the vehicle had committed a breach of the terms of the contract of the insurance.

The matter has been dealt exhaustively by the Hon'ble Supreme Court in Angad Kol's case (supra). The transport authorities while granting licence for LTV or MTV impart special training and test. The driver had failed to adduce any evidence that he was found competent or had taken the test. The Tribunal had relied upon Angad Kol's case (supra) and rightly directed the insurance company to reimburse the claimants and recovery rights were given to it to recover the compensation from the driver and owner. I find no force in the submissions made by the appellant. The appeal is dismissed.

18.02.2015 **(ANITA CHAUDHRY)**
Jiten **JUDGE**