IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1)

FAO No.2326 of 2013 (O&M)
Date of Decision: October 14, 2015.

New India Assurance Company Limited

..........APPELLANT(s).

VERSUS

Ramji Parsad and others

........RESPONDENT(s).

(2)

FAO No.2177 of 2013 (O&M)

Lokesh Thakur

..........APPELLANT(s).

VERSUS

New India Assurance Company Limited and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.K. Prajapati, Advocate for
Mr. R.S. Madan, Advocate
for the appellant in FAO-2326-2013 and
for respondent No.1 in FAO-2177-2013.

Ms. Ekta Thakur, Advocate
for respondent No.3 in FAO-2326-2013 and
for appellant in FAO-2177-2013.

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<u>SURINDER GUPTA, J.</u>

The appeals captioned above are against the common award dated 05.02.2013 passed by Motor Accident Claims Tribunal, Chandigarh ((later referred to as the Tribunal), whereby compensation of ₹10,87,320/- was allowed on account of death of Vikrant Kumar son of claimants Ramji

Parsad Singh and Rita Devi in a motor accident with vehicle Swaraj Mazda bearing registration No.HP-51-B-4459 ((later referred to as offending vehicle). The insurance company was directed to pay the compensation amount to the claimants at first instance and allowed the recovery rights against Lokesh Thakur, owner and driver of the offending vehicle on the ground that driver of the offending vehicle was not having a valid and effective driving licence on the day of accident.

2. New India Assurance Company in appeal (FAO No.2326 of 2013) sought the reversal of the finding of the Tribunal that the accident had taken place due to rash and negligent driving of the offending vehicle by its driver. It has also questioned the quantum of compensation allowed by the Tribunal and to absolve the insurance company from the liability fastened on it.

4. Lokesh Thakur, driver and owner of the offending vehicle has filed appeal (FAO No.2177 of 2013) seeking modification of the award whereby the Tribunal has held the offending vehicle as not falling under the category of light motor vehicle. It was alleged that the appellant was holding LMV (Trans.) driving licence and was authorized to drive Swaraj Mazda vehicle with that licence.

<u>Brief Facts:-</u>

5. Column 24 of the claim petition gives the description of the accident that took place on 02.07.2009 as follows:-

> "On 02.07.2009, deceased Vikrant Kumar while driving his Ciello Car No.CH-01-S-6668 was going to Panchkula and when he reached near Transport Light

Point Sector 26, Chandigarh, a Truck make Swaraj Mazda bearing No.HP-51-B-4459 coming from the side of Tribune Chowk at a very high speed and driving in a very rash and negligent manner, hit the Ciello Car No.CH-01-S-6668 being driven by deceased, resulting into death of Vikrant Kumar. The vehicle was driven by respondent no.1 at a very high speed and in a very rash and negligent manner."

6. In the written statement, respondent No.1(appellant in FAO No.2177 of 2013) denied the accident and termed the story as propounded by the claimants concocted one and after-thought.

7. Respondent No.2-insurance company (appellant in FAO No.2326 of 2013) in its separate written statement, denied the accident and alleged that no intimation qua the alleged accident was received by it.

8. Pleadings of the parties led to the framing of following issues:-

"1. Whether Vikrant died in road side accident which took place on 2.7.2009 at about 2.10 am on the Transport Light Point, Sector 26, Chandigarh because of rash & negligent driving of respondent no.1 while driving vehicle bearing registration no. HR-51-B-4459 (sic HP-51-B-4459)? OPP

2. If issue no.1 is proved in affirmative, to what amount of compensation the claimants are entitled and from whom? OPP

3. Whether the driver of offending vehicle was not holding a valid & effective driving licence at the time of accident, if so its effect? OPR

4. Relief.

9. While recording findings on issue No.1, the Tribunal concluded that the accident resulting in death of Vikrant Kumar was caused due to rash and negligent driving of the offending vehicle by respondent No.1. On the

issue of validity of driving licence of the driver of the offending vehicle i.e. Lokesh Kumar (appellant in FAO-2177-2013), the Tribunal observed as follows:-

> "27. The driving license of respondent no.1 copy of which is Ex.R-1 was valid for LMV-Trans w.e.f. 21.6.2004 and for HTV w.e.f. 13.9.2010. The accident occurred on 2.7.2009 and apparently, the driving license was not valid for HTV on that date. Ex. R-1 is the copy of form of certificate of registration of vehicle no. HP-51-B-4459 which describes it as MCV. It is a Swaraj Mazda open truck with gross vehicle weight of 8000 Kg. Section 2(21) of the Act defines light motor vehicle as under:-
>
> > ***'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;***
>
> 28. Since gross vehicle weight of the vehicle was 8000 kgs., therefore, the vehicle was not a light motor vehicle. At the time of accident, the driver, respondent no.1 had driving license valid for LMV-Trans only. A driving license is required to contain information of motor vehicle of specified description as per Section 10(2)(j) of the Act. Since the vehicle in question was not a light motor vehicle, therefore, it cannot be held that the driving license of respondent no.1 was valid and effective at the time of accident. "

10. Lokesh Kumar (appellant in FAO-2177-2013) has challenged the recovery rights given to the insurance company on the ground that Swaraj Mazda was not a heavy transport vehicle, rather it was a light motor

vehicle as its unladen weight does not exceed 7500 kgs. The appellant was authorized to driver Swaraj Mazda as he was possessing licence to driver LMV-Trans vehicle.

11. Learned counsel for the insurance company has argued that the licence of Lokesh Kumar was valid only for LMV-Trans and Swaraj Mazda was a heavy transport vehicle, as such, the Tribunal has rightly allowed the recovery rights with regard to the compensation paid to the claimants against the appellant Lokesh Kumar. The Tribunal while calculating the quantum of compensation has wrongly taken age of deceased instead of age of claimant.

12. Considering the rival contentions, following points arise for consideration in these appeals:-

> *(i) Whether the offending vehicle falls within the category of light motor vehicle and Lokesh Kumar, who was driving the vehicle, was having a valid driving licence to drive the same?*
>
> *(ii) Whether the Tribunal was right in ordering the insurance company to first pay the compensation amount and then to recover the same from the owner of the offending vehicle?*
>
> *(iii) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?*

13. Admittedly, on the day of accident, appellant Lokesh Kumar was having licence to driver Light Motor Vehicle-Transport. The Tribunal while referring to the definition of light motor vehicle as given in Section 2(21) of Motor Vehicles Act (later referred to as the Act) has observed that Swaraj Mazda is not a light motor vehicle as its gross weight was 8000 kgs.

Section 2 (21) of the Act defines 'light motor vehicle' as follows:

'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."

14. Medium goods vehicle has been defined in Section 2(23) of the Act as follows:-

"medium goods vehicle" means any goods carriage other than a light motor vehicle or a heavy goods vehicle;

15. As is clear from the definition of 'light motor vehicle' given under Section 2 (21) of the Act, a transport vehicle with gross vehicle weight not exceeding 7500 kgs. falls within the definition of 'light motor vehicle'. 'Heavy goods vehicle' has been defined in Section 2(16) as any goods carriage, the gross vehicle weight of which exceeds 12000 kgs. The vehicles falling between light motor vehicle and heavy goods vehicle fall in the category of medium goods vehicle. Unladen weight indicated in Section 2 (21) of the Act is referable only to a motor car or tractor or road roller. For the transport vehicle, in order to assess as to whether it falls within the light motor vehicle, the gross vehicle weight is to be taken into consideration. This fact is not disputed that the gross weight of the offending vehicle as mentioned in Ex.R3 (national permit for goods carriage) is 8000 Kgs.

16. Before proceeding further, it will be relevant to have a look on the definition of 'transport vehicle' as given in Section 2 (47) of the Act, which is as follows:-

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

17. The word 'gross vehicle weight' has been defined in Section 2 (15) of the Act which reads as follows:-

> “ 'gross vehicle weight' means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.”

The offending vehicle was Swaraj Mazda which is a vehicle meant for carrying goods, as such, falls within the definition of transport vehicle. The load certified and registered by the registering authority as permissible for this vehicle was 8000 kgs, as such, this vehicle cannot be construed as 'light motor vehicle'. As defined in Section 2 (23) of the Act, this vehicle falls within the definition of 'medium goods vehicle'.

18. This fact is not disputed that the driver of the offending vehicle Lokesh Thakur was possessing a driving licence to drive light motor vehicle (LMV-Trans), as such, the findings by the Tribunal in para 27 and 28 of the award (referred above) calls for no interference.

19. The vehicle was insured with New India Assurance Company Limited (appellant in FAO-2326-2013), as such, the Tribunal has rightly directed the insurance company to pay the amount of compensation to the claimants in the first instance and for the breach of terms of the insurance policy, has allowed the recovery rights against the owner of the offending vehicle. It has also been so observed by Hon'ble Apex Court in ***New India Assurance company Vs. Kamal and others (2001-1) The Punjab Law Reporter 830.***

20. The appeal filed by Lokesh Thakur (FAO No.2177 of 2013) alleging that the driving licence of appellant was valid, is without merits.

21. On the question of quantum of compensation, it has been argued that the Tribunal has applied the multiplier as per the age of the deceased instead of taking the age of the claimants into consideration.

22. The above arguments of learned counsel for insurance company is not relevant. It is no more res integra that while calculating the amount of dependency, the multiplier is to be applied taking into account the age of the deceased and not the age of the claimants as has been held by a three Judges' Bench of Hon'ble Supreme Court in ***Reshma Kumari and Ors. v. Madan Mohan and Anr. (2013) 9 SCC 65*** and affirmed by another three Judges' Bench of Hon'ble Apex Court in ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447.*** This contention of learned counsel for the appellant in FAO No.2326 of 2012 is also rejected. Though the plea has been raised in the grounds of appeal that accident did not take place due to rash and negligent driving of offending vehicle, but it was not pressed.

23. In view of my above discussion, both the appeals i.e. FAO No.2326 of 2013 and FAO No.2177 of 2013 have no merits.

24. Dismissed.

(SURINDER GUPTA)
JUDGE

October 14, 2015.
Sachin M.

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Whether to be referred to Reporters: ***Yes/No***