

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

RA-CR-149-CII of 2014 in
FAO No.3444 of 2013
Date of decision : 21.07.2015

New India Assurance Company Ltd. ...Petitioner

V/S

Nirmala Rai and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. G. S. Sawhney, Advocate
for the applicant/respondent Nos.6 and 7

Mr. Paul. S. Saini, Advocate
for non-applicant/appellant.

JITENDRA CHAUHAN, J. (Oral)

1) This review application has been filed by the driver and owner of the vehicle for the review of the order dated 19.05.2014 passed by this Court in FAO No.3444 of 2013.

2) Learned counsel for the driver and owner i.e. the applicants contends that as per registration certificate issued by the Registering Authority, Ludhiana, the gross weight of the vehicle i.e. Tata Ace, is 1550 Kilograms, which is a “light motor vehicle”, as defined in Section 2(21) of the Motor Vehicle Act. He further contends that the license held by the driver was for driving the motor cycle and light motor vehicle. He further contends that the driver, who possesses a valid driving license to drive the light motor vehicle was, therefore, authorised to drive the vehicle in

question which is a light motor vehicle. Armed with the above contention, he argued that the Insurance Company cannot escape its liability to pay the compensation. The learned counsel cites-**Ashok Gangadhar Maratha VS. Oriental Insurance Company** AIR 1999 Supreme Court 3181; **National Insurance Company VS. Parveen Kumar and others**-2005 Accident Claims Journal 1178; **National Insurance Company Ltd. VS. Annappa Irappa Nesaria** 2008(2) Law Herald (SC) 1053; **S. Iyyapan Vs. United India Insurance Company**-2013(4) Law Herald (SC) 3049; **National Insurance Company VS. Mam Kaur and others** 2014 Accident Claims Journal 902 and **Balbair Singh and another Vs. Ralla Singh and others**-2014 Accident Claims Journal 1037.

3) On the other hand, the learned counsel for the Insurance Company contends that even as per the registration certificate the class of the vehicle is “Light Goods Vehicle”, which is a commercial vehicle, thus the driver Sarabjit Singh was not authorised to drive the vehicle as he was only authorised to drive the M. Cycle/LMV only. He prays for a dismissal of the review application.

4) I have heard the learned counsel for the parties and perused the record with their able assistance.

5) In **Kamlesh Verma Vs. Maya wati and others** 2013 (5) Recent Apex Judgment 62 (Supreme Court), the following guidelines have been laid down, where the review is not maintainable:-

“When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.”*

So, this review is not maintainable.

6) On merits also, the review is also not maintainable. The vehicle in question, as per registration certificate, is “Light Goods Vehicle”. Admittedly, the license possessed by the driver was for driving the motor cycle and light motor vehicle. He was not authorised to drive the light goods vehicle. Sections 3, Chapter II, of the Act reads as under:-

“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.”

There is no specific endorsement to drive the light goods vehicle, as provided in Section 3 of the Act. The point raised in this review application has been specifically dealt with in the main judgment. So, this point cannot be reagitated in the review application. The case law cited by the learned counsel is distinguishable on facts.

7) This review petition is therefore, dismissed.

21.07.2015

ashok

**(JITENDRA CHAUHAN)
JUDGE**