IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 1220 of 2013(O&M)
Date of Decision : 28.01.2016

Cholamandalam MS General Insurance Company Ltd.

...... Appellant

versus

Pushap Kumar and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Ms.Vandana Malhotra, Advocate
for the appellant.

Mr. Parambir Singh, Advocate for respondents No.1 to 3.

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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?

AJAY TEWARI, J. (Oral)

CM No. 7493-CII of 2013

This is an application for condonation of delay of 44 days in filing the present appeal. The ground taken is that since the file had to go through many channels before the approval could be granted, that is why the delay occurred.

For the reasons recorded in the application, the delay of 44 days in filing the present appeal is condoned.

CM stands disposed of.

F.A.O. No. 1220 of 2013

This appeal has been filed by the insurance company against the award dated 28.09.2012 whereby claimant-respondents No. 1 to 3 have been awarded a compensation of Rs.2,77,600/- along with interest at the rate of 9% p.a. from the date of filing of the claim petition till realisation.

Brief facts of the case are that on 05.10.2009 Ashok Kumar was going on his scooter when he was hit by a three wheeler bearing registration No. PB-10CR-6791 being driven by respondent No.4 in a rash and negligent manner. In the accident Ashok Kumar received injuries and was admitted in the hospital where he remained up to 10.10.2009 from where he was referred to DMC, Ludhiana and was discharged from there on 14.11.2009. He was still under treatment when the claim petition was filed and died during the pendency thereof and the claim petition was contested by his legal heirs.

In the claim petition respondent No.4 took a specific stand that respondent No.4 did not possess a valid and effective driving licence on the date of the accident. In fact, he was authorised to drive a particular class of vehicle for which a licence was given and the same was for driving a car. He was, therefore, not authorised to drive a three wheeler. The Tribunal did not accept this plea of the insurance company and held that the the driver of the three-wheeler was holding a valid and effective driving licence at the time of accident. It held that the car and three wheeler both fall in the category of light motor vehicles and no separate driving licence is required for driving a three wheeler. It has further been held that when a person is granted a licence for driving a light motor vehicle he can drive another type of vehicle which is of the same category but of different type. The Tribunal granted a compensation of Rs. 2,77,600/- to the legal heirs of the claimants to be payable in equal shares by all the respondents jointly and severally.

Learned counsel for the appellant has assailed the finding of the Tribunal that the driver of a light motor vehicle is authorised to any other vehicle of the same category but of different type. To controvert this finding of the Tribunal learned counsel has placed reliance on **National Insurance Co. Ltd. v. Kusum Rai and others** reported as 2006(2) SCC(Cri) 214 wherein the driver of the offending vehicle was driving the same as a taxi which was a commercial vehicle but he was not having an appropriate licence therefor. It was held that there was breach of the terms and conditions of insurance policy and it could raise the defence that the driver of the offending vehicle was not holding a valid and effective driving licence but keeping in view the peculiar facts and circumstances of that case the Hon'ble Supreme Court granted right to the insurance company to recover the amount from the owner. To the similar effect is the case of **New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir and Anr**. reported as 2008(3) SCC(Cri) 476. In that case the driver was driving a three wheeler when he caused the accident but he did not possess a licence to drive the same as in the present case . This Court held that insurance company was not liable to pay the compensation as the vehicle was being driven in violation of the terms and conditions of insurance policy.

In view of the aforesaid judicial pronouncements, it is held that the insurance company has a right to recover the amount of compensation to be paid by it from the owner of the offending vehicle.

Appeal stands disposed of in the above terms.

(AJAY TEWARI)

January 28, 2016 **JUDGE**

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