

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

FAO No. 1408 of 2015 (O&M)

Date of Decision: February 29, 2016

M/s Ludhiana Bottling Company

...Appellant

Versus

Satpal Arora and others

...Respondents

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

Present: Mr. Sanjeev Goyal, Advocate,
for the appellant.

Mr. DD Gupta, Advocate,
for respondent No.3.

Mr. Neeraj Khanna, Advocate, for
Mr. Vinod Chaudhari, Advocate,
for respondent No.4.

K. KANNAN, J. (Oral)

1. The appeal is brought on an issue of indemnity denied to the owner on the ground that the driver had only a licence to drive a heavy motor vehicle (HMV) and it cannot avail to driver who is driving a medium transport vehicle. The Court was relying on a judgment passed by this Court in United India Insurance Co. Ltd. Vs. Smt. Santra Devi and others 2012 ACJ 179 that relied on a judgment of the Supreme Court in Oriental Insurance Co. Ltd. Vs. Zaharulnisha 2008 ACJ 1928, while considering the issue of liability for a person who held a heavy transport vehicle licence who was driving a tractor. The reliance on this judgment must be seen in the context in which it was applied. It was a case of the deceased travelling on the mudguard of the tractor falling out of it and trapped under the wheel.

The tractor itself was not meant to carry a passenger and the insurer could

not have been made liable. In such a situation, it was not required to be seen whether the licence to drive a heavy transport vehicle could qualify for a person to drive a tractor which may require different skills. I have no reason to suspect that the driving a medium transport vehicle is any different from the skill to driver a heavy motor vehicle. The skills are the same for both type of four wheelers.

2. The order declining the indemnity is set aside and the appeal is allowed.

February 29, 2016
prem

(K.KANNAN)
JUDGE