IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5254 of 2013 (O&M)
Date of decision: February 18,2016.

Bharti AXA General Insurance Company Ltd.
........Appellant

VS.

Satender and others
.........Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

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

Mr. Anil.K.Gahlawat, Advocate
for the respondent Nos. 6 and 7.

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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?**

<u>K.KANNAN,J</u> (Oral)

1. The appeal is by the insurer on the issue of liability for the use by the insurer being made liable to indemnify the owner and driver of a tractor attached with trolley in a situation where the driver had only a LMV/tractor licence. The vehicle was admittedly insured as commercial vehicle and the premium paid therefor. The contention by the owner was that at the relevant time of the accident, the vehicle was being put to an agricultural purpose, which was not a commercial purpose and, therefore, the Insurance Company is bound to indemnify.

2. I have seen through the terms of the policy. It is insured as a

commercial vehicle and a comprehensive insurance policy has been issued by payment of premium that includes the premium for a transport vehicle. It is the nature of the vehicle and the policy that will dictate the nature of driving licence as well. By the expressions employed in Section 3 of the Motor Vehicles Act a tractor which by itself is only a Light Motor Vehicle. If attached to a trail, as defined under Section 2 (4b) of the Motor Vehicles Act, and it is intended to be drawn by a motor vehicle, it shall become a goods carriage, as defined in Section 2 (14) of the Act, which states that any motor vehicle which is constructed adapted for use of carriage goods will qualify as such. Section 2 (47) defines a transport vehicle as including a goods carriage. Section 3 of the Motor Vehicles Act declares that no person shall so drive a transport vehicle other than a motor cab or motorcycle unless his driving licence specially entitled to do so. It is, therefore, the category of vehicle which he drives that is material. If the driver did not have a transport vehicle licence for a vehicle that is insured as a commercial vehicle, then the driver cannot be taken as having an effective driving licence. The indemnity provided to the driver and owner was erroneous and it is set aside.

3. The appeal by the insurer is allowed and the insurer shall be at liberty to exercise the right of recovery against the owner and driver after satisfying the claim.

4. The appeal is allowed to the above extent.

FEBRUARY 18, 2016 **(K.KANNAN)**

Rajeev **JUDGE**