

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

**FAO No. 1572 of 2008 (O&M)
Date of Decision: 08.03.2017**

National Insurance Company Limited

... Appellant

vs.

Baljit Kaur and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. L.M. Suri, Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.**

**Mr. Anil Shukla, Advocate
for respondent Nos. 1 to 3.**

**None for respondents No.4 and 6.
None for respondent No.5.**

ANITA CHAUDHRY, J.

Delay condoned in filing and re-filing the appeal.

This is an appeal by the Insurance Company seeking the recovery rights.

Learned counsel for the appellant has urged that the issue involved is short and they were only seeking recovery rights as the driver of the offending vehicle did not have a licence to drive a tractor-trolley and was holding a licence to drive the scooter and car only and the Tribunal has wrongly rejected the right of recovery.

The records of the case were burnt in the fire incident that took place in 2011 and the file was partially reconstructed.

Respondent No.5 was reported to have died. His LR was

brought on record. Notice was issued to him and as per office report, he was served through his sister-in-law. No one has appeared on his behalf. The LR so impleaded is the son of respondent No.6.

The counsel for the appellant has urged that the issue involved is legal and the position of law is undisputed and arguments may be heard today as the appeal is of 2008 and the accident is of 2004. Learned counsel for respondents No.1 to 3 states that he has no objection.

Respondent No.4 was the driver while respondents No.5 and 6 are the owners of the offending vehicle.

It is clear from the award the respondent No.4 was holding the licence to drive the scooter and car only, whereas he was driving the tractor-trolley at the time of accident. In the case of **Oriental Insurance Company Limited Vs. Mekh Chand & Ors. 2012(3) PLR 37**, this Court had held that if a person possesses a valid licence for driving a car/ scooter, it cannot be taken to be one for tractor and special endorsement is required on the licence to drive the tractor. Tractor was attached with a trolley and would constitute a goods carriage under Section 2(14) of the Motor Vehicles Act and consequently a transport vehicle. Specific endorsement was necessary to drive the tractor-trolley. In the case of **New India Assurance Company Limited Vs. Prabhu Lal 2008(1) RCR(Civil) 198**, it has been held by the Hon'ble Apex Court that unless there was endorsement under Section 3 of the Motor Vehicles Act, a person holding driving licence to ply light motor vehicle cannot ply transport

vehicle. The driver did not have the requisite licence, therefore, the insurance company was entitled to recover the amount from the owner and the driver. The appeal is allowed and the insurance company is given recovery rights only after payment of compensation to the claimants.

08.03.2017

Jiten
Whether speaking/ reasoned
Whether reportable

(ANITA CHAUDHRY)
JUDGE
Yes/ No
Yes/ No