

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

FAO-2880-2012 (O&M)
Date of decision: 03.10.2017

The New India Assurance Company

.... Appellant

Versus

Beena Devi and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.D.K.Prajapati, Advocate for
Mr.Raghujeet S. Madan, Advocate
for the appellant.

Ms. Pratibha Yadav, Advocate for
Mr. Prithvi Raj Yadav, Advocate
for respondent No.1.

Avneesh Jhingan, J.

Present appeal has been preferred against the award dated 09.02.2012 passed by Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as the 'Tribunal').

The present appeal has been filed by the Insurance Company. The only ground pressed in the appeal is that the driver was having a licence for motorcycle with gear, light motor vehicle and tractor whereas he was driving a goods carrying commercial vehicle, there is a breach of condition of policy.

The brief facts are that on 25.11.2010, Smt. Beena Devi was struck by Mahindra Pick Up bearing registration No.RJ-32-GA-6279 (for short, 'the offending vehicle'). The offending vehicle was driven in a rash and

negligent manner. As a result of the accident, Smt. Beena Devi suffered injuries.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed.

The Tribunal after considering the witnesses and evidence, awarded a sum of Rs.9,85,000/- along with interest @ 6% per annum.

The respondents were jointly and severally held liable to pay the same.

Aggrieved of the said award, the present appeal has been filed by Insurance Company.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

Admitted fact is that the driver was holding a driving licence for light motor vehicle. It is not disputed that the gross weight of "Pick Up" was 2820 kilograms and the same falls within the definition of light motor vehicles. The only dispute is that the driver was driving a goods carrying commercial vehicle and there was no endorsement on the licence for goods carrying commercial vehicle.

Learned counsel for respondent No.1 has argued that the licence of light motor vehicles would cover goods carrying commercial vehicle also.

The issue raised by learned counsel for the appellant is no longer res-integra. The said matter is covered by the decision of the Apex Court in case of **Kulwant Singh and others vs. Oriental Insurance Company Ltd., 2015(2) SCC 186** and the latest decision of the Hon'ble Apex Court in civil appeal No.5826 of 2011, decided on 03.07.2017, titled as **Mukund**

Dewangum vs. Oriental Insurance Company Ltd., 2017(7) Scale 731.

In case of *Kulwant Singh's case* (supra), the Hon'ble Apex Court relying upon its own earlier decision in **S. Iyyapan vs. United India Insurance Company Limited and Another, 2013(3) RCR (Civil) 654** and **National Insurance Company Ltd. Vs. Annappa Irappa Nesaria Alias Neseearagi and others, 2008(1) RCR (Civil), 848,** has held as under:-

9. We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No.4. It was concluded :

"20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor

vehicle, therefore, was authorised to drive a light goods vehicle as well."

Thereafter in case of ***Mukund Dewegan's case*** (supra), the Hon'ble Apex Court has held as under :-

"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2) (d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also

and the expression in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) 'Light motor vehicle' as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No. 54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed

7500 kg. or a motor car or tractor or road-roller, the “unladen weight” of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained “medium goods vehicle” in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and “heavy passenger motor vehicle” in section 10(2)(h) with expression ‘transport vehicle’ as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related

only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

Law enunciated in the above decisions is that a light motor vehicle would include the transport vehicle of such class as per the weight prescribed under Section 2(21) read with Section 2(15) and 2(48) of the Act. There is no need to obtain separate endorsement to drive transport vehicle.

In view of the settled position of law, the argument raised by the appellant has to be rejected. It is held that the driving licence held for light motor vehicle was valid for goods carrying commercial vehicle.

The appeal is dismissed being devoid of any merit.

(AVNEESH JHINGAN)
JUDGE

03.10.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes