

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 10523 of 2014 (O&M)

Date of Decision: 20.9.2017.

National Insurance Co. Ltd.

.....Appellant

Versus

Balwinder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Mr. Simran Singh, Advocate for
Mr. S.S. Rangi, Advocate
for respondents No. 6 and 7.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 22.8.2014 passed
by the Motor Accidents Claims Tribunal, Ludhiana (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal
are noted:

On 18.10.2010 Surinder Pal Singh lost his life in an accident.
His motor cycle bearing registration No. PB-43-C-3654, was struck by a
school van bearing registration No.PB-10-BR-0916. The accident occurred
near Behololpur Road on Samrala Chandigarh Road, Samrala. Surinder Pal
Singh was brought to Civil Hospital, Samrala, where he succumbed to his
injuries. FIR No. 264 dated 18.10.2010 was registered at Police Station
Samrala. The deceased was working as Junior Engineer at PSEB Ghulal
(Samrala).

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, two major un-married daughters and one minor son and the father of the deceased.

The Tribunal after considering the evidence and witnesses, awarded a compensation of ₹ 32,12,820/- alongwith interest at the rate of 7.5% per annum.

The present appeal has been filed by the Insurance Company.

Two issues raised are that firstly the Tribunal has wrongly deducted 1/4th as personal expenses and secondly, the licence held by the driver of the school van was of LMV whereas he was driving a Mini Bus.

I have heard learned counsel for the parties and perused the paper book.

There is no dispute on the facts of the case.

The first issue raised is that the Tribunal has wrongly deducted 1/4th for self expenses. The issue raised is no longer res-integra.

Hon'ble the Apex Court in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121, observed as under :-

“14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the

number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.”

A perusal of the above decision shows that the deduction for self expenses depends upon the number of dependents in the family.

In the present case, the claimants were five and even if we exclude the father, yet there will be four claimants who are undisputedly dependent of the deceased.

In view of law laid down ,1/4th deduction has been rightly made and there is no illegality committed by the Tribunal in applying 1/4th deduction.

With regard to issue No.2 raised by learned counsel for the appellant, the said issue is also 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 Insuramce Company Ltd.**

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,** 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 as per the weight prescribed under Section 2(21) read with Section 2(15) and 2(48). There is no need to obtain separate endorsement to drive transport vehicle.

Learned counsel for the appellants could not seriously dispute that the unladen weight of the school van was 4450 kilogram. As such it

was covered under the definition of LMV as defined under section 2(21) of the Act.

As a result, the appeal is devoid of any merit and thus is dismissed. The award dated 22.8.2014 passed by the Tribunal is upheld.

20.09.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No