IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1445 of 2015
Date of Decision: 15.11.2017

Rohtash and another ....Appellants

Vs.

Bharti Axa General Insurance Co.Ltd. And ors. ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.G.C.Shahpuri, Advocate, for the appellants.

Mr.Rajbir Singh, Advocate, for respondent No.1.

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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the owner and driver of the offending vehicle against award dated 01.12.2014, passed by the learned Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal') vide which compensation to the tune of Rs.5,63,180/- and insurance company has been given recovery rights from the appellants i.e. owner and driver of the offending vehicle on the ground that at the time of accident, no valid licence was found with the driver.

In paragraph 23 of the Award, it has been observed that as per insurance policy Ex.R4 (Ex.R6), the offending tractor was insured by respondent No.3 and this vehicle was belonging to a category of commercial vehicle-goods which would imply that the insurance given to owner was for a vehicle to be used as goods carriage. The tractor alone could not be used as a goods carriage. On issue No.3, the driving licence was examined as Annexure R-1 and this was issued only in respect of LMV Tractor. RW1 Phool Singh, an official of concern Licensing Authority had proved that the licence was valid only in respect of non-transport vehicle. Since the offending vehicle by virtue of its description in insurance policy as commercial vehicle-goods falls in the category of transport vehicle per Section 2(47) of the Motor Vehicles Act and as per terms of insurance policy, the insured was duty bound to ensure that the vehicle was driven by a person possessing valid and effective driving licence. In these circumstances, when the offending vehicle was covered by the definition of transport vehicle and respondent No.1 was not possessing a driving licence to drive transport vehicle, there was no escape from the conclusion that the offending vehicle at the time of accident was being driven in violation of terms and condition of of the insurance policy and insurance company was given right to recovery of compensation from respondents No.1 and 2.

Learned counsel for the appellants has referred to the judgment of the Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Ltd. 2017 (4) RCR (Civil)** where, this aspect has been considered and it is held that a driver who is having a licence to drive light motor vehicle and is driving transport vehicle of that class is not required to obtain an endorsement to drive a transport vehicle. In paragraph No.46 is answered the question as under:

> " 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) f 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(21) section 2(15) and section 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 (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 (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) andsection 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. "

Learned counsel for the petitioner has further referred to the judgment of Supreme Court in the case of **Kulwant Singh and others Vs Oriental Insurance Company 2015(2) SCC 186** whereby, it is held that a driver had a valid licence to drive a light motor vehicle, therefore, he was authorized to drive a light goods vehicle as well and insurance company is not entitled to recovery rights on the ground of breach of conditions of insurance policy.

So in the light of the references made above, the appeal is allowed and finding of the learned Tribunal, with regard to recovery right was given to insurance company, is set aside and appellants i.e driver and owner of the offending vehicle and insurance Company i.e. respondent No.1 are liable to pay the compensation jointly and severally to the claimants.

Since the appeal is allowed, the bank draft for an amount of Rs.25,000/- which has been retained with the Registry of this Court diposited by the appellants at the time of filing of appeal, be released in favour of them forthwith.

(RITU BAHRI)
JUDGE

15.11.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No