IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7757 of 2014(O&M)

Date of decision: 29.11.2017

Gurdev Singh …..Appellant

VERSUS

Oriental Insurance Company Ltd. and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.S. Dhillon, Advocate for the appellant.

Mr. R.N. Singal, Advocate for respondent No.1.

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REKHA MITTAL, J.

CM No.20672-CII of 2014

Prayer in this application is for condoning delay of 64 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of H.S. Dhillon, Advocate, the application is allowed. Delay of 64 days in filing the appeal stands condoned.

Disposed of accordingly.

CM No.20673-CII of 2014

Prayer in this application is for condoning delay of 29 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Gurdev Singh-appellant, the application is allowed. Delay of 29 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.7757 of 2014

The owner of Truck No.PB-12-F-8697 (alleged offending vehicle) has filed the instant appeal to assail findings of the Tribunal that driver of the offending vehicle did not possess a valid driving licence which entitles the insurance company to recover the amount of compensation from the insured on account of breach of terms and conditions of the policy, after satisfying the award towards the claimants who have been awarded compensation to the tune of Rs.4,87,992/- on account of death of Ajit Singh in a motor vehicular accident that took place on 14.07.2011.

The sole submission made by counsel for the appellant is that Amandeep Singh, driver of the vehicle was holding licence to drive motorcycle, LMV, MMV and HMV, therefore, he was legally competent to drive a heavy goods vehicle or heavy passenger vehicle. In support of his contention, he has referred to the Division Bench judgment of this Court **United India Insurance Company Ltd. Vs. Kamal alias Kamla Devi alias Kamla Wati, 2000(2) ACJ 1461**.

Counsel representing the insurance company has supported findings of the Tribunal recorded in para 28 of the award on the basis whereof the insurer has been held entitled to recover the amount of compensation after payment thereof to the claimants.

Indisputably, Amandeep Singh was holding licence valid for driving motorcycle, LMV, MMV and HMV on the day of occurrence i.e. 14.07.2011. In **Kamal alias Kamla Devi alias Kamla Wati's case** (supra) the issue before the Division Bench was as to whether a driver holding a licence HMV was competent to drive heavy passenger motor vehicle. The Court in para 4 of the judgment has held, quoted for ready reference:-

> “4. It is undoubtedly correct that the Act defines different types of vehicles. It is also true that in Section 2(16) and (17) 'heavy goods vehicle' and 'heavy passenger motor vehicle' have been separately defined. However, a perusal of these definitions shows that the parameters have been clearly laid down. The basic requirement is that the unladen weight should exceed 12,000 kilograms. Once this requirement is fulfilled, it cannot be said that there is any real and substantial qualitative difference between the two categories of vehicles so as to result in disqualifying the driver, having a licence for a heavy motor vehicle, from driving a bus. It is not the case of the appellant that this condition was not satisfied. Still further, it is true that the Act uses the expression 'heavy passenger motor vehicle'. It is also true that the Act does not talk of 'heavy motor vehicles'. While 'light motor vehicles' have been specifically defined in clause (21), no separate definition of a 'heavy motor vehicle' has been given. Despite this, it is not disputed that a competent Licensing Authority had issued the driving licence, which has been produced on record as Ex.R1 According to this licence, the driver was entitled to drive a heavy motor vehicle. In the very nature of things it has reference to a vehicle other than a 'light motor vehicle'. Still further the provisions of Section 10(2) of the Act clearly contemplate the issue of driving licence for a "motor vehicle of a specified description". While a separate provision in respect of 'light motor vehicle' has been made, no distinction between a 'heavy motor vehicle' and a 'heavy passenger motor vehicle' has been made in sub-section (2) of Section 10. Moreover, learned counsel has not referred to any evidence which may indicate that a person, who has a licence to drive a heavy motor vehicle is not competent to drive a bus. In this situation, we find no ground to hold that the petitioner did not have a valid driving licence or to differ with the view taken by the Tribunal.

Counsel for the insurance company has failed to cite any contrary judgment. In view of the ratio laid down in the aforesaid judgment, I find merit in contention of the appellant that Amandeep Singh, driver of the offending vehicle was legally authorized to drive the vehicle in question on the basis of licence possessed by him at the time of occurrence. In this view of the matter, findings of the Tribunal recorded in para 28 of the award cannot stand the test of judicial scrutiny and ordered to be set aside. As driver of the offending vehicle was possessing a licence of the class authorizing him to drive the vehicle in question, insured cannot be held guilty of committing breach of terms and conditions of contract of insurance. Resultantly, the insurance company is liable to indemnify the insured in discharge of its obligation created under the policy.

For the foregoing reasons, the appeal is allowed. The award passed by the Tribunal giving recovery right to the insurance company against owner of the vehicle is set aside. The insurance company shall be jointly and severally liable to pay compensation to the claimants. No order as to costs.

NOVEMBER 29, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no