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

**FAO No.834 of 2014 (O&M)
Date of decision: 26.09.2017**

M/s Shekhupura Transport Company Limited and another
....Appellants
Versus

New India Assurance Company and another
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Baldev Kapoor, Advocate,
for the appellants.

Mr. Ashwani Talwar, Advocate,
for respondent No.1-Insurance Company.

***

RITU BAHRI J. (Oral)

M/s Shekhupura Transport Company Ltd. & Mandeep Singh-appellants (owner and driver of offending vehicle) have come up in appeal against the award dated 06.12.2013 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.2,05,000/- has been awarded in favour of claimants-respondent Nos.2 to 4 on account of death of Harbhajan Singh in a motor vehicular accident which took place on 14.03.2011. Respondent Nos.2 to 4 are widow and children of deceased-Harbhajan Singh.

Brief facts of the case are that on 14.03.2011, at about 6.30 A.M., Harbhajan Singh (since deceased) along with his son Gurjit Singh-respondent No.3 was coming back after paying obeisance at Thakardwara

Mandir, Naushehra Pattan. In the meantime, a bus bearing registration No.PB-10-CX-5711 of M/s Shekhupura Transport Company, being driven by Mandeep Singh (appellant No.2) in a rash and negligent manner, came from the side of Gurdaspur and struck against Harbhajan Singh, as a result of which, Harbhajan Singh fell on the metalled road and received grievous injuries on his head and ribs. He was shifted to Civil Hospital, Mukerian, from where he was referred to DMC, Ludhiana. However, he succumbed to the injuries on way to Ludhiana. With regard to the accident, FIR No.34 dated 14.03.2011 was registered at Police Station, Mukerian. Consequently, the claimant (respondent Nos. 2 to 4 herein) filed a claim petition before the Tribunal.

Upon notice, respondent Nos. 1 and 2 (appellants herein) filed a joint written statement, stating therein that no accident had taken place with the offending vehicle driven by Mandeep Singh (respondent No.1 in claim petition), but the offending vehicle had been involved falsely in the case.

Insurance Company-respondent No.2 filed a separate written statement stating that respondent No.1-driver (appellant No.2 herein) was not holding a valid and effective driving licence at the time of accident. It was further stated that the offending vehicle was not having valid route permit, registration certificate and fitness certificate at the time of accident. All other allegations levelled by the claimants were denied and prayer for dismissal of the claim petition was made.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether death of Harbhajan Singh son of Harnam Singh took place in road accident on 14.03.2011, at about 6.30

A.M. in the area of Adda of Naushehra Pattan, District Hoshiarpur and whether said accident caused due to rash and negligent driving of Bus No.PB-10-CX-5711 by respondent No.1? If so, its effect. OPP

2. If issue No.1 is proved, to what amount of compensation claimants are entitled and from whom? OPP
3. Whether driver of offending vehicle was not holding valid and effective driving licence and offending vehicle was not having valid route permit, registration certificate and fitness certificate at the time of accident? If so, its effect. OPR 3
4. Whether vehicle in question was duly insured with respondent No.3? OPR 1
5. Relief.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the deceased had died in a roadside accident which took place on account of rash and negligent driving of offending vehicle (bus No.PB-10-CX-5711) by its driver-Mandeep Singh and thus, returned the finding on issue No.1 in favour of the claimants-respondent Nos. 2 to 4. This finding was given on the basis of deposition of Gurjit Singh (AW-1), who was an eye witness of the accident. Moreover, FIR Ex.A4 was registered against the driver of offending bus for causing the said accident.

In the absence of any documentary proof, income of the deceased was assessed as Rs.5000/- per month i.e. Rs.60,000/- per annum, out of which, 1/3rd amount was deducted towards personal expenses of the deceased. Dependency of claimants, thus, came to Rs.40,000/- per annum. Age of the deceased was between 70 to 75 years at the time of death/accident. Accordingly, after applying the multiplier of four, claimants were found entitled to a compensation of Rs.1,60,000/-. Apart from this, Rs.25,000/- were awarded on account of funeral expenses, Rs.10,000/- for loss of estate, Rs.10,000/- on account of loss of consortium. Ultimately, the claim petition was accepted and a sum of Rs.2,05,000/- was awarded in favour of claimants-respondent Nos.2 to 4.

While allowing the claim petition, Tribunal has given finding on issue Nos.3 & 4 against the against the owner and driver of the offending vehicle to the effect that at the time of accident, respondent No.1-driver (appellant No.2 herein) was not having a valid and effective driving licence to drive the offending vehicle. Accordingly, it was ordered that respondent No.3, after paying the compensation, could recover the same from respondent No.2-transport company (appellant No.1 herein) because the offending vehicle was duly insured with the insurance company (respondent No.1 herein).

Feeling dissatisfied with the impugned award, owner and driver of the offending vehicle (appellants) have preferred the present appeal.

Learned counsel for the appellants does not challenge the finding given on issue No.1 and restricts his prayer to the findings of the Tribunal on issue Nos.3 and 4.

I have heard learned counsel for the appellants and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Driving licence of appellant No.2 (driver of offending bus) was placed on record as Mark R-6, which showed that he was holding a valid and effective driving licence to drive 'light motor vehicle' as well as 'heavy motor vehicle'. The offending vehicle was a 50 seater bus and was a heavy passenger vehicle as per Section 2 (17) of the Act. As per verification report Mark R-8, the driver was holding driving licence to drive LIVIV and HMV. There was no endorsement on the driving licence enabling him to drive heavy passenger motor vehicle. Sham Singh, Accountant with appellant No.1-company, while appearing as RW-1, did not state that the driver had been appointed after verification of his licence. The Tribunal had referred to the judgment passed in ***Manager, National Insurance Co. Ltd. vs Asiam Ali Baig and others,*** 2002 ACJ 705 and ***National Insurance Co. Ltd. vs Bashir Ahmad Chopan and others,*** 2013 ACJ 1703 and held that the bus in question was a heavy passenger motor vehicle and did not fall within the description of heavy goods vehicle, medium goods vehicle or light motor vehicle etc. and without having PSV endorsement on the driving licence, the driver could not drive the said vehicle, therefore, there was a breach of insurance policy cover note, Ex.R-5. With these observations, the insurance company was exempted from liability to make the payment.

Mr. Kapoor, learned counsel for the appellants, has referred to the judgment passed by Hon'ble the Supreme Court in ***Mukund Dewangan vs Oriental Insurance Compay Limited,*** 2017 SCC OnLine SC 788, to contend that the matter had been referred to the Larger Bench of the Hon'ble Supreme Court to examine, whether a driver having a light motor vehicle, would not require to have an endorsement to drive a transport vehicle. The term 'transport vehicle' would mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. As per Section 2 (35) of the Act, 'public service vehicle' means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor cab, contract carriage, and stage carriage. Under Section 2 (14) of the Act, 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. A driver, who is holding a license to drive light motor vehicle for private use, would not be required to have an endorsement to drive a transport vehicle. As per Section 10 of the Act, it requires the driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. Mr. Kapoor has further argued that by virtue of the amendment made vide Act 54/1994 w.e.f. 14.11.1994, clauses (e) to (h) of Section 10 (2) of the Act have been substituted, which used to contain medium goods vehicle, medium passenger motor vehicle, hevy goods vehicle and heavy passenger motor vehicle by one word i.e. “transport vehicle.” Once, amendment has been made in the Act, all the above said vehicles have to be treated as transport vehicles.

Applying the ratio of the aforesaid judgment to the facts of the present case, a driver, who is holding license to drive light motor vehicle and heavy motor vehicle, would not require a separate endorsement to drive heavy goods vehicle, heavy passenger vehicle, as they belong to the same class of transport vehicle.

Learned counsel for respondent No.1-insurance company has argued that the verdict of Hon'ble the Supreme Court in ***Mukund Dewangan's*** case (supra), was with respect to the driving license of light motor vehicle and it cannot be made applicable for heavy motor vehicle.

This argument is liable to be rejected. In para 63 of the aforesaid judgment, it has been abundantly clarified 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."

In the above judgment, Hon'ble the Supreme Court has clarified that in one class of vehicles, there can be different kind of vehicles and all of those will fall in the same class of vehicle and no separate endorsement was required for that purpose.

In the facts of the present case, driver-appellant No.2 was having a licence Mark-R-6 and as per verification report Mark R-8, he was authorized to drive light motor vehicle as well as heavy motor vehicle. Hence, as per amendment made by virtue of Act No.54 of 1994, he could drive the vehicle, which fall in the unamended Clauses (e) to (h) of Section 10 (2) of the Act and no separate endorsement is required on his driving licence to drive heavy passenger vehicle. The present case is squarely covered by the judgment given in ***Mukund Dewangan's*** case (supra). Therefore, the findings given by the Tribunal on issue Nos.3 and 4 are reversed and the Insurance Company is held liable to pay compensation to the claimants.

Resultantly, the impugned award is modified to the extent that the amount of compensation shall be paid by the Insurance Company-respondent No.1 only and it shall not recover the same from the owner and driver (appellants) of the offending vehicle.

Allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

26.09.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No