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

FAO No. 7488 of 2015(O&M)

Date of decision: 28.8.2017

Mukeem and another ....Appellants

VERSUS

Usha and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gaurav Sharma, Advocate for
Mr. Rakesh Kumar Sharma, Advocate for the appellants.

Mr. Shubham Jain, Advocate for
Mr. Suman Jain, Advocate for respondent No.6.

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REKHA MITTAL, J.

The driver and owner of the offending vehicle bearing No.HR-30G-6358 have preferred this appeal against the award dated 05.02.2015 passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been awarded in regard to death of Rohit in a motor vehicular accident that took place on 24.11.2013 and the insurance company has been given right of recovery against the owner and driver of the offending vehicle after satisfying the award towards the claimants.

The sole submission made by counsel for the appellants is that the findings recorded by the Tribunal in paras 27 to 29 of the award are erroneous and liable to be set aside as driver of the offending vehicle was possessing the driving licence to drive a motorcycle, car and tractor, therefore, is not rendered incompetent to drive a tractor attached with a trolly. In support of his contention, he has placed reliance upon the latest judgment of Hon'ble the Supreme Court of India **Mukund Dewangan Vs. Oriental Insurance Co. Ltd., 2017(7) Scale 731**.

Counsel representing the insurance company has supported the findings of the Tribunal conferring right of recovery upon the insurance company against the driver and owner of the offending vehicle as the insured was guilty of committing breach of terms and conditions of contract of insurance for want of valid driving licence with driver of the offending vehicle.

I have heard counsel for the parties, perused the paper-book particularly the award passed by the Tribunal.

The Tribunal in para 27 of the award has held to the following effect:-

> "A thorough perusal of the driving licence Ex.R1 of respondent No.1 Mukeem shows that he was authorized to drive motorcycle, car and tractor only. Admittedly, at the time of the accident the respondent No.1 was driving the tractor-trolley bearing registration No.HR-30G-6358 loaded with the bricks and as per the contents of the insurance policy Ex.R3, even the trolley was insured with the respondent No.3 insurance company. However, in citation Sushila and others (supra) handed down the Hon'ble Bombay High Court, it has been laid down that the tractor trolley together constitute a transport vehicle and in the said citation in this regard reference of citation United India Insurance Company Limited Versus Pritpal Singh 1996(2) PLR 49 handed down by our own Hon'ble High Court has also been given and thus, in these circumstances, it is established that the tractor-trolley was being plied as a transport vehicle and admittedly the respondentNo.1, as per the contents of the driving licence Ex.R1 was only authorized to drive tractor and not a transport vehicle and accordingly there is violation of the breach of the insurance policy."

When the facts and circumstances of the present case are examined in the light of enunciation laid down by Hon'ble the Supreme Court in **Nagashetty Vs. United India Insurance Co. Ltd., 2001(4) RCR (Civil) 597** and the latest judgment in **Mukund Dewangan's case** (supra), there is no escape from conclusion that driver of the offending vehicle was competent to drive the tractor attached with trolley, thus, the insured has not committed breach of the terms and conditions of contract of insurance in view of the driving licence Ex.R1. As such, findings recorded by the Tribunal in paras 27 to 29 of the award that either the insured was guilty of committing breach of terms and conditions of contract of insurance or the insurance company is entitled to recover after payment to the claimants cannot be allowed to sustain and accordingly set aside.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed, part of the award giving recovery rights to the insurance company against driver and owner of the vehicle is ordered to be set aside. No order as to costs.

AUGUST 28, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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