In the High Court of Punjab and Haryana at Chandigarh

FAO- 8687 of 2015 (O&M)
Date of Decision: 11.8.2017

Lakesh Kumar

---Appellant

versus

ICICI Lombard General Insurance Company Ltd. and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rahul Rampal, Advocate
for the appellant.

Mr. Amrinder S. Sidhu, Advocate,
for respondent No.1

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<u>Rekha Mittal, J.</u>

The present appeal directs challenge against award dated 08.05.2015 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short “the Tribunal”) whereby compensation has been awarded in regard to injuries sustained by Balbir Singh in a motor vehicular accident that took place on 05.06.2012.

Counsel for the appellant would contend that the Tribunal has committed a serious error by determining issue No.3 to the extent of upholding plea of the insurance company that driver of the offending vehicle was not holding a valid driving licence, therefore, giving right of recovery to the insurer against insured and driver of the offending vehicle. It is further submitted that as driver of van was holding a licence for driving scooter/car/Jeep, he was competent to drive any light motor vehicle including a van, thus, the driver was possessing a valid driving licence. Another submission made by counsel is that gross weight of van is less than 7500 kgs, therefore, the driver was competent to drive the vehicle on the basis of licence held by him. In support of his contention, he has referred to latest judgment of Hon'ble the Supreme Court of India **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731** wherein Hon'ble the Apex Court has held, quoted thus:-

> "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 raod-roller, thus "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."

Counsel representing the insurance company is not in a position to say something to counter plea of the appellant in the light of what has been held by Hon'ble the Supreme Court in the cited judgment.

Indisputably, gross vehicle weight of van is less than 7500 kgs. Counsel for the insurance company, in the light of enunciation laid down by Hon'ble the Supreme Court in the referred authority is not in a position to assert its claim that either the insured committed breach of terms and conditions of policy for want of valid driving licence with the driver or the insurer is liable to be exonerated on this count.

In view of the above, the appeal is partly allowed. The award passed by the Tribunal is modified to the effect that driver was holding a valid driving licence at the time of occurrence, therefore, the insurance company is liable to indemnify the insured without any right of recovery.

(Rekha Mittal)
Judge

11.8.2017
ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No