IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.01.2018

FAO No. 370 of 1999

National Insurance Company Limited .... *Appellant*

Versus

Kulwant Singh and others ....*Respondents*

FAO No. 371 of 1999

National Insurance Company Limited .... *Appellant*

Versus

Satya Narain and others ....*Respondents*

FAO No. 372 of 1999

National Insurance Company Limited .... *Appellant*

Versus

Inder Singh and others ....*Respondents*

FAO No. 373 of 1999

National Insurance Company Limited .... *Appellant*

Versus

Monika and others ....*Respondents*

FAO No. 415 of 1999

National Insurance Company Limited .... *Appellant*

Versus

Rajesh Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Suman Jain, Advocate
for the insurance Company

Mr. S.P.S. Tina, Advocate
for respondent No. 3 (FAO No. 370 of 1999)

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same accident that took place on 06.11.1995 wherein injuries were sustained by Rajesh Kumar, Naresh Kumar, Inder Singh, Rajesh and Satya Narain. However, Naresh Kumar and Rajesh succumbed to the injuries sustained in the occurrence.

Counsel for the appellant, at the very outset, would inform that the appeals have been preferred by the insurance company to assail findings of the Tribunal qua competency of Birbal, driver of offending vehicle i.e. Canter bearing No. RJ 13-G-1203 to drive the vehicle in question. It is argued with vehemence that Birbal was possessing a licence to drive Car/Tractor and was not authorized to drive the Canter which is a goods carrier and transport vehicle. It is further argued that as driver was not legally authorized to drive the vehicle in question, the insured is guilty of committing breach of terms and conditions of contract of insurance entitling the insurance company to be exonerated of its liability to pay compensation or in the alternative press for right of recovery against the insured after satisfying the award towards the claimants.

Counsel representing the owner/insured of the offending vehicle has supported findings of the Tribunal that the insurance company is jointly and severally liable to pay compensation to indemnify the insured in discharge of its contractual obligation created under the policy. It is further argued that as the driver possessed a licence to drive a light motor vehicle namely Car/Tractor, he was authorized to drive the vehicle in question which also falls within the definition of 'light motor vehicle' as defined under Section 2(21) of the Motor Vehicles Act, 1988 (in short, 'the Act'). In support of his contention, heavy reliance has been placed upon latest judgment of Hon'ble the Supreme Court of India ***Mukund Dewangan vs***

Oriental Ins.Co.Ltd. *2017 (7) Scale 731.*

Counsel for the insurance company has not disputed that the gross vehicle weight of Canter in question is 5,935 kilograms, therefore, the vehicle falls within the definition of 'light motor vehicle' under Section 2 (21) of the Act, reads thus:-

> *"light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms"*

In the instant case, Birbal, driver of the offending vehicle was possessing a licence to drive Motor Car/Tractor which was valid on the day of accident. Hon'ble the Supreme Court of India in ***Mukund Dewangan's*** case *(supra)* has held in para 14, reads thus:-

> "14. The definition of 'light motor vehicle' makes it clear that for a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kgs. 'Gross vehicle weight' has been defined in section 2(15). The motor car or tractor or road roller, the unladen weight of any of which does not exceed 7500 kgs. as defined in section 2(48) of the Act, are also the light motor vehicle. No change has been made by Amendment Act of 54/94 in the provisions contained in sections 2 (21) and 10(2)(d) relating to the light motor vehicle. The definition of 'light motor vehicle' has to be given full effect to and it has to be read with section 10(2)(d) which makes it abundantly clear that 'light motor vehicle' is also a 'transport vehicle', the gross vehicle weight or unladen weight of which does not exceed 7500 kgs. as specified in the provision. Thus, a driver is

issued a licence as per the class of vehicle i.e. light motor vehicle, transport vehicle or omnibus or another vehicle of other categories as per gross vehicle weight or unladen weight as specified in section 2(21) of the Act. The provision of section 3 of the Act requires that a person in order to drive a 'transport vehicle' must have authorization. Once a licence is issued to drive light motor vehicle, it would also mean specific authorization to drive a transport vehicle or omnibus, the gross vehicle weight or motor car, road roller or tractor, the unladen weight of which, as the case may be, does not exceed 7500 kg. The insertion of 'transport vehicle' category in section 10(2)(e) has no effect of obliterating the already defined category of transport vehicles of the class of light motor vehicle. A distinction is made in the Act of heavy goods vehicle, heavy passenger motor vehicle, medium goods vehicle and medium passenger motor vehicle on the basis of 'gross vehicle weight' or 'unladen weight' for heavy passenger motor vehicle, heavy goods vehicle, the weight, as the case may be, exceed 12000 kg. Medium goods vehicle shall mean any goods carriage other than a light motor vehicle or a heavy goods vehicle; whereas 'medium passenger motor vehicle' means any public service vehicle or private service vehicle or educational institution bus other than a motorcycle, invalid carriage, light motor vehicle or heavy passenger motor vehicle.

Thus, the newly incorporated expression 'transport vehicle' in section 10(2)(e) would include only the vehicles of the category as defined in section 2(16) - heavy goods vehicle, section 2(17) - heavy passenger motor vehicle, section 2(23) – medium goods vehicle and section 2(24) medium passenger motor vehicle, and would not include the 'light motor vehicle' which

> means transport vehicle also of the weight specified in Section 2(21)."

In view of enunciation by Hon'ble the Supreme Court coupled with the factum that the vehicle in question falls within the definition of 'light motor vehicle' along with the fact that there is no evidence on record that mechanism of the vehicle in question is different from that of a motor car or tractor, it is difficult to accept contention of the insurance company that Birbal, driver of the offending vehicle was not competent to drive the vehicle in question. In this view of the matter, contention raised by counsel for the insurance company that the insured in guilty of committing breach of terms and conditions of the contract of insurance is not meritorious and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed. No order as to costs.

(Rekha Mittal)
Judge

09.01.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No