

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

FAO No. 6842 of 2010(O&M)

Date of decision: 10.10.2018

Bijender and another

.....Appellants

VERSUS

Rahul and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. N.K. Malhotra, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

The driver and owner of alleged offending vehicle i.e. three-wheeler/auto rickshaw bearing No.HR-46B-9644 are in appeal on the limited issue of insurance company having been exonerated of liability to pay compensation and the claimant has been held entitle to get compensation from the appellants.

Counsel for the appellants would urge that Bijender son of Mehar Singh, driver of the vehicle was possessing licence Ex.R1 whereby he was authorized to drive scooter, motorcycle and car which is valid w.e.f. 25.09.2006 to 19.04.2026. It is argued that as the offending vehicle has gross vehicle weight of 750 kgs, the same falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (in short 'the Act'), therefore, he was authorized to drive the vehicle in question.

The second submission made by counsel is that even if the auto rickshaw had been carrying 9 persons as against sitting capacity of 3 plus 1, since only one person has received injuries in the occurrence, insurance company can neither escape liability to pay compensation nor can press for right of recovery against the insured.

Counsel representing the insurance company, on the contrary, would urge that even if the driver had licence to drive car, he did not have effective licence to drive auto rickshaw. In addition, it is argued that as auto rickshaw had 9 passengers at the time of occurrence as against its sitting capacity mentioned in the insurance policy, the company has rightly been exonerated of liability to pay compensation.

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

Be that as it may, it is undisputed position of the case that driver of the auto rickshaw had licence Ex.R1, valid from 25.09.2006 to 19.04.2026 authorizing him to drive scooter, motorcycle and car. Perusal of the registration certificate of offending vehicle would reveal that its gross vehicle weight is 750 kg and unladen weight is 375 kg, therefore, the same falls within the definition of Light Motor Vehicle under Section 2 (21) of the Act. There is nothing on record suggestive of the fact that mechanism of auto rickshaw is different from that of a car. When the case is examined in the light of judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731**, it is difficult to sustain findings of the Motor Accidents Claims Tribunal, Rohtak (in short 'the Tribunal') that driver did not possess a

licence authorizing him to drive the vehicle in question. Accordingly, findings of the Tribunal in this regard are set aside.

This brings the Court to persons carried in the vehicle. There is nothing on record suggestive of the fact that besides Rahul, the minor claimant, any other passenger sustained injuries in the occurrence or claimed compensation. Even if driver was carrying passengers more than sitting capacity, it does not constitute a defence in favour of the insurer under Section 149(2) of the Act in order to escape liability to pay compensation. In this view of the matter, it can safely be held that the Tribunal has seriously erred by holding that the insurance company is not liable to pay compensation. Resultantly, the insurance company shall be jointly and severally liable to pay compensation to the claimant.

The appeal is partly allowed in the aforesaid terms.

OCTOBER 10, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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