

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

1. FAO-7102-2011 (O&M)
Date of decision: 27.04.2018

Dharambir Appellant

Versus

M/s Reliance General Insurance Company Ltd. and others

..... Respondents

2. FAO-7103-2011 (O&M)

Dharambir Appellant

Versus

M/s Reliance General Insurance Company Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Ashwinder Kaur, Amicus Curiae
for the appellant.

Mr. Rajneesh Malhotra, Advocate
for respondent No. 1.

Mr. Shiv Kumar, Advocate
for respondents No.2 to 6 in FAO No.7102 of 2011 and
for respondents No.2 to 9 in FAO No.7103 of 2011

Avneesh Jhingan, J.

The present two appeals have been filed against the award dated 01.12.2010 passed by Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal').

A motor vehicular accident took place on 26.09.2007, in which Dharambir and Tek Chand lost their lives. They were going on a motorcycle bearing registration No.HR-30/D-5764. The motorcycle was being driven by Dharambir and Tek Chand was a pillion rider. Near village Bagpur, one TATA 407 bearing registration No.HR-38L-1300 (for short, 'the offending vehicle') being driven rashly and negligently struck against the motorcycle. As a result of the injuries sustained, Tek Chand died at the spot. Dharambir was taken to Central Hospital, Faridabad where he died on the same day. FIR No.124 dated 27.09.2007 was registered at Police Station Chhainsa.

Two claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') were filed by the legal heirs of Tek Chand and Dharambir.

The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The claimants were found entitled to compensation which was duly awarded by the Tribunal. The Tribunal further held that the driver of the offending vehicle was holding a driving licence for light motor vehicle but he was driving a goods carrying vehicle i.e TATA 407. The plea of the Insurance Company was upheld that there is violation of terms of policy and hence they are not liable to pay the compensation. Recovery rights were given to the Insurance Company.

Aggrieved of the recovery rights, the owner of the offending vehicle has filed these two appeals.

No one appeared for the appellant. Ms. Ashwinder Kaur

(Enrolment No.3077/2015 and mobile No.7015686152), who is present in Court, was appointed as amicus curiae. She has assisted the court after going through the paper book and record.

She has argued that the Tribunal erred in awarding the recovery rights to the Insurance Company as admittedly TATA 407 comes within the category of light motor vehicle having less than 7500 kgs of gross weight. Reliance is placed upon the decision of the Supreme Court in case of **Mukund Dewangan vs. Oriental Insurance Company Ltd., 2017(14) SCC 663.**

Learned counsel for the Insurance Company argued that there was no separate endorsement on the driving licence for driving the transport vehicle.

The issue raised by learned counsel for the appellant is no longer res-integra and decided by the Supreme Court in case of **Kulwant Singh and others vs. Oriental Insurance Company Ltd., 2015(2) SCC 186** and in **Mukund Dewangan's case (supra).**

In case of **Kulwant Singh's case** (supra), the Hon'ble Apex Court relying upon its earlier decisions in **S. Iyyapan vs. United India Insurance Company Limited and Another, 2013(3) RCR (Civil) 654** and **National Insurance Company Ltd. Vs. Annappa Irappa Nesaria Alias Neseearagi and others, 2008(1) RCR (Civil), 848,** has held as under:-

9. We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria (supra), this Court referred to the

provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No.4. It was concluded :

"20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."

Thereafter in case of ***Mukund Dewegan's case*** (supra), the Hon'ble Apex Court has held 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.”

Law enunciated in the above decisions is that a light motor vehicle would include the transport vehicle of such class as per the weight prescribed under Section 2(21) read with Section 2(15) and 2(48) of the Act. There is no need to obtain separate endorsement to drive transport vehicle.

The decision of **Mukund Dewangan's case (supra)** has been followed by Supreme Court in cases of **Sant Lal vs. Rajesh and others, 2017(8) SCC 590** and in case of **Jagdish Kumar Sood vs. United India Insurance Company Ltd., in Civil Appeal No.240 of 2017, decided on 06.03.2018.**

The award of the Tribunal absolving the Insurance Company from the liability was set aside.

No other issue has been raised.

The appeals are allowed. The recovery rights given to the Insurance Company are set aside.

(AVNEESH JHINGAN)
JUDGE

27.04.2018

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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes