

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-6608-2012(O&M)
Date of Decision: 13.07.2018

St. Soldier Divine Public School & another --Appellants

Versus

Ashok Kumar & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Tarun Sharma, Advocate for
Mr. R.S. Bajaj, Advocate for the appellants.

Mr. Harsh Aggarwal, Advocate for respondent no.4.

TEJINDER SINGH DHINDSA.J (Oral)

A claim petition under Section 166 of the Motor Vehicle Act was filed before the M.A.C.T., Jalandhar seeking compensation on account of death of Charanjit in a motor vehicle accident that took place on 5.12.2009. Case set up was that on 5.12.2009 Charanjit (since deceased) was proceeding on a bicycle and was struck by a Tata-407 School Bus bearing registration no. PB-08-BD-8917 color yellow being driven in a rash and negligent manner by Tarlochan Singh driver/respondent no.5.

The owner(s) of the offending vehicle have filed the instant appeal assailing the award dated 7.9.2012 passed by the Tribunal and in terms of which the compensation amount awarded in favour of the claimants has been directed to be satisfied in the first instance by the Insurance Company and recovery rights have been granted to the Insurance Company to get the amount of compensation reimbursed from the owner(s).

Counsel for the parties have been heard at length.

In the claim petition the following relevant issues were framed by the Tribunal:-

“1. Whether respondent no.1 was not holding the valid licence at the time of accident?OPR

2. Whether the respondent no.2 and 3 violated the terms of insurance policy?OPR”

While recording findings on Issues no.1 and 2 and granting recovery rights in favour of the Insurance Company and against the present appellant, the following reasoning was adopted by the Tribunal:-

“I have considered the arguments advanced by the counsel for insurance company. Copy of the driving license of Tarlochan Singh is on the file, which is admittedly for L.M.V and as per R.C the offending school bus is L.T.V the respondent no.1 was not authorized to drive the light transport vehicle. Therefore, he was plying vehicle against the terms of Insurance Policy. At the same time the offending bus was insured for the period from 3/7/2009 to 2/7/2010. The accident took place on 5/12/2009, which is within the period of insurance policy. Keeping in view these circumstances, the insurance company is liable to pay the amount of compensation to the applicants but at the same time they are entitled to get the amount of compensation reimbursed from the insured i.e. M/s Paradise Educational Society, respondent no.1. With this observation, Issues no.1 and 2 are accordingly disposed of.”

In ***Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017(4) R.C.R (Civil), 111***, the Apex Court had considered the relevant provisions under the Motor Vehicle Act and had held as follows:-

“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 60 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.”*

It has gone uncontroverted that in the facts of the case as also the evidence adduced on record in the Registration Certificate of the bus in question the description was given as 'Light Transport Vehicle' and the driver had the license to drive a Light Motor Vehicle. It is also the admitted position that in the Registration Certificate of the vehicle its unladen weight was 2050 kgs and gross vehicle weight was 5300 kgs. As such, the vehicle would fall within the definition of Light Motor Vehicle as defined under Section 2 (21) of the Motor Vehicle Act, 1988 as per observations made by the Apex Court in ***Mukund Dewangan's*** case (supra) reproduced herein above.

In view of the above, the view taken by the Tribunal that respondent no.5 Tarlochan Singh was not authorized to drive a Light Motor Vehicle on account of the fact that his Driving License carried an endorsement 'Light Motor Vehicle' and as such, he was plying the offending vehicle against the terms of the Insurance Policy, cannot sustain.

Resultantly, the instant appeal is allowed. The recovery rights granted to the Insurance Company with regard to the compensation amount, are set aside.

Appeal is allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

13.07.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No