

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 257 of 2015 (O&M)

Date of Decision: 03.05.2018

New India Assurance Company Ltd.

.....Appellant

Versus

Harbans Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Manjeet Singh, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondents No. 5 and 6.

AVNEESH JHINGAN, J.(oral)

The insurer of school bus bearing registration No.PB-11-AM-9475 has filed the present appeal against the award dated 09.10.2014 passed by the Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal').

As a result of the accident that took place on 18.07.2013 Varinder Singh lost his life and a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by his LRs. The Tribunal after considering the facts and evidence produced, awarded compensation of Rs.12,33,000/- and interest @ 6% per annum was awarded in case payment is not made within two months.

The Tribunal held that the accident occurred due to rash and negligent driving of the school bus bearing registration No.PB-11-AM-9475 (for short 'the offending vehicle'). The Tribunal held owner, driver and insurer of offending vehicle jointly and severally liable to pay compensation.

The grievance raised in the appeal is that no recovery rights

have been awarded by the Tribunal inspite of the fact that driver was driving a mini school bus while he was having a driving licence valid for driving light motor vehicle (LMV).

It is not being disputed that as per the registration certificate, the gross weight of the bus was less than 4000 kgs, hence, it falls within the class of LMV.

The issue raised by learned counsel for the appellant is no longer res-integra and is decided by the Supreme Court in cases of **Kulwant Singh and others vs. Oriental Insurance Company Ltd., 2015(2) SCC 186** and in case of **Mukund Dewangan vs. Oriental Insuramce Company Ltd., 2017 (14) SCC 663.**

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 Nesearagi and others, 2008(1) RCR (Civil), 848,** wherein it 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 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.

There is no need for separate endorsement on the driving licence for driving a transport vehicle of the class for which the driving licence has been issued.

In the present case the driving licence was issued for LMV and the mini bus falls within the category of LMV. Hence, the issue is decided against the appellant.

Learned counsel for the appellant challenged on the quantum of compensation at this stage. He cannot do so as vide order dated 13.01.2015 notice of motion was issued to respondents No. 5 and 6 only i.e. driver and owner of the offending vehicle to the extent of recovery rights. In such circumstance, the compensation awarded on quantum cannot be gone into.

The appeal is accordingly dismissed.

03.05.2018
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(AVNEESH JHINGAN)
JUDGE

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