

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

FAO No.2595 of 2015(O&M)

Date of decision: 8.5.2018

Rajesh Kumar

.....Appellant

VERSUS

Smt. Munni Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Saurabh Garg, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal has been preferred by driver of the offending vehicle to express his grievance that insurance company has been exonerated of liability to pay compensation while fastening liability against the driver and owner, held to be jointly and severally liable to pay compensation.

Mr. Lalit Garg, Advocate, has caused appearance on behalf of Insurance Company.

The Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') in para 41 of the award, by relying upon judgments of Hon'ble the Supreme Court **New India Assurance Co. Ltd. Vs. Prabhu Lal, 2008(1) RCR (Civil) 198** and **Oriental Insurance Company Vs. Angad Kol and others, AIR 2009 SC 2151** has held that driver must have specific endorsement for driving transport vehicle irrespective that he was holding licence for LMV. In the present case, respondent No.1 had driving

licence to drive LMV (Non Transport) and as per notification Ex.RC vehicle in question falls under the transport vehicle.

Counsel for the appellant would urge that as the vehicle involved in the occurrence is three Wheeler with gross vehicle weight less than 7500 KG, licence possessed by the appellant is sufficient to authorize him to drive the vehicle in question. In support of his contention, reliance has been placed upon latest judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731.**

Counsel representing the insurance company has supported the award with the submission that as the vehicle in question is a transport vehicle having a different class, the driver was not authorized to drive the vehicle on the basis of licence possessed by him. Another submission made by counsel is that the claimants filed FAO No.1312 of 2015 and the same has been decided by this Court vide judgment dated 26.02.2018.

Counsel for the insurance company has not disputed that gross vehicle weight of three-wheeler involved in the occurrence is less than 7500 KG and the same falls in the definition of Light Motor Vehicle under Section 2 (21) of the Motor Vehicles Act, 1988. That being so, the controversy raised in the present appeal is squarely covered in favour of the appellant by judgment in **Mukund Dewangan's case** (supra). This apart, even if driver did not possess a valid licence, insurance company cannot escape liability to pay compensation to the claimant in discharge of its contractual obligation though it may be entitled to press for right of recovery against the insured by raising a plea of violation of terms and conditions of the policy.

So far as the plea of insurance company that appeal filed by the claimants has already been disposed of by this Court, counsel has fairly conceded that the issue with regard to exoneration of the insurance company was not adverted to in the appeal filed by the claimants, therefore, there is no adjudication on the said question by this Court while disposing of appeal preferred by the claimants wherein the insurance company was given an opportunity to be heard while accepting plea of the claimants for enhancement of compensation. In this view of the matter, disposal of appeal filed by the claimants would not enure to benefit of insurance company to seek affirmation of findings of the Tribunal exonerating the insurance company of liability to pay compensation which otherwise cannot be allowed to sustain.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. Findings recorded by the Tribunal on the question of driving licence are set aside. As a natural corollary, insurance company shall be jointly and severally liability to pay compensation to the claimants. No order as to costs.

MAY 8, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

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