IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.1674 of 2016 (O&M)
Date of Decision: November 22, 2018

Mani Ram and another ......Appellants.

versus

Chagan Singh and others .....Respondents

CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL
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Present: Mr.P.K.Chugh, Advocate, for the appellants.
Mr.V.Ramsawroop, Advocate, for respondent No.2.
Mr.Pankaj Mehta, Advocate, for respondent Nos.5 to 7.

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Rekha Mittal, J. (Oral)

CM Nos.6174 & 6175-CII of 2016

Heard.

Allowed as prayed for. Delay of 272 days in re-filing and 451 days' in filing the appeal is condoned.

Main case

The owner and driver of Maruti Van Ambulance bearing No.HR-39B-4236 are in appeal on the limited issue that in view of findings of the Tribunal on the question of validity or otherwise of driving licence possessed by Suresh Kumar-appellant No.2, the Insurance Company has been given right of recovery after payment of compensation to the claimant (s).

It is argued that as the driver possessed licence Exhibit R-11 authorizing him to drive light motor vehicle and Maruti Van which falls within the definition of Section 2(21) of the Motor Vehicles Act, 1988 (in short, 'the Act'), findings recorded by the Tribunal that respondent No.1 (appellant No.2 herein) was not possessing effective and valid driving licence at the time of accident, are liable to be set-aside and the Insurance Company should be held jointly and severally liable to pay compensation without any right of recovery. In support of his contention, he relies upon judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

Counsel representing the Insurance Company is not in a position to support findings of the Tribunal on the aforesaid issue, in the light of judgment of Hon'ble the Supreme in **Mukund Dewangan's case (supra).**

The controversy raised in the present appeal is squarely covered in favour of the appellants in the light of enunciation in **Mukund Dewangan's case (supra)** as the vehicle in question falls within the definition of light motor vehicle under Section 2(21) of the Act and driver was holding a licence to drive light motor vehicle, therefore, there is no question of the insured being guilty of violating the terms and conditions of policy constituting a defence in favour of the Insurance Company. That being so, findings of the Tribunal recorded in para No.51 of the award cannot be allowed to sustain and accordingly set-aside. As a natural corollary, the Insurance Company shall be jointly and severally liable to pay compensation to the claimants without any right of recovery.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

November 22, 2018 **(REKHA MITTAL)**
mohinder **JUDGE**

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