

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

**FAO No.2665 of 2016(O&M)**

**Date of decision: 3.4.2018**

Jakir

.....Appellant

VERSUS

Rakib Minor and others

.....Respondents

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**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. C.B. Goel, Advocate for the appellant.

Mr. Sanjiv Goel, Advocate for respondent-Insurance  
Company.

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**REKHA MITTAL, J. (Oral)**

**CM No.9777-CII of 2016**

Prayer in this application is for condoning delay of 49 days in  
filing the appeal.

Heard.

In view of averments made in the application supported by an  
affidavit of Jakir - appellant, the application is allowed. Delay of 49 days  
in filing the appeal stands condoned.

Disposed of accordingly.

**FAO No.2665 of 2016**

Jakir son of Ali Mohammad, owner of Tata Mini Truck  
No.HR74-3801 has assailed award dated 26.11.2015 passed by the Motor  
Accidents Claims Tribunal, Mewat (in short 'the Tribunal') to the limited  
extent whereby the insurance company has been allowed recovery right

against the driver and owner of the vehicle on the premise that Jakir Hussain, driver of the offending vehicle was not possessing a valid licence to drive the vehicle in question.

The Tribunal in view of discussion made in para 20 has recorded its conclusion in para 21 that respondent No.1 was not holding a valid licence at the relevant time, therefore, respondents No.1 and 2 have violated the terms and conditions of the insurance policy and the insurance company was exonerated of its liability to pay compensation.

The insurance company examined Krishan Kumar, Clerk S.D.M. Office RW-1 along with record pertaining to driving licence No.1760/1999 issued on 16.09.1999 and valid upto 26.09.2020 for Motorcycle, Scooter, Car, Jeep only. The witness had further deposed that licence possessed by the driver was not valid for LTV/TV and Commercial Vehicle.

Counsel representing the insurance company, in response to a query by the Court, has fairly informed that gross vehicle weight of Tata Mini Truck No.HR74-3801 is not more than 7500 KG. That being so, the vehicle in question would fall within the definition of 'Light Motor Vehicle' under Section 2(21) of the Motor Vehicles Act, 1988 (in short 'the Act'). There is nothing on record suggestive of the fact that mechanism of a car and jeep is different from the mechanism of Tata Mini Truck. As the driver possessed a valid licence to drive the Motorcycle, Scooter, Car, Jeep and the vehicle in question falls within the definition of 'Light Motor Vehicle', when the case is examined in the light of enunciation laid down by Hon'ble the Supreme Court **Mukund**

**Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale**

**731**, it is difficult to affirm findings of the Tribunal that driver was not possessing a valid licence authorizing him to drive the vehicle in question or upholding plea of the insurance company that the insured is guilty of violating the terms and conditions of insurance policy constituting a defence in favour of the insurer under Section 149(2) of the Act. In this view of the matter, conclusion recorded by the Tribunal in para 21 of the award cannot be allowed to sustain and liable to be set aside. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation along with driver and owner of the offending vehicle.

No other point has been raised.

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

**APRIL 3, 2018**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

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