

214 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No. 3783 of 2015 (O&M)

Date of Decision:31.10.2018

Balbir Singh Thakur

.....Appellant

Versus

IFFCO-Tokio General Insurance Co. Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. K. Rana, Advocate,
 for the appellant.

Ms. Vandana Malhotra, Advocate,
for respondent No. 1.

AVNEESH JHINGAN, J (Oral) :

The owner-cum-driver of Mahindra Pick-up bearing registration No. HP-10B-0374 (for short 'offending vehicle') has filed the present appeal against the award dated 31.07.2013 passed by the Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal').

2. The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident occurred on 21.11.2012 in which the offending vehicle struck the motor cycle of the claimant. In the accident, Parma Nand suffered injuries. FIR No. 294 dated 21.11.2012 under Sections 279, 337 and 338 of the Indian Penal Code, 1860 was registered. In a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal awarded a sum of Rs. 6,15,500/- along with interest at the rate of 7.5 % per annum.

3. After considering the facts and on appreciating the evidence adduced, the Tribunal held that the accident occurred due to rash

and negligent driving of the offending vehicle. The insurer of the offending vehicle was given recovery rights on the ground that the driver was holding a licence for Light Motor Vehicle, whereas he was driving a 'Mahindra Pick up' which is a Light Transport Vehicle and there was no endorsement on the licence. Further, it was held that the vehicle belonged to Himachal Pradesh and the accident occurred in State of Haryana and there was no route permit.

3. Learned counsel for the appellant contended that the Supreme Court in case of “*Mukund Dewangan Vs. Oriental Insurance Co. Limited, 2016(4) SCC 298*” has held that there is no requirement of endorsement on the driving licence for driving a Transport Vehicle of the same class. He further argued that the driver was holding a valid driving licence for driving LMV and the offending vehicle falls within the definition of LMV as per the Act. He further argued that there was no specific stand taken by the Insurance Company that appellant was not having a valid permit.

4. Learned counsel for the Insurer argued that though the Tribunal has mentioned in the award that the appellant was not having a route permit, but in fact, the issue raised was that there was no permit with the appellant.

5. The issue regarding the endorsement on driving licence is no longer res integra as has been decided by the Supreme Court in *Mukund Dewangan's case (supra)*. The relevant part of the judgment reads 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 2(15) section 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.”

5. From perusal of the paper book and the record, it is evident that no specific plea was taken by the Insurer before the Tribunal that the offending vehicle was not having a valid permit. The only discussion in the award is with regard to the route permit. The driver-cum-owner was proceeded against ex-parte before the Tribunal vide order dated 27.05.2013. It would not be appropriate to decide said issue against the

appellant without granting him adequate opportunity to defend himself.

6. In view of the aforesaid facts and circumstances, the matter is remitted back to the Tribunal only with regard to liability to pay compensation. The matter be decided in accordance with law, after affording opportunities to the parties concerned i.e. the owner-cum-driver of the offending vehicle and insurer of the offending vehicle to produce relevant evidence in support of their claims.

7. The parties are directed to appear before the Tribunal on 29.11.2018.

8. The instant appeal is disposed of, accordingly.

October 31, 2018

Ajay Goswami

[AVNEESH JHINGAN]

JUDGE

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No