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

FAO No.2914 of 2016(O&M)

Date of decision: 22.3.2018

Balak Ram and another …..Appellants

VERSUS

Dinesh Kumar and others .....Respondents

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sagar Aggarwal, Advocate for the appellants.

None for respondents No.1 to 3.

Mr. Pardeep Kumar, Advocate for respondent No.4.

*****

REKHA MITTAL, J. (Oral)

The precise controversy involved in the present appeal is in regard to recovery right given to the insurer on the basis of findings recorded on issue No.3. Counsel for the appellants (driver and owner of the offending vehicle) would urge that as the driver possessed licence to drive scooter/motorcycle/motor car/jeep/tractor, he was competent to drive the tractor attached with a trolly, as gross vehicle weight is not more than 7500 kg, therefore, it falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988 (in short 'the Act'). In support of his contention, he has relied upon latest judgment of Hon'ble the Supreme Court **Mukund Dewangan Vs. Oriental Insurance Co, Ltd., 2017 (7) Scale 731.**

Counsel representing the insurance company has supported findings of the Tribunal that as driving licence possessed by Balak Ram did not contain endorsement of 'transport' and the tractor was attached with trailor, insured is guilty of violating the terms and conditions of insurance policy constituting a defence under Section 149(2) of the Act.

I have heard counsel for the parties and perused the paper-book.

Counsel for the insurance company has not disputed that Balak Ram had licence authorizing him to drive the aforesaid vehicle. The controversy raised in the present appeal is no longer res integra and stands decided in favour of the appellants in the light of judgment in **Mukund Dewangan's case** (supra). This apart, as there is no privity of contract between the insurer and the driver, the driver otherwise cannot be held liable to pay to the insurer even on account of breach by the insured. In this view of the matter, findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the appeal is partly allowed. The insurance company shall be jointly and severally liable to pay compensation to the claimants without any right of recovery. No order as to costs.

MARCH 22, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no