

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

-.-

FAO 3997 of 2015 (O&M)
Date of decision: 08.02.2018

Subash Chand

.....Appellant

Versus

United India Insurance Co Limited and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Arvind Kumar Yadav, Advocate
for the appellant

Mr. R C Kapoor, Advocate
for the insurance Company

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Rekha Mittal, J. (Oral)

CM No. 12618 CII of 2015

Prayer in this application is for condoning delay of 520 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, the application is allowed and delay of 520 days in filing the appeal stands condoned.

Main case

Subash Chand, driver of Truck No. HR 47A-3200 has filed the appeal to assail award dated 26.09.2013 passed by the Motor Accidents Claims Tribunal, Rewari (in short, 'the Tribunal') whereby compensation has been awarded in respect of injuries sustained by Raj Tilak in a motor vehicular accident that took place on 26.05.2011.

Counsel for the appellant would inform that appeal has been

preferred to the limited extent of assailing recovery right given to the insurer on the basis of findings recorded on issue No. 3 whereby it has been held that driver was not possessing a valid licence to drive heavy transport vehicle of which unladen weight is 6,750 kgs. It is argued that initially the driver was issued driving licence for 'light motor vehicle' on 07.05.2007 with validity upto 01.02.2024 by the Licensing Authority, Alwar. Later, there is an endorsement of transport under the head 'Badge detail' 23429 dated 14.10.2008 TRANS. It is further submitted that as per report Ex.R10 produced by Insurance Company, licence was renewed for transport from 14.10.2011 to 13.10.2014 meaning thereby that initial endorsement of transport w.e.f. 14.10.2008 was valid upto 14.10.2011. It is further argued that as occurrence in question took place during the initial period of validity of licence to drive a transport vehicle, driver was competent to drive the vehicle in question.

According to counsel, the Tribunal has seriously erred by holding that the driver was competent to drive a transport vehicle which falls within the definition of 'light motor vehicle'. It is further submitted that with regard to transport vehicle, there is no distinction between transport light motor or heavy motor vehicle for the purpose of licence. The Motor Vehicles Act, 1988 (in short 'the Act') was amended in the year 1994 and by way of amendment of Section 10 of the Act, the vehicles described at clauses (e) to (h) namely (e) medium goods vehicle; (f) medium passenger motor vehicle; (g) heavy goods vehicle; and (h) heavy passenger motor vehicle were later classified as 'transport vehicle'. After amendment of Section 10 in the year 1994, a driver holding a driving licence with endorsement of 'transport vehicle' is competent to drive medium goods

vehicle; medium passenger motor vehicle; heavy goods vehicle and heavy passenger motor vehicle now classified as 'transport vehicle'. Thus, the driver of the offending vehicle, in no terms, can be said to be incompetent to drive the vehicle in question on the basis of driving licence possessed by him at the time of occurrence.

Counsel representing the insurance company has supported findings of the Tribunal that as driver was authorized to drive a transport vehicle that is light motor vehicle, he was not competent to drive a heavy transport vehicle, therefore, insurance company has rightly been given recovery right against the insured. Another submission made by counsel is that the insurance company presses for recovery right against the insured only, therefore, in case appeal preferred by the driver is allowed, right of recovery against the insured may be kept intact.

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

A conjoint reading of documents Driving Licence Ex.R4 and report Ex. R10 produced by the insurance company leaves no manner of doubt that initially DL No. RJ02/2007/174819 was issued on 07.05.2005 for LMV (non Transport) which was valid upto 01.02.2024. On the back of this driving licence, there is an endorsement of transport containing badge details, reproduced herein before. The report Ex.R10 would reveal that this licence for transport was renewed from 14.10.2011 to 13.10.2014. As per the settled position in law, licence for driving a transport vehicle or an endorsement in this regard is made for three years. As per provisions of the Act, there is no such classification of vehicles or licences LMV transport or HTV transport. Rather, classification of vehicles as medium goods vehicle,

medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle, that has been done away by the legislature in the year 1994. The insurance company did not examine a witness from the Licensing Authority, Alwar to prove that in view of endorsement made on licence possessed by the driver, he was authorized only to drive a transport vehicle which falls in the definition of light motor vehicle under section 2(21) of the Act. In this view of the matter, I find merit in contention of the appellant that the Tribunal has misdirected itself by accepting plea of the insurance company that driver was not competent to drive the heavy goods vehicle with gross vehicle weight 16,200 kgs. As such, findings recorded by the Tribunal on issue No. 3 cannot be allowed to sustain and liable to be set aside.

As the driver was holding a valid licence with authorization to drive the vehicle in question, plea of the insurance company that the insured is guilty of committing breach of terms and conditions of insurance constituting a defence under Section 149 (2) of the Act is not tenable and accordingly rejected. This apart, in absence of privity of contract between the driver and insurer, the insurance company otherwise cannot be allowed recovery right against the driver.

For the foregoing reasons, the appeal is allowed. Resultantly, insurance company shall be jointly and severally liable to pay compensation without any right of recovery against insured much less the driver.

No order as to costs.

(Rekha Mittal)
Judge

08.02.2018

mohan bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No