

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

FAO-6969-2014 (O&M)
Date of decision: 08.03.2018

BHUPENDER & ORS

... Appellants

Versus

BAJAJ ALLIANZ GENERAL INS CO & ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Pratibha Yadav, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal raises a precise controversy with regard to recovery right given to the insurer on the basis of findings recorded by the Tribunal on issue No.3.

Counsel for the appellants would argue that as per registration certificate of tractor bearing No.HR-36-K-4586, unladen weight of the vehicle is 1650 kgs., therefore, the same falls within the definition of Light Motor Vehicle under Section 2(21) of the Motor Vehicles Act, 1988. It is further submitted that as the driver was possessing licence to drive LMV-tractor, M/CYCL.WG, LMV-non transport, he was authorised to drive the vehicle in question.

Another submission made by counsel is that the insurance

company has failed to adduce any evidence that gross vehicle weight of tractor attached with trolley was more than 7500 kgs., therefore, contention raised by the insurer that the insured is guilty of violating the terms and conditions of contract of insurance is not worthy of consideration much less acceptance in the light of latest 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 issue No.3 in view of the facts recorded in the registration certificate and driving licence of the driver when examined in the light of enunciation in **Mukund Dewangan's case** (supra). In this view of the matter, findings recorded by the Tribunal on issue No.3 cannot be allowed to sustain and ordered to be set aside.

No other point has been raised.

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.

08.03.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No