

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

F.A.O No. 4892 of 2016

Date of decision:- 09.03.2018

M/s Shiv Shankar Enterprise and Anr.

...Appellants

Versus

National Insurance Company ltd. And Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Ashwani Arora, Advocate,
for the appellant.

Mr.V. Ramswaroop, Advocate,
for respondent No.1.

RITU BAHRI J. (Oral)

This appeal has been filed by the appellants against the Award dated 26.07.2016 by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') wherein claimants (respondent in the present appeal) had filed claim petition on account of death of Sangat Ram in a motor vehicular accident which took place on 02.09.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 02.9.2015, at about 9.00 A.M. Sangat Ram, since deceased, along with his daughter namely Sonam Kansal (claimant No.3) was going to his office i.e. FCI at Sector 4, Panchkula on scooter Activa bearing registration No.HR-03-P-4970 by driving on the correct left hand side of the road at a moderate speed and after following all the traffic norms. When they reached in front of Tau Devi Lal Stadium, in the meanwhile, a Mahindra Pick Up bearing

registration No. CH03-Q-1478 (hereinafter in brevity, referred to as offending vehicle) came from back side, driven by respondent No. 1 rashly, negligently, at a very high speed and without blowing any horn and straightway hit the Activa of the deceased. As a result of accident, both the occupants of the Activa Scooter fallen down on the road and the head of the deceased was run over by the offending vehicle. However, claimant No. 3 Sonam sustained multiple injuries in the said accident. It is further pleaded that the deceased suffered severe and grievous injuries and rushed to Alchemist Hospital, Sector -21 Panchkula, and eventually succumbed to the injuries at Alchemist Hospital. In this regard, an FIR No. 311 dated 02.09.2015 under Sections 279/304-A was registered in the police station Sector 5, Panchkula against the respondent No.1, on the statement of Sonam.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of negligent driving of offending vehicle by respondent No.1.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Hence, Tribunal passed a awarded of Rs.59,05,346/-in favour of family of the deceased-Sangat Ram.

Feeling dissatisfied with the findings on issue No.3 by the Tribunal, the appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the

case file.

In the present case, learned Counsel for the appellants has referred the judgment of Hon'ble Supreme Court in case **Mukund Dewangan versus Oriental Insurance Compnay limited 2017 Civil Appeal No. 5826 of 2011 decided on 03.07.2017** and stated that controversy with regard to the person holding the driving licence of LMV driving Transport Vehicle has been set to rest where it has been decided that the person holding LMV driving licence can drive light transport vehicle as well and there is no separate endorsement required with regard to transport.

However, in the present case, in paragraph No.53 of the award of the Tribunal which shows, as evidence from oral and documentary evidence i.e. Vehicle thought falls under LMV category but is a commercial vehicle and was insured as such and was passed for fitness as such commercial as well as transport vehicle. It is a transport vehicle.

As per the findings of the Tribunal said driving licence Ex. R4/R6 in question required special endorsement for transport vehicle, this findings required to be set aside as per the judgment referred by the learned counsel for the appellant.

Keeping in view ratio laid down in the judgment **Mukund Dewangan versus Oriental Insurance Compnay'case(supra)** finding of Tribunal with regard to the issue No.3 is hereby set aside and it is also concluded that driver was holding a valid driving licence at the time of accident. Hence findings of issue No.3 is being reversed and no recovery rights can be given against the owner-driver.

Accordingly, the award is hereby set aside to the above extent and the present appeal is allowed.

09.03.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No