

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

**FAO No.9930 of 2014 (O&M)
Date of decision: 18.01.2018**

New India Assurance Company Ltd.

....Appellant

Versus

Narinderpal Kaur and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Paul S. Saini, Advocate,
for the appellant.

Appeal qua respondent Nos. 1 and 2-claimants already
dismissed vide order dated 25.02.2015.

Mr. Nitish Garg, Advocate,
for respondent Nos. 3 and 4.

RITU BAHRI J. (Oral)

This appeal has been filed by New India Assurance Company Ltd.-appellant against the award dated 07.08.2014 passed by Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.5,16,000/- has been awarded in favour of claimants-respondent Nos. 1 and 2 on account of death of Kulwant Singh @ Jaspreet Singh @ Gaggi in a motor vehicular accident which took place on 27.06.2013. Respondent Nos.1 and 2 are parents of deceased Kulwant Singh @ Jaspreet Singh.

Brief facts of the case are that on 27.06.2013, at about 12.00 P.M., Kulwant Singh @ Jaspreet Singh @ Gaggi (since deceased) along with Lovpreet Singh was going from his village towards village Bhatti Wala via Bathinda on a motorcycle bearing registration No.PB-03-P-5667.

Harmander Singh was following them on a separate motorcycle. When they reached near Thamiya Gate on Bathinda-Bhucho road, a vehicle bearing registration PB-03-U-4045 being driven by Sewak Singh-respondent No.3 in a rash and negligent manner, came from the opposite side and struck against the motorcycle, as a result of which, Kulwant Singh and Lovpreet Singh fell on the road and received multiple injuries. Within two hours of the accident, Kulwant Singh succumbed to the injuries. With regard to the incident, FIR No.73 dated 27.06.2013, Ex.C1 was registered at Police Station, Cantt. Bathinda against Sewak Singh-respondent No.3 (respondent No.1 in the claim petition). Consequently, the claimant-respondent Nos.1 and 2 filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of offending vehicle by respondent No.1 (respondent No.3 herein), as a result of which Kulwant Singh has died and thus, returned the finding on issue no.1 in favour of the claimants. This finding was rightly given on the basis of the deposition of Harmander Singh (CW-2), who was an eye witness of the accident and on whose statement, FIR Ex.C1 was registered. Further, the claimants have proved on record copy of charge sheet, Ex.C2 and postmortem report, Ex.C3.

In the absence of any documentary proof, notional income of the deceased was assessed as Rs.4500/- per month. Out of this, 50% amount was deducted towards personal expenses of the deceased. As per postmortem report Ex.C3, deceased was 21 years of age at the time of accident/death. He was a bachelor. After applying the multiplier of 18, dependency of claimants came to Rs.4,86,600/- (2250/- x 12 x 18). In

addition to it, Rs.25,000/- were awarded on account of funeral expenses and Rs.5000/- towards loss of consortium. Hence, the claimants were found entitled to total compensation of Rs.5,16,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the appellant-insurance company has preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding of Tribunal on issue No.1 that the accident had been caused on account of rash and negligent driving of the offending vehicle by its driver-Sewak Singh . The impugned award has been challenged on a short ground that driver of the offending vehicle was not holding a valid and effective driving license at the time of accident, therefore, applicant-insurance company was not liable to indemnify the insured. Learned counsel for the appellant has argued that driving licence Ex.R4 was issued for LMV only and there was no endorsement of commercial vehicle, whereas the offending vehicle i.e. Maxi Pick Up, which was being driven by the driver at the time of accident, was a 'goods carrying vehicle.

Reference, at this stage, can be made to a verdict given by Hon'ble the Supreme Court in **Mukund Dewangan vs Oriental Insurance Compay Limited**, 2017 SCC OnLine SC 788, whereby the matter had been referred to the Larger Bench of the Hon'ble Supreme Court to examine, whether a driver having a light motor vehicle, would not require to have an

endorsement to drive a transport vehicle. The term 'transport vehicle' would mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. As per Section 2 (35) of the Act, 'public service vehicle' means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motor cab, contract carriage, and stage carriage. Under Section 2 (14) of the Act, 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. A driver, who is holding a license to drive light motor vehicle for private use, would not be required to have an endorsement to drive a transport vehicle. As per Section 10 of the Act, it requires the driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. By virtue of the amendment made vide Act 54/1994 w.e.f. 14.11.1994, clauses (e) to (h) of Section 10 (2) of the Act have been substituted, which used to contain medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle and heavy passenger motor vehicle by one word i.e. "transport vehicle." Once, amendment has been made in the Act, all the above said vehicles have to be treated as transport vehicles.

Applying the ratio of the aforesaid judgment to the facts of the present case, a driver, who is holding license to drive light motor vehicle and heavy motor vehicle, would not require a separate endorsement to drive heavy goods vehicle, heavy passenger vehicle, as they belong to the same class of transport vehicle. In para 63 of the aforesaid judgment, it has been abundantly clarified 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 [section 2 \(15\)](#) 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.”

In the above judgment, Hon'ble the Supreme Court has clarified that in one class of vehicles, there can be different kind of vehicles and all of those will fall in the same class of vehicle and no separate endorsement was required for that purpose.

The present case is squarely covered by the judgment given in **Mukund Dewangan's** case (supra). Therefore, the findings given by the Tribunal on issue No. 3 are not required to be interfered with. In this view of the matter, argument raised by learned counsel for the appellant is rejected.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

18.01.2018
ajp

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