

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

**FAO No.2386 of 2017
Date of Decision.16.01.2018**

Naveen and another

.....Appellants

Vs

Cholamandlam MS General Insurance Company Ltd. and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.P. Chahar, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.7974-CII of 2017

For the reasons stated in the application, delay of 124 days in
filing the appeal is condoned.

Application is allowed.

FAO No.2386 of 2017

The appellants, owner and driver, are in appeal against the
finding rendered by the Tribunal on issue No.3 whereby the recovery rights
have been granted to the insurance company on the premise that the driver
was not having an effective and valid driving licence on the date of accident
occurred on 02.08.2015.

Mr. Chahar, learned counsel appearing on behalf of the
appellants submitted that unladen weight of the vehicle as per the
Registration Certificate Ex.R1 was 6500 kgs and therefore, the endorsement
of LMV would be a sufficient requirement to bring the vehicle under the
aforementioned expression. In this regard, he has drawn attention of the

Court to definition of sub-section 21 of Section 2 of the Motor Vehicles Act. He also referred to Ex.R9, report of the Licensing Authority, Bhuj and also the driving licence to show that the driver had the valid driving licence to drive the transport vehicle as the endorsement was for transport vehicle w.e.f. 26.02.2007, though he got renewal of the same on 22.12.2015 to be valid w.e.f. 22.12.2015 to 21.12.2018. The endorsement of LMV w.e.f. 15.12.2004 to 14.12.2024 would be sufficient requirement for entitling him to drive the vehicle in question.

He further submitted that the report, Ex.R9, has not been proved in accordance with law, in the absence of examination of the official from the concerned DTO and relied upon the statement suffered by the counsel where the aforementioned documents along with other documents were tendered on 27.05.2016.

On the issue of quantum, he submitted that the amount of ₹1 lac provided towards loss of love and affection is on higher side as the deceased was unmarried, much less, as per the latest law, the parents are not entitled for loss of love and affection, thus, urges this Court for modification of the award passed by the Tribunal.

I have heard learned counsel for the appellants and appraised the paper book. Sections 13 to 15 of the Motor Vehicles Act envisage the extent of currency of the driving licence and renewal of the same. The aforementioned provisions are extracted herein below:-

“13. Extent of effectiveness of licences to drive motor vehicles. - A learner’s licence or a driving licence issued under this Act shall be effective throughout India.

14. Currency of licences to drive motor vehicles. (1) A learner’s licence issued under this Act shall, subject to the other provisions of

this Act, be effective for a period of six months from the date of issue of the licence.

(2) A driving licence issued or renewed under this Act shall –

(a) in the case of a licence to drive a transport vehicle, be effective for a period of three years :

Provided that in the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course of the prescribed syllabus ; and

(b) in the case of any other licence –

(i) if the person obtaining the licence, either originally or on renewal thereof, has not attained the age of [fifty years] on the date of issue or, as the case may be, renewal thereof –

(A) be effective for a period of twenty years from the date of such issue or renewal ; or

(B) until the date on which such person attains the age of [fifty years], whichever is earlier ;

(ii) if the person referred to in sub-clause (i), has attained the age of fifty years on the date of issue or, as the case may be, renewal thereof, be effective, on payment of such fee as may be prescribed, for a period of five years from the date of such issue or renewal :

Provided that every driving licence shall, notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry.

15. Renewal of driving licences. - *(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry :*

Provided that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal :

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and

in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be apply in relation to every such case as they apply in relation to a learner's licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made 31 previous to, or not more than thirty days after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than thirty days after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central government :

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence.”

Admittedly, the unladen weight of the vehicle was 6500 kgs but

I cannot lose sight of the fact that the gross weight of the vehicle as per the registration certificate was 26000 kgs. Sub-section 21 of Section 2 of the Motor Vehicles, which is reproduced herein below, provides that a light

motor vehicle would mean a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which does not exceed 7500 kilograms:-

“Section 2(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms”

The aforementioned definition cannot be read in isolation as it has to be read in conjunction of the evidence brought on record and the fact that gross weight of the vehicle as per registration certificate was 26000 kilograms, therefore, the driver was required to have an endorsement of Heavy Transport Vehicle which was valid only upto three years i.e. w.e.f. 26.02.2007 to 25.02.2010 whereas the accident had taken place on 02.08.2015, therefore, there was no valid endorsement.

Even otherwise, the owner had not stepped into the witness box to state that he employed the driver after vouching for the validity of the driving licence and believed it to be genuine. Had this been done, perhaps there would have been some force in the arguments of Mr. Chahar, in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Pepsu Road Transport Corpn. v. National Insurance Co., (2013) 10 SCC 217.**

As regards the argument of non-proving of the document in accordance with law, I am of the view that no such objection was taken at the time of the exhibition of the document which was required to be taken as per Order 13 Rule 1 CPC, therefore, the aforementioned argument is wholly misplaced.

Vis-à-vis quantum, it is a case where a young person aged 20 years, who has not even enjoyed the company of spouse, died and therefore,

in my view, the amount of ₹1 lac provided towards loss of love and affection to the parents, who lost their young son is justified. But the aforementioned observation of mine shall not be treated as a finding on the basis of settled law but observed in peculiar facts and circumstances of the case.

In view of the aforementioned, I do not find any reason to interfere with the award passed by the Tribunal. No ground for interference is made out. The appeal stands dismissed. The amount of ₹25,000/- deposited before this Court shall be transmitted to the Tribunal for onward disbursal to the claimants in part satisfaction of the award.

(AMIT RAWAL)
JUDGE

January 16, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No