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

**FAO No.2569 of 2017 and
Cross-Objection No.9-CII of 2018 (O&M)
Date of decision: 15.05.2018**

Idu

....Appellant

Versus

Smt. Shashi Bala and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shiv Kumar, Advocate,
for the appellant.

Mr. Aditya Dassaur, Advocate,
for Mr. Ivan Singh Khosa, Advocate,
for respondent Nos.1 to 5-claimants.

Mr. Sukhdarshan Singh, Advocate,
for respondent No.6-Insurance Company.

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RITU BAHRI J. (Oral)

CM No.580-CII of 2018 in
Cross-objections No.9-CII of 2018

In view of the averments mentioned in the application, same is allowed and delay of 54 days in re-filing of the cross-objections is condoned.

CM No.581-CII of 2018

Cross-objections filed on behalf of claimants are taken on record.

Misc. application stands allowed accordingly.

FAO No.2569 of 2017

Idu-appellant (owner of offending vehicle) has come up in appeal (FAO No.2569 of 2017) against the award dated 08.01.2016 passed by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal'), whereby compensation of Rs.14,13,000/- has been awarded in favour of the claimant-respondent Nos. 1 to 5 on account of death of Dharam Kumar in a motor vehicular accident which took place on 16.04.2014.

Brief facts of the case are that on 16.04.2014, Dharam Kumar (since deceased) had met with an accident with the offending vehicle and later on, expired after sustaining injuries in the said accident. With regard to the accident, FIR No.241 dated 09.05.2014, under Sections 279/304-A IPC was registered at Police Station, Sadar, Palwal against Shyam Singh-driver (respondent No.1 in claim petition) on the statement of eye witness Vivek Kumar. Consequently, claimants-respondent Nos.1 to 5 filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, Tribunal came to a conclusion that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver-Shyam Singh. This finding was rightly given on the basis of evidence led by the claimants. In the absence of any documentary proof, income of deceased-Dharam Kumar was assessed as Rs.8000/- per month, out of which, 1/4th amount was deducted towards his personal expenses. Remaining amount came to Rs.6000/- per month i.e. Rs.72,000/- per annum. Deceased was 50 years of age at the time of death/accident and multiplier of 13 was applied by the Tribunal. By applying the multiplier of 13, dependency of claimants came to Rs.9,36,000/-. In addition to this, a sum of Rs.1,00,000.- was awarded to claimant No.1-widow as loss of consortium and Rs.25,000/- were awarded as funeral expenses. A sum of Rs.3,52,000/- has been awarded on account of expenses incurred on the treatment of the deceased. Hence, claimants were found entitled to a total amount of Rs.14,13,000/- as compensation. Feeling dissatisfied with the impugned award, owner-appellant has filed the present appeal.

The appellant is not challenging the finding given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver-Shyam Singh (respondent No.1 in claim petition), as FIR Ex.P17 was registered against him for causing the said accident. The challenge is to the finding given by the Tribunal on issue No.3, where the owner (appellant herein) and driver have been made liable to make payment of compensation and Insurance Company has been absolved of its liability to pay compensation, as driver-Shyam Singh was not having a driving licence with endorsement of 'transport.' Insurance company-respondent No.7 (herein) has been held entitled to recover the awarded amount from owner and driver of offending vehicle. Issue No.3 was decided against owner and driver-respondent Nos. 1 and 2 (in claim petition) and in favour of the Insurance Company.

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

Shyam Singh-driver was having a licence to drive a 'light motor vehicle'. A perusal of the impugned award shows that by virtue of driving licence Ex.P12 (Ex.R3), Shyam Singh-driver (respondent No.1 in claim petition) was authorized to drive motorcycle, light transport vehicles and heavy transport vehicles. While deciding issue No.3, the Tribunal has referred to the judgment passed by this Court in ***Ganesh and others vs. Bajaj Allianz General Insurance Company Limited and others,*** 2015 ACJ 414, wherein the driver was having a licence to drive light motor vehicle and heavy transport vehicle. It was held that in none of the aforesaid categories, tractor was included. Hence, at the first instance, the Insurance Company was directed to pay the awarded amount and then it was given a right to recover the same from the insured by executing the award.

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 (4) RCR (Civil) 111, 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:
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> (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). Since the driving licence Ex.P12 (also Ex.R3) is not being disputed, it is held that on the date of accident, the driver of the offending vehicle was having a valid and effective driving licence to drive a tractor. Therefore, the finding given by the Tribunal on issue No.3 is reversed/set aside and all the respondents i.e. owner, driver and insurance company are jointly and severally held liable to pay compensation to the claimants. Since the vehicle was insured on the date of accident, insurance company-respondent No.6 (herein) will indemnify the award and it will not have any recovery right against the owner and driver of the offending vehicle.

During the pendency of this appeal, claimants-respondent Nos.1 to 5 have filed Cross Objections No.9-CII of 2018 seeking enhancement of the compensation awarded by the Tribunal vide aforesaid award.

After hearing learned counsel for the parties, the impugned award is liable to be modified in view of the judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.8000/- per month
(ii)	10% of (i) above to be added as future prospects	8000 + 800 = Rs.8800/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	8800 – 2200 = Rs.6600/-
(iv)	Compensation after multiplier of 13 is applied	Rs.6600/- x 12 x 13 = Rs.10,29,600/-
(v)	Medical expenses	Rs.3,52,000/-

(vi)	Compensation under conventional head	Rs.70,000/-
(vii)	**TOTAL COMPENSATION AWARDED**	**Rs.14,51,600/-**
	Enhanced amount of compensation	**Rs.14,51,600 – 14,13,000 = Rs.38,600/-**

The enhanced amount of compensation of **Rs.38,600/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others***, Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018."

Resultantly, the impugned award is modified to the extent that the amount of compensation shall be paid by the Insurance Company-respondent No.6 (respondent No.3 in claim petition) only and it shall not recover the same from the owner (appellant) and driver of the offending vehicle. Appeal filed by owner-appellant and cross-objection filed by claimants-respondent Nos.1 to 5 stand partly allowed/disposed of.

(RITU BAHRI)
JUDGE

15.05.2018
ajp

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