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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd September, 2014

+ **MAC.APP. 711/2010**

DEVINDER KUMAR KUKREJA	 Appellant
Through	Mr.L.A.Vashishtha, Advocate
versus	
NUFRA KHATOON & ORS	 Respondent
Through	Mr.S.K.Rai, Advocate for R-1 to R-4
	Mr.Vijay Singh and Mr.Abhishek
	Kumar, Advocates for the Insurance
	company/R-6

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No.7093/2013

This is an application filed by the appellant seeking amendment in the grounds of the appeal.

A perusal of the grounds of the appeal show that what the appellant seeks to urge are only legal issues based on the facts and evidence already on record. Accordingly the application is allowed and the appellant is permitted to urge additional grounds as stated in the present application.

MAC.APP. 711/2010 & CM No. 19061/2010 (stay)

1. By the present appeal the appellant namely the owner of the offending vehicle seeks to impugn the award dated 06.05.2010.
2. The brief facts are that on 27.09.2003 when the deceased was going on his motorcycle he was hit by the offending vehicle driven by respondent no.5 in a rash and negligent manner. The deceased fell down on the road and received fatal injuries.

3. Based on the evidence on record, the Tribunal awarded a total compensation of Rs. 6,01,176/-.
4. On apportionment of liability, the Tribunal noted that the appellant himself had stated that he had employed respondent no.5 for running of the water tanker. The tanker was supplying water. The Tribunal further noted that respondent no.5 had a valid licence only for light motor vehicle (non-transport). Based on the same the Tribunal concluded that the driver of the offending vehicle did not have a valid driving licence and directed that the respondent no.6-insurance company would first pay the compensation amount awarded and then have recovery rights.
5. The learned counsel appearing for the appellant has strongly submitted that the vehicle in question was a tractor to which was attached a trolley. He submits that a tractor is a LMV as defined under Section 2(21) of the Motor Vehicles Act. He submits that as it is a LMV respondent no.5 has a licence to drive a LMV and the Tribunal had erred in giving recovery rights to the respondent No.6/insurance company. He relies upon judgment of the Supreme Court in the case of ***S. Iyyapan vs. United India Insurance Company Ltd. Civil Appeal No. 4834/2013*** decided on **01.07.2003**.
6. R3W1 Shri Devinder Kumar Kukreja the appellant in his statement has said that the original policy is valid upto 12.09.2004 and that the tractor in question which belong to him was insured. He confirmed in his cross-examination that he had hired the driver respondent no.5 for supplying water on trolleys. He has further confirmed that respondent no.5 used to supply water on tractor under his supervision and permission. He has further said that he did not have knowledge about validity of the driving licence of the driver.

7. R3W3 Shri Nekh Ram, LDC, Transport Deptt. Sheikh Sarai, New Delhi has brought the record regarding the driving licence in the name of respondent no.5. He has confirmed that the driving licence is valid for driving motorcycle and Light Motor Vehicle (NT).

8. This Court in a recent judgment dated 25.08.2014 in **MAC APP.203/2014 Satish Chand Kasana & Anr. vs Chandra Shekhar Yadav & Anr.** held that where a tractor trolley is used for agricultural purposes, the driver is not required to have a LMV (Commercial) licence. It is only in such cases where the vehicle is being used for a commercial purpose that this question would arise. This Court had relied upon the judgment of the Supreme Court in the case of **Oriental Insurance Company Ltd vs. Brij Mohan & Ors. AIR 2007 SC 1971** which relying on para 16 of **National Insurance Co. Ltd. vs. V. Chinnamma and Ors. MANU/SC/0698/: AIR2004SC4338** held that a tractor fitted with a trolley may or may not be a goods carriage. The relevant portion Para 16 of the judgment reads as follows:-

“16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes...”

9. This Court had also relied upon the judgment of the High Court in *New India Assurance Company Ltd. vs. Sanjay Singh & Ors. MAC APP. 561/2012* decided on **08.05.2014** which held that a tractor is a LMV and no separate endorsement is required of the driving licence for driving a tractor which is used for agricultural purpose.

10. It cannot be ignored that in the present case the tractor was not being used for agricultural purpose but as a commercial vehicle for carriage of goods. Section 2(47) defines a transport vehicle to include a goods carriage. Section 10(2) of the Motor Vehicle Act reads as follows:-

“Section 10 - Form and contents of licences to drive

(1) Every learner's licence and driving licence, except a driving licence issued under section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government.

(2) A learner's licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:-

- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;
- [(e) transport vehicle;]
- (i) road-roller;
- (j) motor vehicle of a specified description.”

11. In view of the above, it follows that in the present case merely because respondent no.5 had a driving licence to drive a light motor vehicle ipso facto does not mean that he could drive a transport vehicle based on the same licence. This is clear from Section 10 (2) (e) above.

12. The judgment relied upon by the learned counsel for the appellant is not applicable to the facts of the present case. In *S. Iyyapan vs United India*

Insurance Company Ltd. (supra) the facts were that the accident was caused by a Mahindra Maxi Cab. The Supreme Court came to the conclusion that the Mahindra Maxi Cab is covered by the definition of a light motor vehicle and merely because the driver did not get any endorsement on the driving licence to drive a light motor vehicle, it cannot be held that he did not have a valid driving licence. The said judgment would not be applicable to the facts of this case. A maxi cab is not akin to a transport vehicle.

13. There is no merit in the appeal. The same is dismissed.

JAYANT NATH, J

SEPTEMBER 23, 2014

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