

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

212

FAO-1122-2014 (O&M)

Date of decision: 20.05.2019

PAWAN KUMAR @ KALE RAM AND ANR.

... Appellants

Versus

RAJ KUMAR AND ANR.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikram Jeet Singh, Advocate for the appellants.
Mr. Ramender Chauhan, Advocate for respondent No.1.
Mr. Anshul Sharma, Advocate for
Mr. VM Gupta, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

CM No.3705-CII of 2014

Heard.

Allowed as prayed for. Delay of 25 days in refiling the appeal stands condoned.

Main Case

The driver and owner of offending vehicle i.e. tractor bearing No.HR-21C-5502 are in appeal to assail findings of the Tribunal in award dated 19.09.2013 whereby it has been held that Pawan Kumar appellant was not holding valid licence to drive the offending vehicle and as such, there is breach of terms and conditions of insurance policy at the behest of insured and accordingly, the insurance company has been exonerated of liability to pay compensation.

It is argued that Pawan Kumar, driver had licence to drive motorcycle, scooter, car and jeep Ex.R2, therefore, he was authorised to drive the tractor. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731.**

Counsel representing the insurance company has supported findings of the Tribunal on the question of driving licence on the basis whereof the insurance company has been exonerated of liability to pay compensation.

The controversy raised in the present appeal is squarely covered in favour of the appellants by judgment of this Court **Rashid Vs. Mohit and others, FAO No.8548 of 2017, decided on 26.09.2018.**

A relevant extract therefrom, reads as follows:-

Indisputably, the driver had a licence authorising him to drive motorcycle, scooter, car and jeep. The offending vehicle is a tractor that falls within the definition of LMV under Section 2(21) of the Motor Vehicles Act, 1988. There is nothing on record suggestive of the fact that mechanism of tractor is different from that of car or jeep. When the case is examined in the light of judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited 2017(7) Scale 731**, it is difficult to sustain findings of the Tribunal that driver of offending vehicle was not possessing a licence authorising him to drive the vehicle in question or the insured is guilty of violating terms and conditions of the insurance policy. That being so, right of recovery given to the insurance company against the insured is also liable to be set aside.

In view of the above, findings of the Tribunal that the insured is guilty of violating the terms and conditions of insurance policy or the insurance company is entitle to be exonerated of liability to pay compensation cannot be allowed to sustain and accordingly set aside. As a natural corollary, the insurance company shall be jointly and severally liable to pay compensation to the claimant without any right of recovery.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

20.05.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No