

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 1358 of 2015 (O&M)
DECIDED ON: MAY 06, 2019

RAJESH KUMAR

.....APPELLANT

VERSUS

CHOLA MANDLAM MS GENERAL INSURANCE CO. LTD. & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Kumar Tada, Advocate for
Mr. Brijender Kaushik, Advocate
for the appellant.

Ms. Vandana Malhotra, Advocate
for respondent No.1.

None for respondents No.3 and 4.

AVNEESH JHINGAN, J.(ORAL)

The award dated 04.07.2014 passed by the Motor Accident Claims Tribunal, Ambala (for brevity 'the Tribunal') has been assailed by the owner of TATA Ace Magic bearing registration No. HR-37C-7577 (hereinafter referred to as 'offending vehicle').

The insurer of the offending vehicle has been arrayed as respondent No.1; driver of the offending vehicle has been arrayed as respondent No.2 and the claimants have been arrayed as respondents No.3 and 4.

There is no dispute between the parties with regard to the factum of accident. There is no challenge to the compensation awarded by the Tribunal. The only grievance raised in the present appeal is that the Tribunal

erred in awarding recovery rights to the insurer on the ground that there was no endorsement on the driving licence, for driving a transport vehicle.

The facts in brief are that a motor vehicular accident took place 19.04.2013. The accident proved fatal for Jai Pal.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The Tribunal awarded a sum of ₹5,10,000/- as compensation alongwith interest @7.5% per annum. As there was no specific endorsement on driving licence authorizing the driver to drive a transport vehicle, recovery right was granted to the insurer.

There is no challenge by the insurer to the fact that the driver of the offending vehicle was holding a licence authorizing him to drive Light Motor Vehicle (LMV) and the offending vehicle also covered within the definition of LMV.

The issue that a person authorize to drive LMV can drive a transport/passenger vehicle of the same class without a specific endorsement thereon, is no longer *res-integra*.

The Supreme Court in ***Mukund Dewangan versus Oriental Insurance Co. Ltd., AIR 2017 SC 3668***, has held as under:-

“54. The vehicle involved was a tractor which was used for carrying goods. The goods were carried in a trailer attached to it. It was held that if a driver was holding an effective licence to drive a tractor, he could validly drive the tractor attached to a trailer. The contention that it was a transport vehicle, as the tractor was attached to a trailer and as such the driver was not holding a valid licence, was rejected. This Court has laid down thus:

“9. Relying on these definitions, Mr. S.C. Sharda submitted that

admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted that therefore it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Co. could not be made liable. He submitted that the High Court was right in so holding.

10. We are unable to accept the submissions of Mr.S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly Under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C.Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

(emphasis supplied)

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Section 10(2) (a) to (j) lays down the classes of vehicles to be

driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

XXX XXX XXX

'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.

(emphasis applied)

It was held that no separate endorsement is required to drive transport vehicle of a LMV class the unladen weight of which does not exceed 7500 kg. The driving licence for such vehicles would be a valid licence to drive transport vehicles of the said class.

The award dated 04.07.2014 passed by the Tribunal is modified to the extent that the liability to pay the compensation shall be jointly and severally.

Appeal is allowed.

(AVNEESH JHINGAN)
JUDGE

MAY 06, 2019
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Whether speaking/reasoned
Whether reportable

Yes
Yes