

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

**F.A.O No. 2109 of 2016
Date of decision:- 15.10.2019**

Ranjit Singh ...Appellant

Versus

Dheeraj Singh Gusain and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rajesh K. Moudgil, Advocate
for the applicant-appellant.

None for the Insurance Company.

RITU BAHRI J.

C.M. No. 7939-CII-2012

For the reasons mentioned in the application, delay of 909 days
in filing of the appeal stands condoned.

The application stands disposed of.

FAO No. 2109-2016

The present appeal has been preferred by the driver and owner-appellant (for short 'the appellant') against the award dated 13.05.2013 passed by the learned Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal') granting the recovery rights to the Insurance Company against the present appellant.

On 03.05.2011 at about 1 a.m, Sukar Singh (since deceased) started from Hotel Western Court, Sector 10, Panchkula for his house in village Kishangarh, Chandigarh. He was going on his cycle on the correct side along with his brother in law Mahavir Singh. When the deceased tried to cross the road on a green light near Dhillon light point, Manimajra,

appellant/respondent No. 1 came from Chandigarh side Bolero Jeep No. HR-49-F-0317 in a rash and negligent manner and hit against the deceased. The deceased fell on the road and was died during his way to hospital in PCR gypsy. F.I.R No. 125 dated 03.05.2011 was registered against respondent No. 1.

The Tribunal awarded the total compensation of Rs.7,54,000/- but the Insurance Company was given the recovery rights to recover the amount from the appellant/respondent No. 1 on the ground that the appellant at the time of accident was possessing the driving license of HTV, whereas he was driving a totally different class of vehicle i.e LMV, which is in contravention of Section 10 (2) of the Motor Vehicle Act.

The issue in this case is as to whether the appellant, who is the owner of the vehicle in question, is liable to pay compensation to the claimants/respondent No. 1 to 6, or as to whether the respondent-insurance company is entitled to recover the compensation awarded by the Tribunal, in its impugned award.

At the very outset, learned counsel for the appellant has referred to a judgment passed by this Court in a case of ***Harsewak Singh v. Lajo Devi and others, 2014 ACJ 719*** where the judgment of Hon'ble the Supreme Court titled as ***Oritental Insurance Co. Ltd vs. Zaharulnisha, 2008 ACJ 1928 (SC)*** has been referred. In ***Harsewak Singh's case (supra)***, the Tribunal fastened the liability on the owner-cum-driver and exonerated the Insurance Company on the ground that the driver was holding a licence to drive two-wheeler and HTV but he was driving LTV at the time of accident. This Court allowed the appeal of the owner-driver and held that

the possession of license to drive a HTV sufficiently qualifies a person to drive a LMV as mechanism for driving HTV is same as a LMV. Thus, it was held that the driver was holding the valid driving license at the time of accident.

Heard learned counsel for the appellant.

Reference at this stage can be made to a recent judgment of this Court in a case of ***National Insurance Company Ltd vs. Parkashi Devi and others, 2017 (1) PLR 361*** wherein while considering the ***Harsewak Singh's case (supra)***, this Court dismissed the appeal filed by the Insurance Co., who filed the appeal on the ground that the driver was not holding a valid driving license to drive a car, as he was possessing driving license to drive HTV and motorcycle whereas the offending car was in the category of LMV. In para 13 to 15, it has been observed as under:-

“13. Coming to the second argument regarding not holding a valid driving license, though, issue No.3 was framed on the point, but no evidence was led by the appellant – Insurer in this regard and accordingly, it has not been discussed by the Tribunal. The copy of the driving licence, as shown by Ld. Counsel for the appellant – Insurer, reveals that it was valid from 31.10.2013 to 30.10.2016 and the driver Surender Singh was authorised to drive HTV and Motorcycle. The accident in question had occurred on 23.4.2014. In other words, on the date of accident, the driver of the offending vehicle was holding a driving license to drive ‘HTV’ and ‘Motorcycle’, but not ‘LMV’.

*14. Similar issue was considered by the Jammu and Kashmir High Court in **National Insurance Co. Ltd. v. Gh. Rasool Baba (Jammu and Kashmir), 2011(2) J.K.J. 357**. After referring to the provisions of the Motor Vehicles Act as also the case law on the subject, it was concluded that holder of a licence to drive HTV*

(PE), cannot be said to be having no licence for driving Light Motor Vehicle as they are of the same type. It was observed as under :

“32. Section 10(2) of the MV Act provides that driving licence shall be express as entitling the holder to drive a motor vehicle of various classes, such as:

- (a) motor cycle without gear;*
- (b) motor cycle with gear;*
- (c) invalid carriage;*
- (d) light motor vehicle;*
- (e) transport vehicle;*
- (f) road-roller;*
- (g) motor vehicle of a specified description.*

33. The aforesaid classification does not give the description of all the vehicles but gives the description of type of vehicles. In the said backdrop the vehicle (Scorpio), in the context of definitions as given to transport vehicle, is held to be the vehicle of same type.

34. In paragraph 47 of the three Judge judgment as referred hereinabove, it has been held that "if a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type".

35. Applying the same ratio to the facts of the instant case, the driver, holder of licence to drive HTV(PE), while driving a Scorpio (Light Motor Vehicle) cannot be said to be having no licence for driving such type of vehicle which in effect is not different and more so when in terms of Section 7 of the Act precondition for obtaining licence for driving transport vehicles, means heavy vehicle, is to possess licence for driving light motor vehicle at least for one year.

38. The category of the vehicle is of essence and then to

hold license for driving a particular category of vehicles having different types can be driven by the driver who possesses driving license for driving such type of vehicles.

39. For the stated reasons, the driver, holder of licence to drive HTV(PE) while driving vehicle (Scorpio) cannot be said to be not holding the licence to drive such type of vehicle, so is held to be having valid and effective license, resultantly there being no violation of specified condition, the insurer is held liable to pay the compensation.”

*15. This issue was also considered by this Court in **Harsewak Singh son of Niranjan Singh v. Lajo Devi wife of Gurmail Singh (Punjab And Haryana) 2013(2) PLR 809**, wherein, agreeing with the decisions of different High Courts, it was held that possession of licence to drive HTV must be seen as sufficient qualification for a person to drive a LMV also, as the mechanism to drive in both the categories of vehicles was the same.*

The ratio of above mentioned judgments are directly applicable to the facts of the present case, as in the present case as well, the Insurance Company was given the recovery rights merely on the ground that the appellant at the time of accident was possessing the driving license of HTV, whereas he was driving a totally different class of vehicle i.e LMV.

Accordingly, the award dated dated 13.05.2013 is modified to the extent that the appellant is not liable to pay compensation to the claimantz and the Insurance Company is liable to make the payment of entire compensation to the claimants.

The appeal stands allowed to the above extent.

Further it is hereby directed that the amount of Rs.25,000/-

deposited by the appellant at the time of filing of appeal in the Registry of

this Court be returned to him.

15.10.2019

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No