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

**FAO No.723 of 2014 (O&M)
Date of Decision: February 25, 2019.**

Harender Singh and another

..........APPELLANT(s).

VERSUS

Bharti AXE General Insurance Company and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None for the appellant (s).

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for respondent No.1-insurance company.

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SURINDER GUPTA, J.

This is appeal by the owner and driver of vehicle TATA-ACE bearing registration No.HR-38P-6798 (later referred to as the offending vehicle) against the award dated 21.11.2013 passed by Motor Accident Claims Tribunal, Palwal (later referred to as the tribunal). The tribunal while allowing compensation of ₹20,95,500/- to the claimants-respondents No.2 to 6, directed the insurer of the offending vehicle i.e. respondent No.1 to pay the same to the claimants and allowed the right to recover from the appellants on the ground that driver of the offending vehicle was holding a licence to drive light motor vehicle which was not having endorsement that he was entitled to drive transport vehicle in the category of LMV, while the offending vehicle was a commercial vehicle.

The observations of the tribunal, while allowing right to recover the compensation amount, to the insurer of the offending vehicle as contained in para 27 of the award are enumerated as follows:-

> "27. To appreciate this argument, case of National Insurance Company Limited Vs. Sunita Devi and others 2011 ACJ 2115 is referred. It was held in this judgment that prior to 28.3.2001 under Central MV Rules, 1989, no endorsement was necessary to drive a transport vehicle with effect from 29.3.2011. No person can be said to hold an effective driving licence entitling him to drive LMV without endorsement thereupon that he is entitled to drive a transport vehicle. In the final outcome, insurance company was held not liable. Similar was the case law of Oriental Insurance Co. Ltd. Vs. Angad Kol and others 2009 ACJ 1411, when the driver was found driving a delivery auto which was a goods vehicle and his licence Ex.R2 of LMV vehicle was renewed for 20 years period, meaning thereby respondent no.1 driving his TATA ACE bearing registration No.HR38P-6798 was a commercial/goods vehicle. Because of these reasons,insurance company is not accounted for the violation of terms of policy of respondents No.1 and 2. Liability to pay compensation falls on respondents No.1 and 2. However, the respondent No.3 the insurer will indemnify the insured. The amount of claim will be given by respondent No.3 to the petitioners with the right to recover the said amount from respondents No.1 and 2 without filing any civil suit."

The law on the above controversy has been settled by the Hon'ble Apex Court in case of ***Mukund Dewangan Versus Oriental Insurance Company Ltd. AIR 2017 SC 3668, AIR 2017 SC 366***, wherein it has been held that a person holding licence to drive light motor vehicle, is also competent to drive commercial and non-commercial vehicle of that category.

Learned counsel for the insurer has argued that the law settled in case of ***Mukund Dewangan Versus Oriental Insurance Company Ltd. (supra),*** has been referred to a Larger Bench of Hon'ble Apex Court in case of ***M/s Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi and others SLP © No.27787 of 2017*** vide order dated 31.10.2017.

In case of ***M/s Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi and others (supra)***, notice for consideration of question as follows was issued:-

> "All that they pray is a notice in terms of Question No.2 which reads as follows:-
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> > "*Whether Hon'ble High Court ought not to have wrongly dismissed the Appeal while wholly relying on the Judgment of this Hon'ble Court in Mukund Dewangan Vs. Oriental Insurance Company Limited & Ors; C.A. 5826 of 2011 which has defeated its objective has led to more ambiguity towards the definition of the Light Motor Vehicles (LMV) as per section 2(21) of the Motor Vehicles Act, 1988 as well as in regard of the amended section 10(2) of said Act, 1988 as the two stands contracting other provisions of the Act in a way making them infructuous. That the passing of the pay and recover order such as this one after appreciating the contentions and circumstances of the petitioner herein would outrightly defeat the mandate as prescribed and*

> *intention of the legislature in incorporating the provisions of the MV Act."*

Law which prevail at this juncture is as settled in case of ***Mukund Dewangan Versus Oriental Insurance Company Ltd. (supra)*** referred above. Relying on the ratio of law in the above referred case, I find merit in this appeal and the same is accepted. The award of the tribunal is modified to the extent it awards right to recover the amount of compensation from the appellants(driver and owner of offending vehicle) by the insurer.

The appeal stands accepted to that extent.

(SURINDER GUPTA)
JUDGE

February 25, 2019.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***