IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 25.04.2019

1. FAO No.6482 of 2016(O&M)

Gian Singh .....Appellant

Versus

Ashok and others .....Respondents

2. FAO No.6965 of 2016(O&M)

Pushpa and others .....Appellants

Versus

Ashok and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. D.K. Tuteja, Advocate
for the appellant in FAO No.6482 of 2016 and
for respondent No.2-A.

Mr. S.S. Shekhawat, Advocate
for the appellants in FAO No.6965 of 2016 and
for respondents No.4 to 7.

Mr. Vishal Garg, Advocate
for respondent No.2 in both the cases.

Mr. Sanjeev Kodan, Advocate
for respondent No.3 in both the cases.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, FAO No.6482 of 2016 titled Gian Singh Vs. Ashok and others and FAO No.6965 of 2016 titled Pushpa and others Vs. Ashok and others are being disposed of. Common facts are being noticed.

[2]. Both the appeals have been preferred against the award dated 24.05.2016 passed by Motor Accident Claims Tribunal, Rohtak (for short 'The Tribunal').

[3]. Brief facts of the case are that on 09.12.2013 at about 9:30 A.M, Virender Singh along with Azad was traveling on a motorcycle. They were following Jitender Singh who was plying his motorcycle. At about 10.00 A.M, when they reached near Johri Wala Mandir near old Sugar Mill, a Canter Eicher loaded with garbage owned by Municipal Corporation, Rohtak came from behind in a rash and negligent manner and after crossing the motorcycle of Virender Singh, struck against the motorcycle of Jitender Singh. Jitender Singh fell on the ground and received many grievous injuries. On inquiry, driver of the canter was found to be Ashok Kumar who was impleaded as respondent No.1 before the Tribunal. A criminal case was registered against the driver of the offending vehicle. Jitender Singh succumbed to his injuries and as a result of that, culpability was enhanced to Section 304-A IPC as well. Respondent No.2 was Executive

Officer of Municipal Corporation, Rohtak who was owner of the offending vehicle. Respondent No.3 was impleaded being Insurance Company of the vehicle in question.

[4]. Municipal Corporation filed its written statement and resisted claim of the claimants. Municipal Corporation took up the stand that the vehicle in question was managed and plied under the supervision of the authorized Contractor of the Municipal Corporation i.e. appellant Gian Singh. Appellant took up the stand that he had no concern with the vehicle or accident, however, he had only supplied the driver to the Municipal Corporation as per its requirement. Insurance Company took up the stand that the driver of the offending vehicle did not have valid driving licence as on the date of accident, nor any intimation was sent to the Insurance Company. Even accident in question was denied with the offending vehicle.

[5]. The Tribunal held under issue No.1 that the accident in question took place due to rash and negligent driving of the driver of the offending vehicle. The Tribunal awarded compensation to the claimants to the tune of Rs.30 lacs. Under issue No.3, the Tribunal relied upon ***Hanuman Singh Vs. Sona Devi and others, 2015(4) PLR 619*** and held that the offending vehicle was a transport vehicle and was doing commercial

activities by lifting garbage. In view of terms of the insurance, vehicle could not have been used as transport vehicle and therefore, driver of the offending vehicle was held to be not having valid driving licence as transport vehicle without any endorsement on his driving licence. Even no certificate of fitness was produced, therefore, breach of the conditions of the insurance policy was held. Liability of the Insurance Company was held at the first instance with a right to recover the same from the persons liable to pay the compensation. In view of arrangement on hire-purchase, the person in possession of the vehicle was treated to be an owner. Though the vehicle was registered with the Municipal Corporation, Rohtak, but it was given to the appellant Contractor as per agreement Exs.R9 and R10. As per terms and conditions of the agreement, maintenance of the agreement was the responsibility of the Contractor and the Contractor was to employee the driver with valid driving licence and experience.

[6]. In view of aforesaid, liability of the Contractor was held and the appellant Gian Singh was held responsible to pay the amount of compensation. The issue was decided in favour of the Insurance Company with a direction to Insurance Company to satisfy the claim at the first instance and then to recover the same from the appellant Gian Singh in accordance with law.

FAO No.6482 of 2016

[7]. Appellant Gian Singh was arrayed as respondent No.2-A in the claim petition filed by the claimants/respondents No.4 to 7 before the Motor Accident Claims Tribunal, Rohtak. Appellant was a Contractor of the Municipal Corporation, Rohtak. Claim petition was filed for awarding compensation on account of death of Jitender Singh in a vehicular accident.

[8]. In view of written statement filed by the Insurance Company, Insurance Company relied upon defences provided under Sections 134(C), 147 to 149, 157 and 170 of the Motor Vehicles Act. The aforesaid stand was taken in para No.5 of the written statement without elaborating anything further. Insurance Company has not produced any policy of insurance on record. Driving licence of Ashok Kumar was brought on record as Ex.R-1. As per registration of the vehicle, class of the vehicle has been shown as light motor vehicle with category as transport. Insurance Company has placed only a cover note without bringing on record the insurance policy. Learned counsel for the Insurance Company after tendering Ex.R-2 closed the evidence on 23.01.2015.

[9]. I have heard learned counsel for the parties.

[10]. In ***Mukund Dewangan Vs. Oriental Insurance***

<u>Company Ltd., 2017(4) RCR (Civil) 111</u>, it was held that when a driver holding a licence to drive the light motor vehicle is competent to drive transport vehicle of that category without specific endorsement to drive the transport vehicle. 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) of the Act. Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

[11]. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kgs would be a light motor vehicle. The holder of the driving licence to drive light motor vehicle as provided in Section 10(2) (d) of the Act would be competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kgs or a motor car or tractor or road-roller, the unladen weight of which does not exceed 7500 kgs. That is why, 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) of the Act continues to be valid after Amendment Act 54/1994.

[12]. The effect of the amendment w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) of the Act 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.

[13]. The effect of amendment of Form 4 by inserting “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. If the driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect. This very concept is applicable to other categories as well which were inserted in the Amendment Act No.54/1994 which were also brought in the category of transport vehicle.

[14]. Insurance Company has not brought on record insurance policy to show any violation of the policy by the driver of the offending vehicle. The Tribunal has relied upon ***Hanuman***

Singh's case (supra), which was decided on the basis of New ***India Assurance Co. Ltd. Vs. Prabhu Lal, 2008(1) RCR (Civil) 198.*** ***Prabhu Lal; case (supra***) has been over-ruled in ***Mukund Dewangan's case (supra)*** as the decision in the said case does not lay down correct proposition of law. While concluding the issue, the Hon'ble Apex Court has discussed the necessary issues with reference to amendment in para No.46 of the judgment which reads as under:-

> *"46. Section 10 of the Act requires a driver to hold a licence with respect to the class of vehicles and not with respect to the type of vehicles. In one class of vehicles, there may be different kinds of vehicles. If they fall in the same class of vehicles, no separate endorsement is required to drive such vehicles. As light motor vehicle includes transport vehicle also, a holder of light motor vehicle licence can drive all the vehicles of the class including transport vehicles. It was pre-amended position as well the post-amended position of Form 4 as amended on 28.3.2001. Any other interpretation would be repugnant to the definition of "light motor vehicle" in section 2(21) and the provisions of section 10(2)(d), Rule 8 of the Rules of 1989, other provisions and also the forms which are in tune with the provisions. Even otherwise the forms never intended to exclude transport vehicles from the category of 'light motor vehicles' and for light motor vehicle, the validity period of such licence hold good and apply for the transport vehicle of such class also and the expression*

in Section 10(2)(e) of the Act 'Transport Vehicle' would include medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, heavy passenger motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which we have discussed. Thus we answer the questions which are referred to us thus:

(i) '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."

[15]. The issue as regards the liability of the contractor viz-a-viz the Insurance Company has to be answered in negative as

the driver is competent to drive the said class of vehicle without any endorsement on his driving licence. Insurance Company has not filed any appeal against the award, thereby seeking relief on the basis of hire-purchase agreement against Municipal Corporation, Rohtak. Such an issue cannot be deliberated in the present appeal filed by the Contractor of the Municipal Corporation.

[16]. Even in view of ratio laid down in ***S. Iyyapan Vs. M/s United India Insurance Company Ltd. and another, 2013(3) RCR (Civil) 654***, the Insurance Company cannot disown its liability on the ground that the driver was holding driving licence to drive a light motor vehicle but was driving a commercial vehicle. The aforesaid proposition coupled with ratio of ***Mukund Dewangan's case (supra)*** would not absolve the Insurance Company from its liability to indemnify the insured.

[17]. Learned counsel for the appellant further referred to ***Uttar Pradesh State Road Transport Corporation Vs. National Insurance Company Ltd. and others, 2018(3) ACC 273*** to advance his arguments. By referring to ***ICICI Lombard General Insurance Company Ltd. Vs. Smt. Joginder Kaur and others, 2010(24) RCR (Civil) 325, Champa Devi (widow) Vs. Ram Sarup, 1994(1) PLR 65*** and ***New India Assurance Co; Ltd. Vs. Darshan Singh and others, 1992 AIR (Delhi)***

329, learned counsel contended that in the written statement, plea of higher award was not specifically taken except the bald statement of the provision in the preliminary objection without there being any elaboration in the main written statement. Even preliminary objection as contained in the written statement does not defend the case of the Insurance Company.

[18]. In view of the fact that insurance policy has not been placed on record, no plea was taken by the Insurance Company, only a headnote was produced on record and thereafter, evidence was closed. The case of the Insurance Company cannot proceed thereafter.

[19]. Learned counsel also referred to ***Uttar Pradesh State Road Transport Corporation Vs. Kulsum and others, 2011(3) RCR (Civil) 826*** and contended that no permission of the Insurance Company was required to give vehicle to the Municipal Corporation on contract. Once the vehicle was insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 146 of the Act does not provide that any person in use of the vehicle independently, needs to have separate insurance policy. There is no such requirement in law to have independent policy of insurance in case of use of vehicle by the contractor.

[20]. On the other hand, learned counsel for the Insurance

Company with reference to unladen weight of the vehicle submitted that the weight was on the higher side, therefore, the ratio of ***Mukund Dewangan's case (supra)*** would not be applicable.

[21]. Learned counsel for the Insurance Company has raised arguments that liability of the insurance company is based on a statutory provision. Compulsory insurance of vehicle is meant for the benefit of third party. Registered owner, insurer as well as Corporation are jointly and severally liable to pay the compensation and the Insurance Company would be at liberty to recover the same from the owner.

[22]. In the light of discussions made in the preceding paragraphs, learned counsel for the Insurance Company does not advance the case any further. Even if, the owner of the vehicle gives the vehicle on lease or on hire, insurer is liable to make payment of the compensation in view of ratio laid down in ***Managing Director, K.S.R.T.C Vs. New India Assurance Co. Ltd. and another, 2015(4) RCR (Civil) 938***, wherein it was held that where the agreement on hire-purchase or an agreement of hypothecation has been entered into or lease agreement, the person in possession of the vehicle will be treated to be an owner. The insurer has to indemnify the insured. Municipal Corporation in terms of hire-purchase agreement entered into

with the registered owner would be entitled to recover the amount from the insurer. In the instant case, once the insurer is held liable, there is no question of correction in paying the compensation at first point of time and then to recover the same from the insurer.

[23]. For the reasons recorded hereinabove, the present appeal is allowed. Insurance Company would answer the claim and indemnify the insured in accordance with law.

FAO No.6965 of 2016(O&M)

[24]. After appreciating material on record, the Tribunal has assessed the income of the deceased as Rs.14225/- per month. He was a seasonal worker, working in Haryana Cooperative Sugar Mills Limited, Rohtak. He was getting full pay for six months whereas he was getting 35% of the basic pay during the off seasons. The Tribunal assessed the total compensation to the tune of Rs.30,00,570/- along with interest @ 7.5 % per annum from the date of filing of the claim petition till final realisation of the amount.

[25]. Learned counsel for the appellants submitted that the monthly income of the deceased assessed by the Tribunal is on the lower side and needs to be enhanced. The deceased was drawing a salary to the tune of Rs.22,650/- per month for a period of six months and 35% of the basic pay i.e. Rs.22650/-

during the off seasons as he was a seasonal worker.

[26]. I have heard the submissions made by learned counsel for the appellants.

[27]. Perusal of the salary certificate (Annexure P11) would show that deceased was getting salary of Rs.22,650/- per month as full salary for six months and 35% of basis pay during the off seasons. The Tribunal has also observed the same, but assessed the monthly income of the deceased on the lower side.

[28]. In view of the salary certificate, the salary of the deceased for six months comes out to be Rs.1,35,900/- (22,650 X 6) and for the next six months he was getting 35% of the basic pay i.e. Rs.7927/-, therefore the salary for the next six months comes out to be Rs.88,338/- (22650-7927). In this way, annual salary of the deceased comes out to be Rs.2,24,238/-.

[29]. In view of ratio laid down in ***National Insurance Co. Limited vs. Pranay Sethi, 2017 SCC 1270,*** future prospects to the tune of 50% is to be added to the income of the deceased. In this way. the income of the deceased would come out to be Rs.3,36,357/- after addition of 50% towards future prospects. 1/4th deduction i.e. Rs.84,089/- can be applied keeping in view the number of claimants towards personal expenses and after applying the same, the yearly dependency would come out to be

Rs.2,52,268/- (3,36,357-84,089). Keeping in view the age of the deceased and as per ratio laid down in ***Sarla Verma vs. Delhi Transportation Corporation, 2009 ACJ 1298 (SC),*** multiplier of 15 has to be applied, therefore, the total compensation would come out to be Rs.37,84,020/- to which an amount of Rs.30,000/- towards conventional heads has to be added in view of ratio laid down in ***National Insurance Co. Limited vs. Pranay Sethi's case (supra).*** Accordingly, the total compensation would come out to be Rs.38,14,020/-.

[30]. In view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors. 2018 (4) RCR (Civil) 333*** an amount of Rs. 40,000/- each to the minor children of the deceased towards parental consortium and Rs.40,000/- towards filial consortium to the mother of the deceased is to be granted. An amount of Rs.2,00,000/- i.e. Rs.50,000/- each to all the four claimants is to be granted towards loss of love and affection. In this way, total amount of compensation would out to be Rs.41,34,020/- (38,14,020+80,000+40,000+2,00,000). Since the Tribunal has granted compensation to the tune of Rs.30,00,570/-, therefore the enhanced amount comes out to be Rs.11,33,450/- (41,34,020-30,00,570).

[31]. The enhanced amount of Rs.11,33,450/- shall carry interest @ 7.5% per annum from the date of filing of the claim

petition till final realisation of the amount. Insurance Company would answer the claim and indemnify the insured in accordance with law.

25.04.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No
Whether reportable Yes/No