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

**FAO-9886-2014 (O&M) &
XOBJC-132-CII-2015
Date of decision:-13.02.2019**

Reliance General Insurance Company Limited

....Appellant

Versus

Anu Devi and others

...Respondents

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. R.K.Bashamboo, Advocate
for the appellant.

Mr. Vikram Kumar, Advocate for
Mr. D.P.S.Bajwa, Advocate
for respondents No. 1 and 2.

Mr. Saurabh Garg, Advocate for
Mr. Upender Prashar, Advocate
for respondents No. 3 and 4.

Mr. Inderpal Singh Parmar, Advocate
for respondents No. 5 and 6.

AVNEESH JHINGAN J. (Oral)

The award dated 29.05.2014 passed by the Motor Accident Claims Tribunal, Kaithal (for short 'the Tribunal') has been assailed by the Insurer aggrieved of award passed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The claimants are respondents No. 1 to 4, driver of the Tractor Swaraj 724 bearing registration No. HR-08-M-7674

(hereinafter referred to as the 'offending vehicle') and owner of the offending vehicle have been arrayed as respondents No. 5 and 6 in the appeal.

In the appeal, the claimants have also filed cross objections for enhancement of the compensation.

The facts emanating from the record are that on 22.04.2013, Rakesh Kumar was riding his motorcycle bearing registration No. HRO8K-9944. He was going towards his village Chandana and Naveen Kumar was pillion rider. The motorcycle was hit by rashly and negligently driven offending vehicle as a result Rakesh Kumar sustained multiple injuries and was taken to the Civil Hospital, Kaithal where doctors declared him brought dead. FIR was registered.

A claim petition was filed by the widow, minor daughter and parents of Rakesh Kumar under Section 166 of the Act and it was pleaded that the deceased was 27 years old at the time of accident and was temporarily employed as Assistant Lineman in UHBVN and was drawing salary of ₹ 12,000/- per month.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and the insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

In the claim petition, the Tribunal assessed monthly earning of the deceased as ₹ 10,400/- per month, 50% future prospects were

awarded; 1/3rd deduction was made for self-expenses and multiplier of '17' was applied. A sum of ₹ 21,76,600/- was awarded along with interest @ 7% per annum. The amount awarded included ₹ 20,000/- on account of consortium and ₹ 15,000/- for funeral expenses and ₹ 20,000/- on account of love and affairs.

Heard learned counsel for the parties and perused the paper book and the relevant documents produced by them.

Learned counsel for the appellant contends that the Tribunal erred in holding insurance company liable to pay compensation as the driver of the offending vehicle was having a licence to drive LMV whereas at the time of accident, a trolley filled with straw was attached to the tractor. He further states that there was no insurance for the trolley and the Tribunal erred in awarding 50% future prospects instead of 40%. No other issue has been raised.

Learned counsel for the claimants while defending the award contends that though the deceased was a temporary employee but was working in Uttar Haryana Bijli Vitran Nigam (UHBVN) for the last six years, hence, 50% future prospects be upheld.

The contention raised by learned counsel for the appellant lacks merit. Learned counsel for the appellant is not able to dispute the fact that the driver of the offending vehicle was having a Driving Licence valid for driving a Tractor. The only grievance raised is that there was no endorsement on the Licence for driving a Transport Vehicle. As per the law laid down by the Apex Court, there is no requirement of separate endorsement for driving goods vehicle of same

class.

The issue raised is no longer *res-integra*. The Supreme Court in case of ***Mukund Dewangan versus Oriental Insurance Co. Ltd., (2017) 14 SCC 663*** 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.

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'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.*

It was held that no separate endorsement is required to drive transport vehicle of a light motor vehicle classes i.e. LMV, tractor or road roller, the unladen weight of which does not exceed 7500 kg. The driving licence for driving such vehicles would be valid licence to drive transport vehicles of the said class.

The Supreme Court reiterated this fact in the case of ***Sant Lal versus Rajesh and others, (2017) 8 SCC 590***, thereby following the decision of the ***Mukund Dewangan's*** case (Supra), held that driver holding a driving licence effective for driving LMV class or driving a tractor needs no separate endorsement on the driving licence regarding transport vehicles if trolley is attached to tractor. The answer to first aspect of contention is decided against the appellant i.e. tractor attached with trolley can be driven by a licence holder of tractor and LMV.

A Division Bench of this Court in case of ***United India Insurance Company Ltd. Versus Surinder, 2004(4) R.C.R. (Civil) 211*** held as under:-

“The offending vehicle i.e. Tractor was insured comprehensively against a premium of Rs.2,076/- with the appellant-company. Now the question to be seen is whether any agriculture instrument

attached to the tractor is deemed to be insured along with the tractor. The word 'tractor' has been defined in the Motor Vehicles Act, 1988 as under:-

“The tractor means a motor vehicle which is not itself constructed to carry any load other than (the equipments used for the purpose) or propulsion but excludes a road roller.” A perusal of the definition of word 'tractor' shows that tractor itself is not able to carry any load without the equipments. Therefore, any equipment attached to the tractor is a part of the tractor and covered under the insurance policy.”

It was held that any equipment attached to tractor becomes part of tractor and is covered in definition of tractor under Section 2 (44) of the Act.

Even otherwise it is proved on record that at the time of the accident, the tractor trolley was carrying straw, hence, was being used for agriculture purposes.

Tractor in itself has no use. It is only the equipment attached to it that makes it suitable for agriculture purpose or for carrying load. If the contention raised by the appellant is accepted, then for every type of equipment, a different endorsement would be required on the driving licence. Thus, the contention raised by learned counsel for the appellant is answered in negative as merely attaching a Trolley to a tractor would not become a transport vehicle. No separate insurance is required for trolley.

This Court in ***FAO No. 3356 of 2011*** titled as ***New India Assurance Co. Ltd. Vs. Krishna Devi and others*** held as:-

“The insurance policy obtained by Sh. Chand Ram, owner of tractor bearing No.HR10E-4846 is a standard Commercial Vehicle Package

*Policy on payment of third party premium of Rs.925/- plus Own Damage. Once the policy is a Commercial Vehicle Package Policy and the tractor cannot be used as a commercial vehicle unless a trolley/trailor is attached thereto, it is difficult to accept contention of the insurance company that the insurer is not liable to pay compensation since Hawa Singh (deceased) sustained injuries only because of the trolley having slipped from the jack. In this view of the matter, the insurance company cannot derive any advantage to its contention from the judgment in **Jai Bhagwan and another's case** (supra). Accordingly, findings recorded by the Tribunal holding the insurance company liable to pay compensation are liable to be affirmed.”*

The contention of the learned counsel for the appellant that Tribunal erred in awarding 50% future prospects deserves acceptance in view of the decisions of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157 and Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**. The deceased was below 40 years of age and was temporarily employed with UHBVN, he was not having permanent job, hence, 40% future prospects are to be awarded.

As per the the decision of the Supreme Court in **Pranay Sethi's case (supra)**, the claimants are entitled to ₹ 15,000/- each for funeral expenses and for loss of estate. ₹ 40,000/- are awarded to the widow on account of loss of consortium.

In view of above discussion, the compensation is recalculated as under:-

<i>Particulars</i>	<i>Amount (in ₹)</i>
Monthly income of the deceased as assessed	10,400/-
40 % Future Prospects	4160/-
Sub Total	14560/-
1/3 rd deduction for self expenses	4853/-
Applying multiplier of '17'	19,80,228 /-
Funeral Expenses	15,000/-
Loss of consortium	40,000/-
Loss of Estate	15,000/-
Grand Total	20,50,228/-

The award dated 10.05.2017 is modified to the extent that the amount of ₹ 21,76,600/- awarded by the Tribunal is reduced to ₹ 20,50,228/-.

Vide order dated 11.12.2014, the recovery of amount of compensation beyond ₹ 15 lakhs was stayed, the claimants shall be entitled to the remaining amount alongwith interest at the rate as awarded by the Tribunal from the date of filing of the claim petition till the realization of the amount.

Both appeal and cross objections are allowed in the afore-said terms.

13th February, 2019
shabha

(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>