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

(1) FAO No.7780 of 2017 (O&M)
Date of Decision: 15.11.2019

Ramphal

.....Appellant

Versus

Chola Mandalam M.S. General Insurance Company Ltd. and others

.....Respondents

(2) FAO No.6303 of 2017 (O&M)

Gobind Kumar

.....Appellant

Versus

Dharampal and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Rajbir Singh, Advocate
for the appellant in FAO-7780-2017.

Mr. Divanshu Jain, Advocate
for the appellant in FAO-6303-2017.

Mr. Abhimanyu Batra, Advocate
for the respondent/insurance company.

NIRMALJIT KAUR, J.

CM-25753-CII-2017 in FAO-7780-2017

For the reasons mentioned in the application, the same is allowed and the delay of 170 days in filing of the appeal is condoned.

Main Cases

Both the aforementioned appeals shall stand decided by this common order as the award dated 02.03.2017, passed by the Motor Accident Claims Tribunal, Narnaul (for short, the Tribunal) and issue is identical.

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Appeal bearing FAO-7780-2017 has been filed by the owner and appeal bearing FAO-6303-2017 has been filed by the driver of the vehicle, being aggrieved with the award passed by the Tribunal, vide which, the liability to pay compensation has been fastened upon them.

It is contended that the liability has been fastened upon the owner and driver of the vehicle on two grounds. Firstly, the driving licence owned by the driver was a fake licence. Secondly, the driver did not have a valid licence to drive a heavy goods vehicle.

Learned counsel for the appellant-owner has relied on the judgment rendered by Hon'ble the Apex Court in the case of Mukund Dewangan Vs. Oriental Insurance Company Limited, 2007 (4) R.C.R. (Civil) 111, to contend that the licence to drive a light motor vehicle and heavy motor vehicle includes the licence to drive transport vehicle/goods vehicle. Further, reliance was placed on the judgment rendered by Hon'ble the Apex Court in the case of Pepsu Road Transport Corporation Vs. National Insurance Company, 2013 (4) R.C.R. (Civil) 273, to contend that the insurance company was liable to pay the compensation in case an owner hires a driver after satisfying that the driver had a valid driving licence and had competency to drive the vehicle.

Learned counsel for the respondent/insurance company while vehemently opposing the stand of the appellant/owner submitted that as per the letter issued under RTI, no driving licence or its renewal was ever issued by the office of R.T.O. Therefore, the licence was fake. Further, reliance was placed on the judgment rendered by this High Court in the case of Rajinder Puri Vs. Sandeep Singh (minor) and others, 2014 (39) R.C.R. (Civil) 241 and Munshi Ram and another Vs. Balkar Singh and others, 2016

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(2) PLR 526, to contend that mere version of the owner that he had verified the driving licence or interviewed the driver when he was employed, is not sufficient to prove that the liability to pay compensation shifts upon the insurance company. Further, even if, the licence is accepted to be proper, there was no endorsement to drive a heavy transport vehicle and without the same it cannot be said that the driver had a valid driving licence to drive a transport vehicle and in the present case, there was neither any endorsement to the said effect and nor the licence to drive heavy goods vehicle was issued.

Heard.

This Court earlier also in the case of Jiwan Singh Vs. Lila Wanti and others, FAO-880-2018, decided on 03.09.2019, while relying on the the judgment rendered by Hon'ble the Apex Court in the case of Pepsu Road Transport Corporation (supra), dealt the issue by holding that any person of a rural background will have no expertise to know as to whether the driving licence is fake or not. Leave alone a person from rural background, even a person with reasonable knowledge and education will not be able to find out the difference between a fake and a genuine driving licence and he is not expected to get the same verified from the Licensing Authority. In any case, the judgment rendered by Hon'ble Apex Court in the case of Pepsu Road Transport Corporation (supra) is a complete answer to the issue in hand. In fact, the said issue is no more *res integra* in view of the judgment rendered in case of Pepsu Road Transport Corporation (supra), wherein it was held as under:-

“9. On facts, in the instant case, the appellant employer had employed the third respondent Nirmal Singh as

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driver in 1994. In the process of employment, he had been put to a driving test and he had been imparted training also. The accident took place only after six years of his service in PRTC as driver. In such circumstances, it cannot be said that the insured is at fault in having employed a person whose licence has been proved to be fake by the insurance company before the Tribunal. As we have already noted above, on scanning the evidence of the licensing authority before the Tribunal, it cannot also be absolutely held that the licence to the driver had not been issued by the said authority and that the licence was fake. Though the appellant had also taken a contention that the compensation is on the higher side, no serious attempt has been made and according to us justifiably, to canvas that position.”

In the present case, the appellant-Ramphal, who is owner of the vehicle appeared as RW-1, filed his affidavit stating that he had appointed Gobind as driver after seeing his original driving licence, which seems to be original to him and besides this he also checked his driving by allowing him to drive the said vehicle alongwith him. Similarly, qua the driver not having heavy licence to drive the heavy motor vehicle also stands answered in the case of Mukund Dewangan (supra), wherein, it was held that a driver holding a licence to drive light motor vehicle, is also competent to drive a transport vehicle of that category without specific endorsement to drive the transport vehicle. Further, heavy passenger motor vehicle includes the expression transport vehicle by virtue of the amendment of Act No.54 of 1994 as discussed and observed in para Nos.7, 45 & 46 in the case of Mukund Dewangan (supra), as under:-

“7. The pre-amended provision of Section 10 contained the vehicles of ten kinds in Section 10(2) (a) to (j). In order to simplify the procedure for obtaining the licence, categories like medium goods vehicle, medium passenger motor vehicle, heavy goods vehicle, and heavy passenger motor vehicle were deleted and one category was inserted for these four kinds of vehicles in the form of transport vehicle in section 10(2)(e) so that drivers are not required to obtain the licence again and again for aforesaid four kinds of vehicles.”

“45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective

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of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994.”

“46. Section 10 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.”

Applying the principle as laid down in the above judgment

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employed the driver after putting him to test and it was duly mentioned in the driving licence that the same was also for heavy motor vehicle, which included heavy transport vehicle. Hence, no separate licence or endorsement was required for the same.

In view of the above, both the appeals are allowed and the award dated 02.03.2017 passed by the Tribunal is set aside to the extent vide which, the recovery has been ordered to be effected from the driver and owner.

15.11.2019

sandeep

(NIRMALJIT KAUR)

JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No