

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

Date of Decision: 09.08.2019

(1)

FAO No.5101-2012

Harbhajan Singh and another

.....Appellants

Versus

Shilpi Jain and others

.....Respondents

(2)

FAO No.5999-2012

Shilpi Jain and others

.....Appellants

Versus

Harbhajan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Ms. Gagan Deep Grewal, Advocate
for the appellants in FAO No.5101-2012 and
for respondents No.1 and 2 in FAO No.5999-2012.

Mr. Rajbir Singh, Advocate
for respondents No.1 to 3 in FAO No.5101-2012 and
for the appellants in FAO No.5999-2012.

Mr. Subhash Goyal, Advocate
for Insurance Company.

ARUN KUMAR TYAGI, J.

1. This order disposes of **FAO No.5101-2012** titled **Harbhajan Singh and another Vs. Shilpi Jain and others** filed by the appellants-driver and owner of the offending vehicle for setting aside the award dated 03.08.2012 passed by the learned Motor Accidents Claims Tribunal, Sangrur (for short 'the Tribunal') in **MACT Case No.62 of 2010** titled as **Shilpi Jain and others Vs. Harbhajan**

Singh and others and **FAO No.5999-2012 titled Shilpi Jain and others Vs. Harbhajan Singh and others** filed by claimants namely Shilpi Jain-widow, Rajneesh Gupta-minor son and Sona Rani-mother of deceased-Banwari Lal for enhancement of compensation awarded vide above-said award on account of death of Banwari Lal in motor vehicle accident which took place on 23.06.2010.

2. For the sake of convenience, the parties are referred to by their description in the claim petition.

3. The claimants-widow, son and mother of deceased-Banwari Lal filed the above-said claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 23.06.2010 at about 8:30 a.m. Banwari Lal along with his mother Sona Devi was going to New DMC Hospital, Ludhiana in Alto Car bearing registration No.PB-29-J-3375. When they reached near village Dhat situated on Ludhiana-Moga Road, P.S. Dakha, Tempo bearing registration No.PB-12G-5975, owned by respondent No.2 and insured with respondent No.3, came from the opposite side, driven by respondent No.1 in a rash and negligent manner and by coming on the wrong side struck against the Car of Banwari Lal due to which Banwari Lal and his mother suffered multiple grievous injuries. They were taken to Civil Hospital, Jagraon, where the attending doctor referred Banwari Lal to New DMC Hospital, Ludhiana. However, Banwari Lal succumbed to his injuries on the way and was declared brought dead by doctors of New DMC Hospital, Ludhiana. FIR No.91 dated 23.06.2010 was registered under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code, 1860 in Police Station, Dakha.

4. While pleading that Banwari Lal was aged about 32 years and was earning ₹3,00,000/- per annum by running a chemist shop under the name and style of M/s Janta Medical Hall at Bagha Purana, District Moga and claiming themselves to be his legal heirs/representatives dependent on him, the claimants sought award of compensation of ₹35,00,000/- with costs and interest at the rate of 18% per annum against respondents No.1 to 3 jointly and severally.

5. The petition was contested by the respondents. In their joint written statement, respondents No.1 and 2 denied the accident and their liability while pleading that the vehicle was insured with respondent No.3 and respondent No.1 had a valid and effective driving licence and respondent No.2 had valid registration and fitness certificate.

6. In its written statement respondent No.3 took objections as to respondent No.1 not having valid and effecting driving licence and respondent No.2 was not having registration and fitness certificates and route permit. Respondent No.3 also controverted the material averments made in the petition. While pleading that the offending vehicle was not insured with it, respondent No.3 also denied its liability.

7. On trial the Tribunal held that Banwari Lal died due to injuries suffered in accident caused by rash and negligent driving of Tempo bearing registration No.PB-12G-5975 by respondent No.1 and that the claimants are entitled to recover compensation for his death. The Tribunal took age of deceased-Banwari Lal as 34 years, assessed his income as ₹1,48,217/- per annum, deducted 1/3rd towards personal

expenses, applied multiplier of 16, added amount of ₹5,000/- towards loss of estate, amount of ₹5,000/- towards funeral expenses, ₹5,000/- towards loss of consortium and awarded compensation of ₹15,95,976/- with costs and interest at the rate of 6% per annum commencing after 30 days from the date of death of the deceased till realization of the awarded amount. The Tribunal also held that the offending Tempo was insured with respondent No.3. However, the Tribunal held that respondent No.1 did not have valid and effective driving licence authorizing him to drive transport vehicle and exonerated respondent No.3 from liability to indemnify respondent No.2 and directed respondents No.1 and 2 to jointly and severally pay the amount of compensation with costs and interest.

8. Feeling aggrieved, the claimants have filed FAO No.5999-2012 for enhancement of compensation and respondents No.1 and 2-driver and owner have filed FAO No.5101-2012 for setting aside the award dated 03.08.2012.

9. I have heard arguments addressed by learned Counsel for the claimants, learned Counsel for respondents No.1 and 2-driver and owner of the offending vehicle and learned Counsel for respondent No.3-Insurance Company and have gone through the record.

10. It may be observed at the very outset that at the time of arguments, learned Counsel for respondents No.1 and 2-driver and owner and learned Counsel for respondent No.3-Insurance Company have not challenged the findings of the Tribunal that Banwari Lal died due to injuries suffered in the accident caused by rash and negligent driving of Tempo being registration No.PB-12G-5975 by respondent

No.1. In the present case respondent No.3 has not filed any appeal or cross-objections challenging the findings of the Tribunal as to the offending vehicle having been duly insured with respondent No.3. Therefore, the findings of the Tribunal as to Banwari Lal having died due to rash and negligent driving of Tempo bearing registration No.PB-12G-5975 and also as to the offending vehicle being duly insured with respondent No.3, which are based on proper appreciation of the evidence on record, do not call for any interference.

11. Learned Counsel for the claimants/appellants in FAO No.5999-2012 has argued that the Tribunal did not properly assess income of the deceased as the Tribunal ought to have assessed income of the deceased on the basis of last income tax return filed before his death. The Tribunal did not make any addition towards future prospects. The Tribunal awarded meager amounts towards loss of estate, funeral expenses and loss of consortium. The Tribunal also awarded lesser interest at the rate of 6% per annum instead of 18% per annum. Therefore, the award may be modified and amount of compensation awarded may be enhanced. In support of his arguments learned Counsel for the claimants has placed reliance on the observations in **National Insurance Company Limited Vs. Pranay Sethi and Others, 2017 (4) R.C.R. (Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram and others, 2018 (4) R.C.R. (Civil) 333**.

12. On the other hand, learned Counsel for respondents No.1- and 2-driver and owner and learned Counsel for respondent No.3- Insurance Company have argued that the Tribunal has awarded just

and adequate compensation and the claimants are not entitled to enhancement thereof.

13. In the claim petition the claimants pleaded and AW-1 Sona Devi and AW-2 Shilpi Jain testified before the Tribunal that the deceased-Banwari Lal was running a chemist shop under the name and style of M/s Janta Medical Hall at Bagha Purana, District Moga and earning ₹3,00,000/- per annum at the time of his death. To prove the income of the deceased-Banwari Lal, the claimants have also examined AW-3 Sudhir Kumar, Tax Assistant who has proved copies of income tax returns filed by the deceased during assessment years 2008-09, 2009-10 and 2010-11 as Ex.A-5 to A-7 respectively which show the income of the deceased during the financial years 2007-08, 2008-09 and 2009-10 as ₹1,16,800/-, ₹1,60,000/- and ₹1,70,000/- respectively. In view of the above-said income tax returns filed by the deceased, the testimony of AW-1 Sona Devi and AW-2 Shilpi Devi as to the deceased earning ₹3,00,000/- per annum cannot be accepted and was rightly disbelieved by the Tribunal to that extent. However, the Tribunal assessed the income of the deceased as ₹1,48,217/- per annum on the basis of average of the income mentioned in income tax returns for the assessment years 2008-09, 2009-10 and 2010-11 Ex.A-5 to A-7. The Tribunal ought to have assessed income of the deceased on the basis of income mentioned in income tax return copy Ex.P-7 filed on 16.04.2010 by the deceased much before his death on 23.06.2010. For judicial precedents in this regard reference may be made to judgments in **Shashikala and others Vs. Gangalakshamma and another : 2015(2) R.C.R.(Civil) 510**

(Supreme Court) and MAC.APP No.23/2013 titled as Geeta & Ors. Vs. Dinesh Chander & Ors. decided by Delhi High Court on 13.01.2015 where income of the deceased was assessed on the basis of income mentioned in last income tax return filed by the deceased. Therefore, assessment of the income of the deceased as ₹1,48,217/- per annum by the Tribunal was not proper. In view of the income tax return for the assessment year 2010-11 income of the deceased must be held to be ₹1,70,680/- per annum at the time of his death.

14. Statutory deduction of income tax was required to be made from gross income of ₹1,70,680/- per annum of the deceased. Reference in this regard may be made to the observations in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945, Sunil Sharma and others Vs. Bachitar Singh and others, 2011 (2) RCR (Civil) 708 and Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741.** Deduction of income tax has to be made from the gross salary/income before making addition towards future prospects. Reliance in this regard may be placed on the observations in para No.24 of the judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77**, para No.6 of the judgment in **Shyamwati Sharma and others Vs. Karam Singh and others, 2010 (3) RCR (Civil) 741**, paras No.9 and 10 of the judgment in **MACAPP No.904/2011 titled as ICICI Lombard General Insurance Co. Ltd. Vs. Chanderwati and others decided by Delhi High Court on 09.02.2012** and in para No.15 of the judgment in **MAC.APP No.23/2013 titled as Geeta & Ors. Vs. Dinesh Chander &**

Ors. decided by Delhi High Court on 13.01.2015. As per rates of income tax for the assessment year 2010-11, income tax of ₹1100/- was payable by the deceased. After deduction of income tax net income of the deceased comes to ₹1,69,580/- per annum.

15. In the present case, the Tribunal did not make any addition in the income of the deceased towards future prospects. The deceased-Banwari Lal is proved to be aged 32 years at the time of his death as per his date of birth 12.06.1978 mentioned in income tax returns Ex.A-5 to Ex.A-7. In view of the age of the deceased and observations of Hon'ble Supreme Court in para No.61(iv) of its judgment in **Pranay Sethi's Case (Supra)**, addition of 40% of the income is required to be made in the income of the deceased towards future prospects. When so added, income of the deceased comes to ₹1,69,580/- + ₹67,832/- =) ₹2,37,412/-.

16. In view of the observations made by Hon'ble Supreme Court of India in para No.14 of its judgment in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77** and the number of claimants dependent on the deceased being 3, deduction of 1/3rd of the income of the deceased was required to be and was rightly so made by the Tribunal towards his personal expenses. On such deduction annual dependency of the claimants on the deceased comes to ₹2,37,412 – ₹79,137 (1/3) = ₹1,58,275/-.

17. Hon'ble Supreme Court observed in para No.61(vii) of its judgment in **Pranay Sethi's case (Supra)** that the age of the deceased should be the basis for applying the multiplier. In view of the

age of the deceased being 32 years and observations of Hon'ble Supreme Court in para No.21 of its judgment in **Sarla Verma's Case (Supra)** multiplier of 16 was required to be and was rightly applied by the Tribunal. When multiplier of 16 is applied to annual dependency of the claimants on the deceased, compensation payable for loss of dependency comes to (₹1,58,275 X 16 =) ₹25,32,400/-.

18. In the present case, the Tribunal merely awarded amount of ₹5,000/- towards loss or consortium, ₹5,000/- towards funeral expenses and ₹5,000/- towards loss of estate. In **Pranay Sethi's Case (Supra)**, while answering the reference on **31.10.2017** Hon'ble Supreme Court observed in para No.61 (viii) of its judgment that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. In **Magma General Insurance Company Limited's Case (Supra)** Hon'ble Supreme Court clarified that in legal parlance 'consortium' is compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium' and awarded compensation of ₹40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in **Pranay Sethi's Case (Supra)**.

19. It may also be observed here that in **Pranay Sethi's Case (Supra)** Hon'ble Supreme Court directed that the amounts on conventional heads should be enhanced at the rate of 10% in every

three years. As a corollary to above observations of Hon'ble Supreme Court regarding enhancement of the amounts under conventional heads at the rate of 10% in every three years for assessment of compensation in cases arising in future, the figures on conventional head will be liable to reduction at the rate of 10% for every three years for assessment of compensation in cases which have arisen in the past. In the present case the accident took place on **23.06.2010** and therefore, the amounts under conventional heads will be liable to be reduced by **20%**.

20. Accordingly, the claimants-widow, son and mother of the deceased will be entitled to award of compensation of ₹32,000/- towards loss of spousal, parental and filial consortium, respectively, ₹12,000/- towards funeral expenses including transportation of the dead body and ₹12,000/- towards loss of estate in equal shares.

21. In view of the above discussion, compensation payable to the claimants on account of death of Banwari Lal is tabulated as under:-

Sr. No.	Head	Compensation
1.	Annual income of the deceased	₹1,70,680/- per month
2.	Annual Income after deduction of income tax	₹1,69,580/-
3.	Income after addition of future prospects at the rate of 40%	₹1,69,580+₹67,832/- = ₹2,37,412/-
4.	Deduction of 1/3 rd on account of personal expenses	₹2,37,412 – ₹79,137 (1/3) = ₹1,58,275/-
5.	Loss of Dependency	₹1,58,275/- x 16 = ₹25,32,400/-
6.	Funeral Expenses	₹12,000/-
7.	Compensation payable for loss of spousal, parental and filial consortium	₹32,000/-
8.	Loss of Estate	₹12,000/-
	Total Compensation	₹25,88,400/-

22. In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 6% per annum commencing after 30 days from the date of death of the deceased till realization of the whole amount which is challenged to be inadequate and the question which arises is as to what would be the appropriate rate of interest.

23. In claim petitions under Section 163-A or 166 of the M.V. Act, the Motor Accidents Claims Tribunal is empowered by Section 171 of the M.V. Act to award interest from the date of making the claim at such rate as may be specified by it. In awarding interest, the Motor Accident Claims Tribunal is not bound by the provisions of Section 34 of the Code of Civil Procedure, 1908 to restrict the award of interest to 6% per annum.

24. In **Puttamma and others Vs. K.L. Narayana Reddy and another 2014 (1) R.C.R. (Civil) 443**, Hon'ble Supreme Court observed in para 60 as under:-

“This Court in **Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another (2003) 3 SCC 148** noticed that varying rate of interest is being awarded by the Tribunals, High Courts and this Court. In the said case, this Court held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc.”

25. In **Supe Dei and others Vs. National Insurance Company Ltd. and another 2009 (4) SCC 513**, Hon'ble Apex Court held that 9% per annum would be the appropriate rate of interest to be awarded in Motor Accidents Claims compensation cases.

26. In **Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy : 2012(3) RCR (Civil) 203** and **Syed Sadiq etc. Vs. Divisional Manger, United India Insurance Company : 2014(1) RCR (Civil) 765** interest was awarded at the rate of 9% per annum.

27. In **Sube Singh and another Vs. Shyam Singh (Dead) and others 2018 (2) R.C.R. (Civil) 131 (SC)** rate of interest of 6% per annum awarded by the Motor Accidents Claims Tribunal was modified by Hon'ble Supreme Court of India to 9% per annum.

28. In view of the observations in above referred judicial precedents, RBI's lending rate of interest, mercantile rate of interest prevalent in the locality, rate of interest allowed on fixed deposit receipts and charged on loans by nationalized Banks and other relevant factors, it will be appropriate to modify the rate of interest of 6% per annum awarded by the Tribunal to 9% per annum.

29. In the present case, the accident took place on 23.06.2010. The claim petition was filed on 15.09.2010. Award was passed on 03.08.2012. The Tribunal was required to award interest from the date of filing of the claim petition and it will be just and reasonable that interest is awarded to the claimants from the date of filing of the claim petition till realization.

30. The question which next arises is as to who is liable to pay the compensation amount to the claimants.

31. Learned Counsel for respondents No.1 and 2-driver and owner-appellants in FAO No.5101-2012, has argued that the driving licence of respondent No.1 authorising him to drive LMV was valid and

effective for driving of the Tempo in question which fell in that category. Respondent No.3 has failed to discharge the onus of proving that respondent No.2 committed breach of the terms and conditions of the insurance policy and respondents No.1 to 3 are jointly and severally liable to pay the compensation amount. In support of his arguments learned Counsel for respondents No.1 and 2-driver and owner-appellants in FAO No. 5101-2012 has placed reliance on the observations in **Mukund Dewangan V/s Oriental Insurance Co. Ltd., 2017 (4) RCR (Civil) 111.**

32. On the other hand learned Counsel for respondent No.3-Insurance Company has argued that respondent No.2 committed breach of the terms and conditions of the insurance policy as respondent No.1 did not have requisite endorsement on his driving licence authorizing him to drive transport vehicle and respondent No.2 did not have route permit. Respondent No.3 was, therefore, rightly exonerated of its liability to indemnify the insured respondent No.2 for payment of compensation amount to the claimants.

33. A perusal of the Registration Certificate Copy Ex.RW-1/C of the Tempo bearing registration No.PB-12G-5975 shows that the above-said Tempo registered as “light goods vehicle” was having unladen weight of 1540 kilograms and gross vehicle weight of 2750 kgs. Section 2(21) of the M.V. Act defines “light motor vehicle” as a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which does not exceed 7500 kilograms. The offending Tempo having gross vehicle weight of 2750 kilograms fell within the definition of “light

motor vehicle” under Section 2(21) of the M.V. Act. Section 66(1) of the M.V. Act inter-alia provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used. However, Section 66(3) of the M.V. Act inter-alia provides that the provisions of Section 66(1) of the M.A. Act shall not apply to any goods vehicle, the gross vehicle weight of which does not exceed 3000 kilograms. Since the gross vehicle weight of the offending Tempo was 2750 kilograms the provisions of Section 66 (1) of the M.V. Act did not apply to the same and the respondent No.2 was not required to get any permit issued for using the same.

34. Further, a perusal of the driving licence Copy Ex.R-2 of respondent No.1 shows that respondent No.1 was thereby authorized to drive LMV during the validity period from 13.11.2007 to 12.11.2027 and respondent No.1 was by subsequent endorsement also authorized to drive transport vehicle during the validity period from 13.11.2010 to 12.11.2013.

35. In the present case, respondent No.1 is proved to be having driving licence authorizing him to drive LMV at the time of the accident without any endorsement authorizing him to drive transport vehicle and question arises as to whether the same was valid and effective for driving of the offending Tempo, which was registered as

light goods vehicle and fell in the category of light motor vehicle, at the time of the accident or not.

36. There was a conflict in the plethora of decisions of Hon'ble Supreme Court on the question whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement authorizing him to drive a transport vehicle. In **Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd.** 2000(1) R.C.R.(Civil) 437 : (1999) 6 SCC 620, **S. Iyyapan v. United India Insurance Co. Ltd. and Anr.** 2013(3) R.C.R.(Civil) 654 : 2013(4) Recent Apex Judgments (R.A.J.) 303 : (2013) 7 SCC 62, **Nagashetty v. United India Insurance Co. Ltd. & Ors.** 2001(4) R.C.R.(Civil) 597 : (2001) 8 SCC 56, the view taken by Hon'ble Supreme Court was that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle; whereas in **New India Assurance Co. Ltd. v. Prabhu Lal**, 2008(1) R.C.R.(Civil) 198 : (2008) 1 SCC 696, a view had been taken that before 2001 also, it was necessary for a driver possessing driving licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in **National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesargi & Ors.** 2008(1) R.C.R.(Civil) 848 : 2008(1) Recent Apex Judgments (R.A.J.) 413 : (2008) 3 SCC 464, a distinction was made in the legal position which existed before 28.3.2001 i.e. the date of amendment of the form and subsequent thereto. It was opined that before 28.3.2001 there was no necessity for the holder of a licence to

drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class. He could drive transport vehicle of Light Motor Vehicle category on the basis of holding a licence to drive light motor vehicle. In **New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. 2008(3) R.C.R.(Civil) 267 : (2008) 8 SCC 253** and **Oriental Insurance Co. Ltd. v. Angad Kol & Ors. 2009(2) R.C.R.(Civil) 419 : (2009) 11 SCC 356**, the view had been taken that a driver holding licence to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on licence authorizing him to drive a transport vehicle.

37. In view of these conflicting decisions, following questions were referred for decision to the larger Bench in **Mukund Dewangan V/s Oriental Insurance Co. Ltd., 2017 (4) RCR (Civil) 111 :-**

- “1. What is the meaning to be given to the definition of "light motor vehicle" as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?
2. Whether '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 licence to drive the class of "light motor vehicle" as provided in Section 10(2)(d) 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.?
3. What is the effect of the amendment made by virtue of Act No. 54 of 1994 w.e.f. 14.11.1994 while substituting Clauses (e) to (h) of Section 10(2) which contained "medium goods vehicle", "medium passenger motor vehicle", "heavy goods vehicle" and "heavy passenger motor vehicle" by "transport vehicle"? Whether insertion of expression 'transport vehicle' Under Section 10(2)(e) is related to said substituted classes only or it also excluded transport vehicle of light motor

vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

4. What is the effect of Amendment of Form 4 as to the operation of the provisions contained in Section 10 as amended in the year 1994 and whether the procedure to obtain the driving licence for transport vehicle of the class of "Light Motor Vehicle" has been changed?"

38. The said questions were answered by the larger Bench in that case in Para 46 of the judgment which is reproduced 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(21) 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."

39. In view of the decision of Hon'ble Supreme Court in **Mukund Dewangan's Case (Supra)** that driving licence for LMV would be valid for driving transport vehicles falling within the category of LMV, respondent No.1, who was having driving license authorizing him to drive LMV at the time of the accident, was entitled to drive the offending transport vehicle, which was registered as "light goods vehicle" but due to having gross vehicle weight of 2750 kilograms fell within the category of LMV, without requirement of any endorsement

for driving of transport vehicle. Therefore, respondent No.1 must be held to be having valid and effective driving licence for driving of the offending Tempo at the time of the accident.

40. Consequently, respondent No.3-Insurance Company has failed to prove breach of the terms and conditions of the insurance policy by respondent No.2-insured and therefore, respondent No.3-Insurance Company is not absolved from its liability to indemnify respondent No.2-insured on the ground of respondent No.1 not having valid and effective driving licence or respondent No.2 not having route permit. The findings of the Tribunal exonerating respondent No.3 from its liability to indemnify respondent No.2 for payment of compensation to the claimants are accordingly reversed.

41. It follows from the above discussion that the claimants are entitled to payment of compensation of ₹25,88,400/- with costs and interest at the rate of 9% per annum from the date of filing of the petition till realization from respondents No.1 to 3 jointly and severally. The amount of ₹15,95,976/- awarded to the claimants by the Tribunal shall be liable to be deducted from the amount calculated as above. Out of the enhanced amount of ₹9,92,424/- amount of ₹4,92,424/- shall be payable to claimant No.1-widow, amount of ₹2,50,000/- each shall be payable to claimant No.2-minor son and claimant No.3-mother of the deceased. On realization 50% of the enhanced compensation as per shares of claimants No.1 and 3 shall be payable to them in cash and remaining 50% shall be deposited in three FDRs in their names in some nationalized Bank for one, two and three years respectively. The amount of the share of minor claimant No.2 shall be

deposited in FDR fetching maximum rate of interest in some nationalized bank till attaining of majority by him and on attaining of majority he shall be entitled to payment of the same with accrued interest without the requirement of passing of any further order in this regard by this Court or the Tribunal.

42. Accordingly, both the appeals are allowed with costs in terms of the above said modifications of the award dated 03.08.2012.

(ARUN KUMAR TYAGI)
JUDGE

09.08.2019
Kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No