

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

**FAO No. 902 of 2017 (O&M)
DECIDED ON: FEBRUARY 26, 2019**

SHINGARA SINGH AND ANOTHER

.....APPELLANTS

VERSUS

THE NEW INDIA ASSURANCE CO. LTD. AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tarun Jhatta, Advocate
for the appellants.

Mr. R.C. Kapoor, Advocate
for the respondent No.1-Insurance Company.

AVNEESH JHINGAN J. (ORAL)

The present appeal has been filed against the award dated 09.08.2016 passed by the Motor Accident Claims Tribunal, Moga (for brevity 'the Tribunal') by the owner and driver of Trola bearing registration No. GJ-12-Y-9414 (hereinafter referred to as 'the offending vehicle') being aggrieved of the recovery rights granted to the insurance company.

The insurer (i.e. The New India Assurance Company) of the offending vehicle has been arrayed as respondent no. 1 in the appeal. Claimants have been arrayed as proforma respondents.

The brief facts necessary for adjudication of the present appeal are

that a motor vehicular accident took place on 26.07.2015. The said accident proved fatal for Shambu @ Shambu Nath @ Shambu Singh (hereinafter referred to as 'Shambu Singh'). FIR No. 70, dated 26.07.2015 was registered at Police Station Ajitwal.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. Claimants were held entitled to compensation of ₹3,32,000/- alongwith interest @6% per annum. It was ordered that the insurer shall pay the compensation amount at first instance and thereafter, will have right to recover the same from the driver and owner.

The only issue raised in the present appeal is that the driver of the offending vehicle was having a valid licence for LMV-Transport. The tribunal erred in granting recovery rights to the insurer.

Learned counsel for the appellants contends that the licence was valid on the date of accident and it had an endorsement of LMV-Transport. He relies upon Section 10 of the Act to state that an endorsement of transport means that he was authorised to drive the trollea.

Learned counsel for the insurer contends that the word transport mentioned in the licence is only an endorsement i.e. LMV-Transport.

Certain factual aspects have to be decided like whether on the date of accident the driver of the offending vehicle was authorised to drive the

offending vehicle. The matter with regard to liability to pay only is remitted back to the Tribunal to be decided afresh after affording opportunities to the appellants and the insurer to adduce evidence in support of their respective claims.

Parties are directed to appear before the Tribunal on 11.04.2019.

In view of the afore-said terms, the present appeal is disposed of.

It is, however, clarified that this remand will not affect the amount to be received by the claimants, as the only dispute is with regard to liability. The remand shall not be construed as any stay qua the claimants for their entitlement to receive the compensation.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 26, 2019
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Whether speaking/reasoned:
Whether reportable :

Yes / No
Yes / No