

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

FAO No.1329 of 2013(O&M)

Date of decision: 9.9.2019

Ravinder SinghAppellant

VERSUS

Balwinder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rishav Jain, Advocate for the appellant.

None for respondent No.1.

Mr. Rajbir Singh, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 03.09.2012 passed by the Motor Accidents Claims Tribunal, Sangrur (in short 'the Tribunal') whereby compensation has been assessed on account of death of Hashanpreet Singh in a motor vehicular accident that took place on 01.12.2009.

The appeal has been filed by Ravinder Singh, driver of the offending vehicle to challenge recovery right given in favour of the insurer, in view of findings qua driving licence possessed by him.

Counsel for the appellant would argue that offending vehicle is Ford Fiesta Car bearing No.DL-1YA-5813 plied as Taxi but licence possessed by the driver did not have endorsement of 'Transport Vehicle' and for that reason, findings on the question of driving licence have been given against respondents No.1 and 3 therein on the basis whereof the

insurer has been given right of recovery. It is further argued that as driver was duly licensed to drive the car and gross vehicle weight is less than 7500KG, it falls within the definition of 'Light Motor Vehicle'. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(7) Scale 731.**

Counsel representing the insurance company has not disputed that controversy raised in the present appeal is squarely covered in favour of the appellant by judgment in **Mukund Dewangan's case** (supra). However, he has submitted that the matter has been referred to a Larger Bench of Hon'ble the Supreme Court in **M/s Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi and others, 2018(4) PLR 765.**

Pendency of reference before a Larger Bench of Hon'ble the Supreme Court would neither amount to judgment in **Mukund Dewangan's case** (supra) being kept in abeyance nor the settled position in law laid down therein.

In view of the above, since the controversy raised in the present appeal is squarely covered in favour of the appellant in view of the judgment in **Mukund Dewangan's case** (supra), findings of the Tribunal on the question of driving licence on the basis whereof insurer has been given right of recovery against respondents No.1 and 3 therein cannot be allowed to sustain and are accordingly set aside. This apart, no right of recovery is available against the driver for want of privity of contract between the insurer and driver of the vehicle. Analyzed from any angle, contention raised by counsel for the appellant is meritorious and accordingly accepted. As a result, findings of the Tribunal on the question

of driving licence as well as giving right of recovery in favour of insurance company are set aside.

In view of what has been discussed hereinbefore, the appeal is partly allowed. However, prayer for refund of Rs.25,000/- deposited towards statutory amount is rejected. The said amount be remitted to the Tribunal for payment to the claimants.

SEPTEMBER 9, 2019	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no