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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 01.10.2021

+ MAC.APP. 268/2021

NATIONAL INSURANCE COMPANY LIMITED Appellant

versus

DHAN LAXMI AND OTHERS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Manoj Ranjan Sinha, Advocate.

For the Respondent : None

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM. APPL. 34626/2021 (exemption)

Exemption is allowed, subject to all just exceptions.

MAC.APP. 268/2021 & CM. APPLS. 34625/2021 , 34627/2021, 34628/2021

1. The hearing was conducted through video conferencing.
2. Appellant impugns award dated 10.10.2019 whereby, the Detailed Accident Report (DAR) has been disposed of and compensation awarded.
3. Learned counsel for the appellant submits that the appellant

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impugns the award on two grounds; (i) that the Tribunal has erred in taking the monthly salary of the deceased at Rs. 33,313/- whereas, as per the salary slip, monthly salary of the deceased was Rs.30,963/-; (ii) that the Tribunal has erred in not granting recovery rights to the appellant, for the reasons that the driver of the offending vehicle was not holding a valid driving license. Learned counsel submits that the driving licence held by the driver was for LMV+LTV (PE) and the offending vehicle was a Truck i.e. a Heavy Goods Vehicle.

4. The Tribunal's record has already been received and appended to the petition.

5. Perusal of the record shows that the deceased was employed as ACP Nayak with the Indian Army and the legal heirs of the deceased had produced one Mr. S.K. Singh, Clerk, who had brought the records pertaining to the salary of the deceased.

6. The Clerk had deposed that the deceased had joint services on 26.04.1996 as an ACP Nayak and for the month of March, 2012, his last gross salary came to Rs.33,313/-. The salary certificate was exhibited as Ex.PW-1/1.

7. Ex.PW-1/1 shows the last drawn salary of the deceased as Rs.33,313/-. It is observed from the cross-examination of the said witness that there is no cross-examination on the aspect of the salary not being Rs. 33,313/- as mentioned by the said salary certificate.

Said certificate Ex.PW-1/1 has been issued by a Lieutenant Colonel, who is the adjutant for the Commanding Officer. There is no material produced before the Tribunal to contradict the same.

8. Accordingly, I find no merit in the submission of learned counsel for the appellant that the Tribunal has erred in taking the monthly salary as Rs.33,313/-.

9. Insofar as the second ground taken by the appellant; that the Tribunal has erred in not granting recovery rights to the appellant as the driver was not holding a valid driving license is concerned, it is noticed that the Tribunal has considered the said aspect and held that the driver of the offending vehicle was in fact holding a valid driving license and was competent to drive the category of vehicle.

10. The Tribunal noticed that the registration certificate of the offending vehicle had shown the unladen weight of the vehicle as 5810 Kg. and accordingly held that it did not fall in the category of a Heavy Goods Vehicle (HGV), but was covered in the category of LMV.

11. The driver was holding a driving license for the category of LMV+LTV (PE). Tribunal has applied the ratio of the judgment of the Supreme Court in *Mukund Dewangan Vs. Oriental Insurance Company Ltd.*, (2017) 14 SCC 663 wherein it is held that the holder of a driving license to drive class of “Light Motor Vehicles” is

competent to drive a vehicle the gross weight of which does not exceed 7500 Kg.

12. In the instant case, the unladen weight of the vehicle was 5810 Kg., which is below 7500 Kg.

13. Accordingly, there is no infirmity in the finding of the Tribunal that the driver of the offending vehicle was holding a valid driving license.

14. Even this Court by judgment dated 12.08.2021 in MAC. APP. 233/2021 titled *Mahesh Kumar Maurya & Anr. Vs. HDFC Ergo GIC Ltd. & Anr.*, following *Mukund Dewangan (surpa)* has taken a similar view.

15. Accordingly, I find no merit in the appeal. The Appeal is dismissed.

16. Since this Court has examined the appeal on merits and found no ground to interfere with the impugned award, the application for condonation of delay is also disposed of.

17. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J.

OCTOBER 01, 2021/NA

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