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

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Judgment delivered on: 12.08.2021

+ MAC.APP. 233/2021

MAHESH KUMAR MAURYA & ANR. Appellants

versus

HDFC ERGO GIC LTD & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Satish Kumar Paanchal, Advocate.
For the Respondent: Mr. A.K.Soni, Mr. Pavan Kumar Vashishth,
Advocates for R-1.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.25794/2021 (exemption)

Exemption is allowed subject to all just exceptions.

CM APPL.25795/2021

1. The hearing was conducted through video conferencing.
2. Appellant seeks condonation of delay of 791 days in filing the appeal.
3. Appellant is the owner of the offending vehicle. It is contended by learned counsel for the appellant that appellant was proceeded *ex*

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MAC.APP.233/2021

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parte before the Tribunal. Learned counsel submits that since the vehicle of the appellant was insured with respondent No.1, appellant was of the view that the Insurance Company would defend the proceedings and accordingly did not choose to defend the same and was proceeded *ex parte*. It is only when the execution was filed that the appellant became aware that recovery rights had been given to the Insurance company against the appellant.

4. Learned counsel submits that the appeal raises a pure question of law.

5. Issue notice. Notice is accepted by learned counsel appearing for respondent No.1. Since the dispute is only with regard to grant of Recovery rights to Respondent No. 1 service of Respondent No. 2 is dispensed with.

6. In view of the above submissions as well as the averments in the application and since only a pure question of law arises in the appeal, I am of the view that appellant has duly explained the delay in filing the appeal.

7. Accordingly, the delay in filing the appeal is condoned. Appeal is allowed.

MAC.APP.233/2021 & CM APPL.25793/2021

8. Appellant impugns award dated 20.10.2018 whereby the

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MAC.APP.233/2021

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detailed accident report has been disposed of and compensation awarded.

9. Issue notice. Notice is accepted by learned counsel appearing for respondent No.1. Since the dispute is only with regard to grant of Recovery rights to Respondent No. 1 service of Respondent No. 2 is dispensed with.

10. Learned counsel for the appellant (the owner of the offending vehicle) submits that appellant impugns the award solely on the ground that recovery rights have been granted against the appellant.

11. Recovery rights have been granted to respondent No.1 on the ground that the offending vehicle was registered as a commercial vehicle and appellant was having a driving license for private vehicle.

12. Learned counsel relies on the decision of the Supreme Court in *Mukund Dewangan vs. Oriental Insurance Company Limited*, (2017) 14 SCC 663 to contend that license to drive a light motor vehicle would include a license to drive a light transport vehicle.

13. The offending vehicle was a Mahindra Bolero having a laden weight of 2880 kgs. Admittedly appellant was holding a driving license for 'light motor vehicle'. The Tribunal in the impugned award has held that the license is valid for motorcycle, LMV(NT). Tribunal has held that the license was valid only to drive a non commercial vehicle, whereas the offending vehicle was insured as good carrying

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MAC.APP.233/2021

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vehicle and was registered as a light goods vehicle.

14. On the ground that the offending vehicle was insured and registered as a light goods vehicle and the appellant was having a driving license for light motor vehicle (NT), Tribunal has held that appellant was driving a vehicle without having a valid license.

15. The Supreme Court in *Mukund Dewangan (Supra)* has held that light motor vehicle as defined in Section 2(21) of the Motor Vehicle Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Section 2(15) read with Section 2(48) and such transport vehicles are not excluded from the definition of light motor vehicle by virtue of the Amendment Act of 1994.

16. For a vehicle to be excluded from the definition of a light motor vehicle, the unladen weight of the vehicle should exceed 7500 kgs. The subject offending vehicle had a laden weight of 2880 kgs which is far below the prescribed limit of 7500 kgs.

17. The Supreme Court in *Mukund Dewangan (Supra)* has specifically held that the holder of a license to drive class of “light motor vehicle” is 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 and no separate endorsement on the license is required to drive a transport vehicle of light motor vehicle class.

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MAC.APP.233/2021

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18. The appeal is squarely covered by the decision of the Supreme Court in *Mukund Dewangan* and the Tribunal has clearly erred in holding that the appellant was not holding a valid driving license for driving the offending vehicle.

19. As held in *Mukund Dewangan (Supra)* no separate endorsement was required on the driving license held by the appellant entitling him to drive a light goods vehicle.

20. In view of the above, the Tribunal clearly could not have granted recovery rights to respondent No.1 on the said ground. Consequently the Tribunal has erred in holding that there was a wilful breach of the insurance policy on the part of the appellant.

21. The impugned award to the said extent is not sustainable and is accordingly set aside limited to grant of the recovery rights to the Respondent No. 1. The recovery rights granted to respondent No.1 are accordingly quashed.

22. Appeal is allowed in the above terms.

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

SANJEEV SACHDEVA, J.

AUGUST 12, 2021/rk

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MAC.APP.233/2021

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