

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

FAO-7541-2014 (O&M)

Date of Decision: September 22, 2022

Cholamandlam General Insurance Company Limited

...Appellant

VERSUS

Smt.Shashi Upadhyay and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Vandana Malhotra, Advocate
for the appellant.

Mr.Nipun Vashisht, Advocate
for respondents No.1 to 5-claimants.

Mr.S.S.Tiwari, Advocate
for respondents No.6 and 7.

ARCHANA PURI, J.

The present appeal has been filed by Cholamandlam General Insurance Company Limited through its Asstt. Manager Claims(Legal), thereby, assailing the Award dated 02.04.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation to the extent of Rs.78,46,610/- has been granted to respondents No.1 to 5, on account of death of Rakesh Upadhyay, in a motor vehicular accident.

Initially, respondents No.1 to 3 i.e. Shashi Upadhyay as well as her minor children, had filed the claim petition, thereby seeking compensation, on account of death of Rakesh Upadhyay, in a motor

vehicular accident, which took place on 16.06.2013. As per version of the claimants, on 16.06.2013, at about 11.00 a.m., Rakesh Upadhyay was coming from Ballabgarh, on his motorcycle bearing registration No.HR-29Q-0963. When he reached near Dundsa Mor, in the meanwhile, a tractor bearing registration No.HR-38S-2379, driven by its driver Dilip Ram (who has been impleaded as respondent No.6 in the present appeal), in a rash and negligent manner, had come front wrong side and struck into the motorcycle of Rakesh Upadhyay. As a result of this accident, Rakesh Upadhyay had sustained multiple injuries, which proved fatal. Said Rakesh Upadhyay was accompanied by his co-employee namely Sjhrio Chander Pal s/o Mansookh Ram, while on separate motorcycle and he had got registered FIR No.260 under Sections 279 and 304-A IPC, Police Station, Sadar Palwal, against Dilip Ram, driver of the tractor in question.

In the claim petition, avocation followed of the deceased is stated to be Supervisor in M/s Denso India limited and he was earning monthly income of Rs.49,419/-. The claimants asserted themselves to be dependent upon the earnings of deceased Rakesh Upadhyay and thus, sought compensation. Even, parents of deceased had been impleaded as proforma-respondents in the claim petition.

In reply, driver and owner of the offending vehicle had denied the factum of accident and stated that it never took place, due to rash and negligent driving of the tractor and also pleaded that claim petition had been filed, only to extract amount of compensation.

At this juncture, it is pertinent to note that the Cholamandlam General Insurance Company Limited, at first instance, was proceeded

against ex-parte vide order dated 18.11.2013. Thereafter, on 17.01.2014, an application for setting aside the ex-parte order was moved by the insurance company, which was allowed, subject to payment of costs of Rs.2,500/-. However, the insurance company failed to deposit the costs, so imposed and consequently, the defence of the insurance company was struck off.

From the pleadings of the parties, following issues were framed:-

- 1. Whether on 17.6.2013 at about 11.30 a.m. At Delhi Mathura Road After Dundsa More, NH-2 Palwal which falls within the jurisdiction of Police Station Sadar Palwal, respondent no.1 Dilip Ram son of Garib Ram had driven the vehicle bearing registration No.HR-38S-2379 rashly and negligently and caused the accident in which Rakesh Upadhyay has died?OPP.*
- 2. Whether the claimants are entitled to compensation, as claimed in the petition and from whom?OPP*
- 3. Whether the claim petition is not maintainable in the present form?OPR*
- 4. Whether the petitioners have got no cause of action and locus standi to file the present petition?OPR*
- 5. Relief.*

After adducing of the evidence by the parties, the award of Rs.78,46,610/- was passed in favour of the claimants and proforma respondents. Respondents No.1 to 3 i.e. driver, owner and insurance company, were jointly and severally held liable to pay the compensation along with interest @ 7.5% per annum, from the date of institution of the claim petition, till the realization of the awarded amount. Also, it was held that insurance company shall be liable to pay the amount of compensation.

Besides the same, in the Award, the detail of apportionment of the awarded

amount and manner of its disbursement, had also been given.

Feeling aggrieved by the aforesaid Award, Cholamandlam General Insurance Company Limited has filed the present appeal.

In pursuance of the notice issued, contesting respondents-claimants No.1 to 3, proforma respondents as well as driver and owner of the offending vehicle, namely Dilip Ram and Jai Kishan, respectively, who were impleaded as respondents No.6 and 7, had made appearance through counsel.

I have heard learned counsel for the parties and perused the lower Court record.

Even though, in the reply, filed by the driver and owner, they had denied the factum of accident and had also denied the imputation of rashness and negligence, on the part of the driver of the offending vehicle, but however, no such evidence, to so substantiate the plea, has been brought on record. To establish the factum of accident and same to be result of rash and negligent driving of the tractor bearing registration No.HR-38S-2379 by respondent-Dilip Ram, sufficient evidence has been brought on record by the respondents-claimants, the detail whereof, has already been given in the impugned Award. Considering the same and also considering the fact of criminal case, being faced by Dilip Ram, as observed in the Award, it stands established that the accident was result of rash and negligent driving of the tractor bearing registration No.HR-38S-2379, driven by Dilip Ram and the same resulted in the injuries on the person of Rakesh Upadhyay, which proved fatal.

So far as, avocation followed by deceased Rakesh Upadhyay is

concerned that he was working as Supervisor and earning Rs.49,419/-, suffice, to consider the affidavit of Shashi Upadhyay, claimant No.1, which is Ex.PW/1. Besides the same, even Yogesh Kumar Malik, Senior Manager of M/s Denso India Limited has been examined as PW-2. He has deposed about the employment of deceased Rakesh Upadhyay as Supervisor and he also proved his earnings. He has proved the salary certificate, which is Ex.P9, as well as Form No.16-TDS Ex.P10 (2012-13) and TDS certificate for year 2011-12 as Ex.P11. He deposed that as per the same, the salary of the deceased was to the extent of Rs.5,49,721.50 per annum. He also deposed about the deceased Rakesh Upadhyay to be permanent employee of the company and that he died on 17.06.2013, in a motor vehicular accident. Claimant No.1 has also deposed to the similar effect, in her affidavit Ex.PW1/A.

Learned counsel for the insurance company, during the course of arguments, did not dispute about the avocation, so followed by the deceased and she also does not dispute about annual earnings of deceased to be Rs.5,49,721.50 and also about the extent of deduction of income tax of Rs.20,722/- from the annual income and that the income, thereafter, to be Rs.5,28,999/-. Even further, the age of the deceased to be 48 years, has not been disputed. However, learned counsel for the insurance company has challenged the extent of Award, only on account of addition of **30%** of the salary of the deceased, towards future prospects, as worked upon by the Tribunal. She submits that the addition, on account of future prospects, at the maximum could be only to the extent of **20%**.

However, the submission, so made, is palpably wrong. It is

pertinent to mention that in the case of *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, the Hon'ble Apex Court, while perceiving the cleavage of opinion between various authorities rendered by the Hon'ble Supreme Court, a two-Judge Bench, in *National Insurance Company Limited vs. Pushpa and others, 2015(9) SCC 166*, had made a reference of the matter to a larger Bench, for its authoritative pronouncement and reference was thus answered by the Hon'ble Apex Court in the aforesaid judgment i.e. *Pranay Sethi's case (supra)*. While recording the conclusion in clause (iii) of paragraph 61, it was observed as herein given:-

(i)

(ii)

(iii) *While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

Thus, as per the aforesaid conclusion, if the deceased was having permanent job and was between the age group of 40 to 50 years, the addition towards future prospects to the income of the deceased, had to be 30%. It is pertinent to mention that PW-2 Yogesh Kumar Malik, Senior Manager of employer company of deceased has stepped into box and he has categorically submitted that Rakesh Upadhyay was permanent employee of the company, which fact has not been disputed, in the cross-examination.

Thus, it stands established that Rakesh Upadhyay was

permanent employee of the company and therefore, towards future prospects, **30%** of the income had to be taken into consideration. Working upon the same, learned Tribunal has rightly reached the conclusion, after deduction of income tax, about earnings of the deceased, on annual basis, to be Rs.5,28,999/- and considering the age of the deceased, the addition of 30% of his salary, towards future prospects, is in consonance with the conclusion, so drawn by the Supreme Court in ***Pranay Sethi's case (supra)***. So working upon, the income of the deceased, after addition of future prospects, has been rightly taken to be Rs.6,87,698/- i.e. Rs.5,28,999/- + Rs.1,58,699/-, per annum.

Even, considering the number of dependents upon the deceased, deduction of 1/4th of the income towards personal and living expenses, has been rightly so taken and after such deduction, the loss of dependency of the claimants, comes to be Rs.5,15,774/- per annum. Taking into the consideration, the age of the deceased, the multiplier of '15' is also in consonance with the observations made by the Supreme Court in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, which had been further endorsed by the Constitution Bench in ***Pranay Sethi's case (supra)***. Thus, on this count, the claim of the insurance company, as such, is hereby rejected.

Besides the aforesaid, it has been assiduously submitted by learned counsel for the appellant that at the relevant time of accident, Dilip Ram-respondent No.6 was not holding a valid and effective driving licence, to drive the tractor trolley, as he was holding a driving licence for **'LMV, MT and Motorcycle'** only and there was no endorsement, authorising him

to drive a '**transport vehicle**'. As such, it is submitted that insurance company be absolved from any liability to pay the awarded amount. Besides the same, it is also submitted that if the liability is held to be joint and several, then the recovery rights be given to the insurance company.

Even, on the aforesaid count, the submission, so made, holds no ground. In this regard, it is important to make reference to the decision of Supreme Court in case *Mukund Dewangan vs. Oriental Insurance Company Limited, 2017(4) RCR (Civil) 111*. Since, there was conflict in the plethora of the decisions of the Supreme Court, on the question of driver's competence to drive '**transport vehicle**', while holding a licence to drive '**light motor vehicle**', the matter was referred to a larger Bench, which was considered by the Hon'ble Supreme Court in *Mukund Dewangan's case (supra)*. In the same, following questions were referred for decision to a larger Bench:-

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?"

Therein, while making reference to the pre-amended and also the post-amended legal position of the amendment made on 28.3.2001 in the Forms for driving licence and also considering the provisions of Motor Vehicles Act, case law was appraised.

In the case in hand, learned counsel for the insurance company had made reference to ***Natwar Parikh & Co. Ltd. vs. State of Karnataka & Ors, 2005(4) RCR (Civil) 61***, while making submission that tractor annexed with the trailer, would constitute a 'goods carrier'.

It is pertinent to mention that Supreme Court in ***Mukund Dewangan's case (supra)*** had made reference to the ***Natwar Parikh's case (supra)*** and had reproduced the observations made therein, as follows:-

"Section 2(28) is a comprehensive definition of the words "motor vehicle". Although a "trailer" is separately defined in Section 2(46) to mean any vehicle drawn or intended to be drawn by a motor vehicle, it is still included in the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the afore-stated definitions under Section

2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself is a motor vehicle, the tractor-trailer would constitute a "goods carriage" under Section 2 (14) and consequently, a "transport vehicle" under Section 2 (47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under Section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Section 2(47) of the MV Act, 1988."

Considering the aforesaid observation, the Hon'ble Supreme Court in ***Mukund Dewangan's case (supra)*** had made observations, as herein given:-

"There is no dispute with the aforesaid proposition, that tractor if drawing a trailer with goods would constitute goods carrier and consequently would be a transport vehicle. The aforesaid discussion was with respect to taxation and not with respect to the competence of driver holding light motor vehicle licence to drive the tractor attached with trailer/trolley carrying goods. The driver had the competence to drive such a vehicle, tractor with a trailer carrying goods being of light motor vehicle category transport vehicle which is the question involved in the instant case. Therefore, the decision renders no help with the cause espoused by the insurer. 45. Transport vehicle has been defined in section 2(47) of the Act, to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Public service vehicle has been defined in section 2(35) to mean any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motor cab, contract carriage, and stage carriage. Goods carriage which is also a transport vehicle is defined in section 2(14) to mean a motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. It was rightly submitted that a person holding licence to drive light motor vehicle registered for private use, who is driving a similar vehicle which is registered or insured, for the purpose of

carrying passengers for hire or reward, would not require an endorsement as to drive a transport vehicle, as the same is not contemplated by the provisions of the Act. It was also rightly contended that there are several vehicles which can be used for private use as well as for carrying passengers for hire or reward. When a driver is authorised to drive a vehicle, he can drive it irrespective of the fact whether it is used for a private purpose or for purpose of hire or reward or for carrying the goods in the said vehicle. It is what is intended by the provision of the Act, and the Amendment Act 54/1994. 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.

In the light of the aforesaid, the questions, which were referred, were answered, as herein given:-

(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(41) 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.

In the light of the aforesaid observations, thus, it is evident that when the driver is holding a licence to drive **'light motor vehicle'**, is competent to drive **'transport vehicle'** of that category, without specific endorsement to drive the transport vehicle. In the case in hand, the driving licence of respondent No.6-Dilip Ram (who was driver of the offending vehicle) is for **'LMV and MT'** and is covered within the same category. So, there was no need for specific endorsement to drive the transport vehicle.

Thus, on this count also, the submission, so made, by learned counsel for

the insurance company, fails.

In the light of the aforesaid observations, the present appeal filed by Cholamandlam General Insurance Company Limited, sans merit and is hereby dismissed.

September 22, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No