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

FAO No.9191 of 2014 (O&M)
Date of decision: 06.09.2022

Oriental Insurance Company

..... Appellant

versus

Ramjeet and others

..... Respondents

FAO No.7112 of 2015 (O&M)

Ramjeet

..... Appellant

versus

Ram Badal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO No.9191 of 2014 and
for respondent No.3 in FAO No.7112 of 2015.

Mr. Parveen Gupta, Advocate
for the appellant in FAO No.7112 of 2015 and
for respondent No.1 in FAO No.9191 of 2014.

Mr. Rakesh Kumar Kaundal, Advocate
for respondents No.2 and 3 in FAO No.9191 of 2014 and
for respondents No.1 and 2 in FAO No.7112 of 2015.

TRIBHUVAN DAHIYA J.

By this order, two appeals, one filed by the Insurance Company and the other by the claimants, pertaining to the award passed by Motor Accident Claims Tribunal, Chandigarh, dated 04.08.2014, are being decided.

2. The facts in brief are, the accident in question took place on 16.08.2011, when respondent No.1-claimant along with his friend was coming from the side of Sector 28, Chandigarh, on motor cycle at slow speed and going towards Sector 27, Chandigarh, for some work. When he reached light point of Sector 28-27, Chandigarh, and was about to cross it, a red coloured three-wheeler bearing No.CH-04-B-8922 came from the grain market side which was being driven by respondent No.2 in a rash and negligent manner. The three-wheeler hit the motorcycle, resultantly, respondent No.1-claimant fell down on the road and suffered multiple injuries on different parts of his body. Permanent disability of 61% was suffered by him in relation to whole body. He is stated to be 23 years of age at the time of accident. Claim petition under Section 166 of the Motor Vehicles Act, 1988, was filed for grant of compensation, on account of the injuries suffered.

3. The Tribunal awarded a sum of Rs.2,00,000/- cumulatively towards loss of future amenities, future prospects and future loss of income, by assessing his income to be Rs.6000/- per month. Besides, other sums were also awarded; Rs.75,000/- for loss of income, Rs.1,00,000/- for pain and suffering, Rs.25,000/- for attendant, Rs.15,000/- for special diet, Rs.50,000/- for expenditure on medicines/treatment and Rs.10,000/- for transportation. In this manner, total amount of Rs.4,75,000/- was awarded to the respondent-claimant along with interest at the rate of 7.5 % per annum from the date of filing of the claim petition till the date of realization.

4. Learned counsel for the appellant/Insurance Company has argued that as respondent No.2/driver of the three-wheeler was holding a

driving licence only to drive a motor cycle with and without gear and private light motor vehicle (LMV); there was no endorsement of transport vehicle on the same. Therefore, he was not holding a valid and effective driving licence to drive three-wheeler, which was being used as a transport vehicle at the time of the accident. The Insurance Company is, accordingly, not liable to indemnify the insured.

5. It has been held by the Supreme Court in ***Mukund Dewangan vs. Oriental Insurance Co. Ltd.***, **Civil Appeal No.5826 of 2011**, a driver holding a licence to drive light motor vehicle (LMV) is competent to drive a transport vehicle of that category without specific endorsement to drive the transport vehicle. The relevant paragraph of the judgment reads as under:

> 1. In the reference, the main question involved is whether a driver who is having a licence to drive 'light motor vehicle' and is driving 'transport vehicle' of that class is required additionally to obtain an endorsement to drive a transport vehicle? There is a conflict in the plethora of decisions of this Court. In ***Ashok Gangadhar Maratha v. Oriental Insurance Co. Ltd. (1999) 6 SCC 620***, ***S. Iyyapan v. United India Insurance Co. Ltd. And Anr. (2013) 7 SCC 62***, ***Nagashetty v. United India InsuranceCo. Ltd. & Ors. (2001) 8 SCC 56***, the view taken by this Court was that when a driver is holding a licence to drive 'light motor vehicle', he is competent to drive a 'transport vehicle' of that category without specific endorsement to drive the transport vehicle; whereas in ***New India Assurance Co. Ltd. v. Prabhu Lal (2008) 1 SCC 696***, a view had been taken that before 2001 also, it was necessary for a driver possessing driving licence to

drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class; whereas in ***National Insurance Co. Ltd. v. Annappa Irappa Nesaria alias Nesargi & Ors. (2008) 3 SCC 464***, a distinction was made in the legal position which existed before 28.3.2001 i.e. the date of amendment of the form and subsequent thereto. It was opined that before 28.3.2001 there was no necessity for the holder of a licence to drive light motor vehicle to obtain an endorsement to drive transport vehicle of that class. He could drive transport vehicle of Light Motor Vehicle category on the basis of holding a licence to drive light motor vehicle. In ***New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir & Anr. (2008) 8 SCC 253*** and ***Oriental Insurance Co. Ltd. v. Angad Kol & Ors. (2009) 11 SCC 356***, the view had been taken that a driver holding licence to drive light motor vehicle in order to drive 'transport vehicle' of that class has to obtain a specific endorsement on licence authorizing him to drive a transport vehicle.

36. In our considered opinion Prabhu Lal's (supra) question has not decided correctly. The intendment and definition of the light motor vehicle which was clearly interpreted in Ashok Gangadhar Maratha (supra) in para 10 have not been taken into consideration in the correct perspective. Interpretation of Form 6 was also not correctly made. Even assuming that Ashok Gangadhar Maratha (supra) did not lay down that the driver holding licence to drive a light motor vehicle need not have an endorsement to drive a transport vehicle, but what emerges from the aforesaid discussion made by us it is clear that there is

> no necessity of such an endorsement for driving a transport vehicle of the category of light motor vehicle, which is not statutorily enjoined or provided for. The intendment of section 3 has also not been correctly appreciated. It has to be read along with Section 10(2)(d) and (e) and those classes of vehicles which are included in a category 10(2) (a) to (j) can be driven by a person without any further specific endorsement to drive a particular vehicle. Thus, the decision in Prabhu Lal (supra) does not lay down correct proposition of law and is hereby overruled.

6. In this view of the matter, the arguments raised by learned counsel for the appellant-Insurance Company is meaningless, being contrary to the settled law that there is no necessity of an endorsement for driving a transport vehicle of the category of light motor vehicle. It is, therefore, held that driver of the offending vehicle/three-wheeler was holding a valid driving licence. The appellant Insurance company cannot escape liability to indemnify the insured.

7. Looking at the finding of the Tribunal, it is apparent that a cumulative notional amount of Rs.2,00,000/- has been awarded to respondent No.1-claimant on account of permanent disability of 61% suffered by him in the accident in question, besides awarding compensation under related heads, as aforementioned. This is not the correct way to calculate the loss caused to a claimant on account of permanent disability suffered in the accident. The calculation has to be as per law laid down by the Supreme Court in ***Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. and another***, **2010(4) SCC (Civil) 168**, and

Raj Kumar vs. Ajay Kumar and another, 2011(1) SCC (Civil) 164, to that effect.

8. The Tribunal has recorded that as per testimony of PW-4 Dr. Rajesh Chhhabra the claimant is a case of head injury with Brain Stem Contusion. He is suffering from permanent disability of 61% in relation to whole body due to weakness in the left side of body and difficulty in speech. His disability is not likely to improve. Respondent no.1-claimant has been established on record to be 8th Standard pass; a technical hand having got training in the course of trade of Electrical Wiring from Chandigarh College of Engineering and Technology, as per certificate Ex.-C129. On appraisal of evidence, the Tribunal held that due to the permanent disability the claimant would not be able to pursue his profession as he was before the accident. It can, therefore, be concluded that 61% permanent disability suffered in relation to whole body would reduce earning capacity of respondent no.1-claimant to that extent.

9. Accordingly, the amount of compensation on account of injuries suffered in the accident by respondent No.1-claimant is to be calculated as under:

a)	Annual income before the accident	Rs.6000 X 12 = Rs.72,000/-
b)	Loss of future earning per annum (61% of the prior annual income	Rs.72,000 X 61/100 = Rs.43,920/-
c)	Multiplier applicable with reference to age	18
d)	Loss of future earnings	Rs.43,920 X 18 = **Rs.7,90,560/-**

10. The award passed by the Tribunal dated 04.08.2014, therefore, stands modified and respondent no.1-claimant is held entitled to an enhanced amount of **Rs.3,15,560/-** with interest at the rate of 7.5% from the date of filing the claim petition till its actual realization, which shall be jointly and severally paid in the same ratio as directed by the Tribunal.

11. Resultantly, appeal filed by the appellant-Insurance company is dismissed, and the Tribunal's award is modified in the aforementioned terms.

(TRIBHUVAN DAHIYA)
JUDGE

06.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No