

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3072-2016(O&M)

Date of decision: January 11, 2023

Jitender Pal Singh and another

....Appellants

versus

The New India Assurance Company Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sanjay Jain, Advocate for the appellants.

Mr. Paul S. Saini, Advocate
and Mr. Vipul, Advocate for respondent No.1.

ARUN MONGA, J. (ORAL)

Appellants before this Court are the driver and owner of the offending vehicle in question seeking to set aside the impugned award dated 07.01.2016 passed by learned Motor Accidents Claims Tribunal, Ambala.

2. Succinct facts as noted by the Tribunal are as below:

“Brief facts of the case are that the day 17.04.2013 proved unfortunate for the petitioners-claimants who lost their sole earning member Manish Mittal @ Sanju, husband of claimant no. 1 and father of claimant no.2, who was going on his work place at Kharga Sports Complex, Ambala Cantt. on his motor cycle bearing registration number PB11AR(T)-9460 from Lalru Mandi along with his friends Major Singh and Vijay Kumar and the said motor cycle was being driven by Manish Mittal alias Sanju and Major Singh and Vijay Kumar were pillion riders on this motor cycle. At about 11.30 a.m. when they reached near MT Crossing, near Air Force Station, Ambala and took turn towards Air Force Station in the meanwhile a TATA ACE bearing registration No. HR 37-C-5578, which was being driven by respondent no.1 in a very high speed without observing the traffic rules in a rash and negligent manner came from Air Force Station side and struck with the motor cycle of the deceased from driver side and due to that impact, all the occupants of the motor cycle along with the motor cycle fell down and Vijay Kumar

suffered jaw fracture, deceased Manish Mittal alias Sanju suffered internal head injuries and other injuries on his person and Major Singh suffered scratches on his person. Respondent no. 1 stopped for a moment and then fled away from the spot along with his offending vehicle. Injured Vijay Kumar was taken to Civil Hospital, Ambala City by Manish Mittal and Major Singh from where he was referred to GMCH, Sector 32, Chandigarh due to grievous and serious injuries on his person. Major Singh also took First aid from the hospital due to having scratches on his person and then Major Singh and deceased went to their respective houses but after reaching in house the deceased Manish Mittal alias Sanju suffered severe pain in his head due to internal injuries and due to having unbearable pain from internal head injuries he succumbed to the accidental injuries at home and was removed to Civil Hospital, Ambala City where doctor declared him dead and Post mortem on his dead body was conducted there. His motor cycle was also badly damaged in this accident. It was further averred that claimants have spent more than Rs.One lac on transportation, cremation and last rites of the deceased.”

3. Upon notice, appellant No.1 and respondent insurance company appeared and contested the petition. Appellant No.2 did not appear despite service and he was proceeded against *ex parte*. Pro forma respondent (father of deceased) filed separate written statement admitting the claim of the claimants. Appellant No.1 denied the factum of accident and involvement of TATA ACE bearing registration No.HR-37-C-5578.

3.1 Respondent-Insurance Company also denied the factum of accident and involvement of said vehicle. It was averred that deceased suffered alleged injuries and death, but the same was due to his own rash and negligent driving with two pillion riders. It was alleged that respondent No.1-Driver was not having valid driving licence. Respondent No.4 pleaded that claimants spent Rs.One lac on the treatment of deceased and they are entitled to the compensation amount.

4. Learned Tribunal framed the following issues:

- “1. Whether an accident took place on 17.04.2013 due to rash and negligent driving of TATA ACE bearing registration No. HR 37-C-5578 by respondent no.1 resulting in to death of Manish Mittal, as alleged? OPP
2. If issue no.1 is proved then to what amount of compensation and from whom, the claimants are entitled to receive it? OPP
3. Whether the claim petition is not maintainable in its present form? OPR
4. Whether the respondent no.1 who was driving the vehicle in question at the time of alleged accident was not holding a valid and effective driving licence at the time of alleged accident? OPR
5. Relief.”

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 3 in favour of claimants. Issue No.4 was decided against the appellants and in favour of respondent-insurance company. Consequently, compensation of Rs.9,93,000/- was awarded in favour of the claimants to be paid by respondent-insurance company at the first instance with rights of recovery from appellants jointly and severally together with costs.

6. Learned counsel for the appellants contends that vehicle in question i.e., TATA ACE was having 1550 Kgs. Weight and therefore, said vehicle was not a commercial vehicle. He relies on Apex Court judgment rendered in **Mukund Dewangan versus Oriental Insurance Company Limited**, reported in **2017 (4) RCR (Civil) 111** to contend that a transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kilograms, would be a light motor vehicle. He further contends that learned Tribunal fell in error while not considering this aspect of the matter. Relevant part of the aforesaid judgment reads thus:

“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. Thus, we answer the questions which are referred to us thus:

(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.”

7. Per contra, learned counsels for respondent No.1-Insurance Company oppose the appeal stating that once it was established that offending vehicle was a pick-up van, then separate endorsement was required *qua* the same on the license to drive a Light motor vehicle in the absence of which, appellant No.1 was not having valid driving licence to drive the vehicle i.e. TATA ACE. I am not in agreement with the arguments canvassed by learned counsel for respondent No.1-Insurance Company.

7.1 A bare perusal of Section 2(21) of the Motor Vehicles Act, 1988 (for short ‘Act’) suggests otherwise. For ready reference, the same reads as under:

“2. Definitions-

XX XX XX

(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms;”

8. From the bare perusal of the above, it is clearly borne out that any vehicle which is less than 7500 kilograms weight falls under the category of

“light motor vehicle” and no separate endorsement is required. Concededly, the weight of the offending vehicle, as has already been noted by the learned Tribunal, is 1550 kilograms. In view thereof, no separate endorsement was required and accordingly, learned Tribunal clearly fell in error of fact and law in fastening the liability on the driver/ owner on the sole ground that in the absence of endorsement on the licence to drive “light motor vehicle”, appellant No.1 was not holding a valid and effective driving licence at the time of accident. As already noted in view of the provisions contained in Section 2(21) of the Act read with Apex Court judgment in **Mukund Dwangan’s case (supra)**, no separate endorsement is required.

9. Appeal is accordingly, allowed. Entire liability to pay the compensation shall be borne by respondent No.1-Insurance Company.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No