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

**FAO-226-2008 (O&M)
Date of Decision: 26.03.2025**

National Insurance Company Limited ......Petitioner

Vs.

Smt. Reeta Devi and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. D.P.Gupta, Advocate,
for the petitioner-Insurance Company.

Mr. Sarvjit Singh Khurana, Advocate
for the respondents No.1 to 3.

None for respondent No.4.

Mr. Jayant Yadav, Advocate, for
Mr. P.R.Yadav, Advocate,
for respondent No.5

Mr. Sandeep Kumar Yadav, Advocate,
for respondents No.6 to 9.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 27.02.2007 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, (Fast Track Court) Rewari (for short, 'the Tribunal'), whereby, the respondents No.1/claimant was granted the compensation of Rs.3,08,000/- along with interest at the rate of 7.5% per annum on account of death of Randhir Singh and the appellant-Insurance Company as well as respondents No.4 to 9 were

held liable jointly and severally to pay the compensation.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 20.08.2003, Randhir Singh and others were travelling in a jeep from Naraul to village Sihore. Roshan Lal was driving the jeep in a rash and negligent manner. Despite repeated requests from the passengers to slow down and drive the jeep carefully, he did not listen. When they reached at T-point near Jaswant Nagar railway crossing on Rewari-Mohindergarh road, the driver lost control of the vehicle. The jeep overturned and fell into a ditch along side the road. As a result of which, all the passengers sustained multiple injuries. They were taken to Civil Hospital in Rewari and got admitted there for treatment. Randhir Singh later succumbed to his injuries in the hospital. A post-mortem examination was conducted on his body. The accident occurred due to rash and negligent driving of the jeep by its driver. In this regard, a report was lodged at Rampura Police Station, whereupon FIR No.115 dated 20.08.2003 was registered under Sections 279, 337, and 304-A of the IPC against the driver.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

> *"1) Whether petitioner Om Parkash son of Badlu Ram sustained injuries in a road side accident which took place on 20.08.2003 due to rash and negligent driving of vehicle No.HR-47-5880 being driven by*

respondent No.1 as alleged? OPP

2) It issue No.1 is proved, to what amount of compensation the claimant is entitled to and from whom? OPP

3) Whether respondent No.1 was not having a valid and effective driving licence at the time of alleged accident, if so to what effect? OPR.

4) Relief."

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has awarded compensation to the tune of Rs.3,08,000/- along with interest at the rate of 7.5% per annum on account of death of Randhir Singh and the appellant-Insurance Company as well as respondents No.4 to 9 were held liable jointly and severally to pay the compensation. Hence, the Insurance Company filed the present appeal challenging the award dated 27.02.2007 passed by the learned Tribunal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

6. The learned counsel for the appellant-Insurance Company contends that the learned Tribunal has wrongly fixed the liability of the appellant-Insurance Company, since the offending vehicle was not insured at the time of accident in question. Hence, he prays for setting aside of the award passed by the learned Tribunal.

7. *Per contra*, learned counsel for respondents No.1 to 3 submit that the award has rightly been passed by the learned Tribunal qua liability to pay the amount of compensation.

8. I have heard learned counsel for the appellant-Insurance Company as well as respondents and perused the whole record of this case.

9. The relevant portion of the award is reproduced as under:-

"30. Petitioner alleged that he spent Rs.60,000/- on his treatment etc. No evidence whatsoever was produced by him to prove it. No medical bills etc. were placed on the record by him. Even, he has not disclosed as to how and on what he spent this amount? He stated that he remained admitted in the hospital for three days. But again produced nothing to prove it. No certificate was produced. With the minor injuries which the petitioner sustained, it is unbelievable that he was kept in the hospital for three days. The claim of the petitioner is vague, wild and without any evidence. It, therefore, cannot be held that the petitioner spent Rs.60,000/- on his treatment etc. Thus, taking into consideration, the nature of the injuries petitioner suffered, facts and circumstances of the case, I award a sum of Rs.5,000/- as compensation to petitioner Om Parkash in claim petition No.9 dated 24-12-2003/7-2-2007.

31. Leaned counsel for the insurer tried to create a confusion that the vehicle in question was not insured with it at the relevant time, but lateron, he conceded at bar that the vehicle was insured with it. Otherwise also, this fact stands firmly proved from the evidence on record. Sh. Balwan Singh, Administrative Officer of the company appearing as RW5 stated that the offending vehicle was earlier insured with National Insurance Company Limited vide policy No.0162105 from 13-9-2002 to 12-09-2003. This vehicle was again insured with the same company from 13-9-2003 to 12-09-2004 in the name of the same person as is evident from the copy of the insurance policy Ex.R5. It means that this vehicle remained insured with the above-said company continuously from 13-9-2002 to 12-09-2003 and then 13-9-2003 to 12-09-2004. The accident in question took place on 20-08-2003, on which day, the vehicle *was insured with respondent No.4 i.e. National Insurance Company Limited. Thus, the latter is liable to indemnify the insured. Accordingly, this issue is answered in favour of the petitioners to the extent stated above.*

ISSUE NO.3 :-

32. It was contended by Shri A.L.Sahani, learned counsel for the insurer that the vehicle in question was insured as a private car and package policy. This is evident from the copy of insurance policy Ex.R5. But the insured plied it as a taxi, commercial purposes. He breached the terms of the policy and as such, the liability of the insurer cannot be fastened to pay the compensation. To bring home his above contention, he referred to New India Assurance Co. Ltd. Versus Karla and others, 2001, ACJ, 843, Supreme Court of India, wherein it has been held that the insurance company is liable to pay to the third party irrespective of the fact that there has been any breach or violation of the policy conditions and the insurance company can recover the amount so paid to the third party from the insured, if it is proved that the latter breached the terms and conditions of the policy.

33. The vehicle in question was insured as a private car, but it was being plied as a taxi to transport the passengers. Ample evidence is on the record to prove it. Sunil Kumar, a passenger travelling in the same vehicle as PW2 stated in the course of cross-examination that usually, Rs.13/- are paid as fare from Nai Wali Chowk Rewari to Dahina to the taxiwalas. But as the accident took place at a little distance suddenly, so, no fare was paid to the driver of the jeep. From his above statement, it is amply clear that the offending vehicle was being plied as a taxi and obviously against the terms and conditions of the policy as it was insured as a private car. The insured violated the terms *and conditions of the policy. The insurance company is liable to satisfy the claim of the third party first and then to recover the amount so paid from the insured, if it is aggrieved and in case it is proved that he breached the terms and conditions of the policy. This view has been taken by the Apex Court in the case law referred to above (Supra). It has also been followed by different Hon'ble High Courts. Reference in this regard can be made to New India Assurance Co. Ltd. Versus Bidya Devi Agrawala, 2002(3) T.A.C. 205 (Orissa), Rita & Anr. Versus Haroon Ali & Ors., II(2005) ACC 90 (Punjab and Haryana) and Pushpa Devi and others Versus Kamal Singh and others, 2002(2) T.A.C. 374 (M.P). This issue is accordingly answered against respondent No.4."*

10. A perusal of the impugned award reveals that the learned Tribunal has rightly held the appellant-Insurance Company, along with respondents No. 4 to 9, jointly and severally liable to pay compensation to the claimants/respondents No.1 to 3.

11. A perusal of the record further shows that the insurance policy (Ex.A-2) conclusively establishes that the offending vehicle was insured on the date of the accident, i.e. 20.08.2003. In the instant case, the record indicates that the insured vehicle was being used for a commercial purpose. It is a settled proposition of law, as laid down by the Hon'ble Supreme Court in **M/s Bajaj Allianz General Insurance Co. Ltd. Vs. Rambha Devi, [2023] 12 S.C.R. 241,** wherein it was held that a holder of a Light Motor Vehicle (LMV) driving license does not require a separate authorization to drive a transport vehicle, provided its unladen weight does not exceed 7,500 kg. The relevant portion of the judgment is extracted as

under:-

> "*130. Now harking back to the primary issue and noticing that the core driving skills (as enunciated in the earlier paragraphs), expected to be mastered by all drivers are universal - regardless of whether the vehicle falls into "Transport" or "Non-Transport" category, it is the considered opinion of this Court that if the gross vehicle weight is within 7,500 kg - the quintessential common man's driver Sri, with LMV license, can also drive a "Transport Vehicle". We are able to reach such a conclusion as none of the parties in this case has produced any empirical data to demonstrate that the LMV driving licence holder, driving a "Transport Vehicle", is a significant cause for road accidents in India. The additional eligibility criteria as specified in MV Act and MV Rules as discussed in this judgment will apply only to such vehicle ('medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'), whose gross weight exceeds 7,500 Kg. Our present interpretation on how the licensing regime is to operate for drivers under the statutory scheme is unlikely to compromise the road safety concerns. This will also effectively address the livelihood issues for drivers operating Transport Vehicles (who clock maximum hours behind the wheels), in legally operating "Transport vehicles" (below 7,500 Kg), with their LMV driving license. Perforce Sri must drive responsibly and should have no occasion to be called either a maniac or an idiot (as mentioned in the first paragraph), while he is behind the wheels. Such harmonious interpretation will substantially address the vexed question of law before this Court.*
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> *131. Our conclusions following the above discussion are as under:-*

(I) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a `Transport Vehicle' without needing additional authorization under Section 10(2)(e) of the MV Act specifically for the `Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, erickshaws, and vehicles carrying hazardous goods.

(II) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle', does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(III) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.

(IV) The decision in Mukund Dewangan (2017) is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment."

12. In view of the above referred to judgment passed in **M/s Bajaj Allianz General Insurance Co. Ltd.'s** case (supra), the learned Tribunal correctly imposed joint and several liability on the appellant-

Insurance Company and respondents No. 4 to 9.

13. Given the cogent evidence and well-settled legal position, the findings of the learned tribunal do not warrant any interference by this Court. The award is legally sound and does not suffer from any perversity.

14. Accordingly, the present appeal is devoid of merit and stands dismissed.

15. Appellant-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. D.P.Gupta, Advocate, pursuant to the order dated 18.07.2024 passed by this Court in FAO-1682-2007 within a period of 20 days from the date of receipt of the copy of this judgment.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

26.03.2025
Virrendra

Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No