

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO (MVA) No. 92 of 2012.
Date of decision: 30th September, 2016.

Sh. Jagdish Kumar and anotherAppellants.
Versus
Smt. Parvati Kumari and others
.....Respondents

Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

Whether approved for reporting ?¹ Yes.

For the appellants: *Mr.J.L. Bhardwaj, Advocate.*
For the respondents: *Mr.H.S. Rangra, Advocate, for*
respondents No.1 to 4.
Mr. Lalit K. Sharma, Advocate, for
respondent No.5.

Mansoor Ahmad Mir, Chief Justice, (Oral)

This appeal is directed against the judgment and award dated 2.12.2011, made by the Motor Accident Claims Tribunal (II) Mandi, H.P., for short “the Tribunal”, in Claim Petition No. 40 of 2007, titled *Smt. Parvati Kumari and others versus Chet Ram and others*, whereby compensation to the tune of Rs.13,16,833.48, alongwith interest @ 7.5% came to be awarded in favour of the claimants and

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?.*

insured/owner was saddled with the liability, hereinafter referred to as “the impugned award”, for short.

2. The insurer and the claimants have not questioned the impugned award on any ground. Thus, the same has attained the finality so far as it relates to them.

3. Owner and driver have questioned the impugned award on the ground that the Tribunal has fallen in an error in saddling them with the liability and exonerating the insurer from the liability.

4. The only question to be determined in this appeal is-whether the Tribunal has rightly exonerated the insurer from the liability? The answer is in negative for the following reasons.

5. The claimant invoked the jurisdiction of the Tribunal for the grant of compensation, as per the break-ups given in the claim petition, was resisted by the respondents and following issues came to be framed.

(i) *Whether the deceased Parkash Chand died due to rash and negligent driving of vehicle no. HP-34-B-0289 by driver Chet Ram? OPP*

- (ii) *If issue No. 1 is proved in affirmative, whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP*
- (iii) *Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance Policy? OPR-3.*
- (iv) *Whether the driver of the vehicle is in question was not holding a valid and effective driving license at the time of accident? OPR-3.*
- (v) *Relief.*

6. The Tribunal, after scanning the evidence, has rightly decided issues No. (i) and (ii) in favour of the claimants and against the owner and driver. The issues No. (iii) and (iv) were decided in favour of the insurer on the ground that the driver was not having a valid and effective driving licence. No other breach was pleaded and proved.

7. Thus, the only question to be determined is whether the findings returned by the Tribunal on issues No. (iii) and (iv) are legally correct.

8. The driving licence is on the record as Ext. RW1/A which does disclose that the driver was competent to drive light motor vehicle. The offending vehicle was Mahindra Pick-up Jeep which falls within the definition of light motor vehicle.

9. This Court in series of cases i.e. FAO No.320 of 2008, titled Dalip Kumar and another vs. New India Assurance Company Ltd. & another, decided on 6th June, 2014, FAO No.306 of 2012, titled Prem Singh and others vs. Dev Raj and others, decided on 18th July, 2014 and FAO No.54 of 2012, titled Mahesh Kumar and another vs. Smt.Priaro Devi and Others, decided on 25th July, 2014, has discussed the issue and held that the driver having driving licence to drive Light Motor Vehicle is not required to have endorsement of “PSV” i.e. public service vehicle. Further held that Tempo Trax is a Light Motor Vehicle.

10. The Apex Court in latest decision, in **Kulwant Singh and others vs. Oriental Insurance Company Limited, (2015) 2 Supreme Court Cases 186**, has held that the driver who is having valid and effective driving licence to drive a Light Motor Vehicle is not required to have endorsement to drive a light commercial vehicle. It is apt to reproduce paragraphs No.10 and 11 hereunder:

“10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive ‘light motor vehicle’ could drive ‘light motor vehicle’ used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed :

“18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was

Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside.”

No contrary view has been brought to our notice.

11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.”

11. Having said so, the driver was having a valid and effective driving licence and the Tribunal has wrongly decided issue No. (iv) in favour of the insurer. Thus the findings recorded on issue No. (iv) are set aside and it is held that the driver was having a valid and effective driving licence and issue is decided in favour of the insured/owner and against the insurer.

Issue No.(iii).

12. It was for the insurer to prove that the owner has committed willful breach in terms of the mandate of Sections 147 and 149 of the Motor Vehicles Act, for short “the Act”, has not proved that the owner has committed any breach. The only ground urged was that the driver was not having a valid and effective driving licence, stands already overruled.

Accordingly, the Tribunal has wrongly decided issue No. (iii). Having said so, the findings retuned by the Tribunal on issues No. (iii) are set aside and issue is decided against the insurer and in favour of the claimants.

13. The factum of insurance is admitted. Thus, the insurer has to satisfy the award.

14. Viewed thus, the appeal is allowed, the impugned award is modified and the insurer is directed to satisfy the award.

15. The insurer is directed to deposit the amount within eight weeks in the Registry. Registry, on deposit, is directed to release the amount in favour of the claimants, strictly, in terms of the conditions contained in the impugned award, through payees' cheque account or by depositing the same in their bank accounts. The statutory amount deposited by the appellant is ordered to be paid as costs in favour of the claimants. Registry is directed to furnish a copy of this judgment to Mr. Lalit K. Sharma, Advocate, within one week.

16. Send down the record forthwith, after placing a copy of this judgment.

September 30, 2016.

(cm Thakur)

(Mansoor Ahmad Mir)

Chief Justice.