

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 31<sup>st</sup> DAY OF DECEMBER, 2021**

**BEFORE**

**HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN**

**FIRST APPEAL AGAINST ORDER NO.**

**150 OF 2021**

**Between:**

**SANJEEV KUMAR AGGARWAL, S/O  
SHRI BANARSI DASS AGGARWAL,  
R/O HOME NO. 9/1 JATOG, SHIMLA-  
8, TEHSIL AND DISTRICT SHIMLA,  
H.P.**

**...APPELLANT**

**(BY MR. BHIM RAJ SHARMA,  
ADVOCATE)**

**AND**

**1. NEW INDIA INSURANCE  
COMPANY LTD.,  
DIVISIONAL OFFICE :  
(351400) SHIMLA IIIrd  
FLOOR, BLOCK 7, SDA  
COMPLEX, SHIMLA-171009.  
2. SH. MOHAN LAL, S/O  
LATEL SH. ROOP CHAND,  
RESIDENT OF DANSHAR**

**(SOHAL) P.O. SAINJ, SUB  
TEHSIL DHAMI (ST)  
DISTRICT SHIMLA, H.P.**

**...RESPONDENTS**

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This petition coming on for hearing this day, this Court passed the following:

**J U D G M E N T**

Whether a person licensed to drive a light motor vehicle is ipso facto entitled to drive the transport vehicle in that category, is a question to be considered in this case? However, before answering the question, it is necessary to recapitulate the facts of the case.

2. Claimants/respondents No. 2 and 3 filed a petition under Section 10 of the Employees' Compensation Act, 1923 for grant of compensation on account of death of their son one Dharam Prakash, who is stated to have died during the course of his employment as a driver with the present appellant.

3. Since the findings regarding death, dependency etc have attained finality, at least so far as the Insurance Company is concerned, the only question that therefore needs to be answered, has already been formulated (supra).

4. However, I find that the issue is no-longer res-integra in view of the decision rendered by a three-judge Bench of Hon'ble Supreme Court in **"Mukund Dewagan versus Oriental Insurance Company Limited"**, reported in (2017) 14 Supreme Court Cases 663, wherein the preposition of law was summarised by the Court as under:

(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.”

5. Adverting to the facts, it would be noticed that learned Tribunal fastened the liability upon the appellant being the owner only on the basis of reasoning accorded in para-27 of the judgment, which reads as under:

“27.In the present case, it is evident from Ext. PW1/A that Shri Dharam Parkash was entitled to drive a Light Motor Vehicle Transport Cab. The copy of RC Ext. RW1/A shows that vehicle No. HP71-0615 is classified as a Medium Goods Vehicle. Presently, Shri Dharam Parkash was not holding a valid and effective driving licence to drive a Medium Goods Vehicle. Therefore, the insurance company cannot be held liable to pay any compensation to the petitioners.”

6. Records of the case would go to reveal that the vehicle in question was a Medium Goods Vehicle and unladen weight thereof was less than 7500 kgs i.e. 3830 kg. However, as per

Mukund Dewagan's judgment (supra) it has been held that the type of vehicle would not matter, as any vehicle which is less than 7500 kg of weight, a license to drive a light motor vehicle will be valid to drive a transport vehicle of all categories, as is evident from the portion of the judgment extracted above.

7. Applying the ratio of law laid down in Mukund Dewagan's case, in the present case also the driver was authorized to drive Swaraj Mazda, though he was not having a driving license to drive a transport vehicle. In the present case also, the gross vehicle weight was not more than 7500 kg, hence the appeal is bound to be allowed on the ground that the appellant was having effective driving license to drive the vehicle in question.

8. Having said so, obviously the judgment passed by learned Tribunal below cannot sustain and the same is accordingly set aside only to the extent of fastening of liability upon the appellant.

9. Since there is no appeal against the remaining part of award, the same is kept intact and otherwise calls for no interference. Meaning thereby, the liability to satisfy the award amount alongwith interest is fastened upon the Insurance

Company i.e. respondent No. 1, who shall deposit the same in the Registry within 60 days from today.

10. Accordingly, the instant appeal is disposed of in the aforesaid terms, leaving the parties to bear their own costs.

**(Tarlok Singh Chauhan)**  
**Judge**

**December 31, 2021**  
Kalpana