Gurdial Kaur vs Kuldip Singh And Ors on 6 March, 2025

Author: Sudeepti Sharma

Bench: Sudeepti Sharma

FAO-2340-2006 (O&M) -1-

205 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-2340-2006 (O&M)
Date of Decision: 06.03.2

Gurdial Kaur .....Appella

Vs.

Kuldip Singh and others .....Respond

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Alankar Narula, Advocate,
for the appellant.

Mr. Suvir Dewan, Advocate,
for respondent No.3-Insurance Company.

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SUDEEPTI SHARMA J. (ORAL)

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.

2. Previously vide order dated 18.07.2024 passed in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, this Court would request the counsel empanelled with the Insurance Company, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On the asking of the Court, Mr. Suvir Dewan, Advocate accepts notice on behalf of respondent No.3-Insurance Company.

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4. Learned counsel for the appellants has handed over copy of the paper-book along with relevant record to the learned counsel for respondent Insurance Company-Mr. Suvir Dewan, Advocate.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Suvir Dewan, Advocate, the counsel engaged by this Court in the present case.

FAO-2340-2006 (O&M)

1. The present appeal has been preferred against the award dated 06.08.2005 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'), whereby the claim petition filed by the appellant/claimant for grant of compensation, was dismissed. FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 22.01.1999, Lakhbir Singh (now deceased) was riding his bicycle from Chandigarh to his village Paintpur. He was moving at a slow speed on the kachcha (unpaved) portion on the left side of the road. At around 10:40 A.M., a tractor-trolley approached him from behind. The tractor belonged to Paramjit Singh's brick kiln and was being driven in a rash and negligent manner by respondent No.1. The driver did not blow the horn to alert Lakhbir Singh. While driving, he took his hands off the steering wheel to adjust his towel (parna) tied on his head. In doing so, he lost control over the tractor, which veered off the road onto the kachcha portion and hit Lakhbir Singh's bicycle from FAO-2340-2006 (O&M) -3- behind. Lakhbir Singh was dragged a considerable distance before the tractor-trolley crashed into a eucalyptus tree and overturned. The accident occurred due to the rash and negligent driving of respondent No.1.

3. Upon notice of the claim petition, respondents No.1, 2 and 3 appeared and filed their written replies denying the factum of accident/compensation.

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

> "1. Whether the respondent No.1 by tractor No.PB-12- 7016 rashly and negligently caused the accident on 22.1.1999 resulting into the death of Lakhbir Singh? OPP.
>
> 2. To what amount of compensation the claimants are entitled, if so, from whom? OPA.
>
> 3. Whether respondent No.1 was not possessing a valid driving licence on the day of accident? OPR-3.
>
> 4. Relief."

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant/claimant contends that the claim petition was dismissed only on the ground that appellant/claimant was not able to prove the involvement of the offending tractor-trolly and the accident had taken place because of rash and negligent driving of tractor trolley by respondent No.1.

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7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues on the lines of the award dated 06.08.2005 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award dated 06.08.2005 is reproduced as under:-

> "ISSUE NO.1
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> 6. On this issue, petitioner No.1 Gurdial Kaur has examined herself as PW-1 and has also produced PW2 Hakam Singh. None of these witnesses have stated that they were the eye witness of the occurrence. Thus, there was no oral testimony of any witness on the file to show that the tractor No.PB-12-7016 was involved in the accident or that it was caused because of rash and negligent driving of the tractor trolley by respondent No.1 or any other person. Photocopy of FIR Ex.PX has been produced in the file, wherein it has been mentioned that the accident in question was caused because of rash and negligent driving of the tractor No.PB-12-7016 by its driver. Copy of the judgment Ex.DX passed by Mrs. Harinder Sidhu, Judicial Magistrate, Kharar, has also been produced in this case. A perusal of the same shows that accused Kuldeep Singh was acquitted in the criminal case regarding the accident in question. But only from the above documents, in the absence of any oral testimony regarding the involvement of the tractor No.PB-12-7016 in the accident in question or rash or negligent driving of the same, it could not be said that the tractor No.PB- 12-7016 was involved in the accident in question and the FAO-2340-2006 (O&M) -5- accident in question had taken place because of rash and negligent driving of the same. This issue is disposed off accordingly."

10. A perusal of the impugned award reveals that the learned Tribunal has erred in dismissing the claim petition on the ground that the appellant/claimant failed to examine any eyewitness to the accident and could not establish the rash and negligent driving of respondent No.1 i.e. the driver of the offending tractor trolley.

11. The record unequivocally establishes that the accident was reported to the police on the same day, leading to the registration of FIR, wherein, it was categorically stated that the accident occurred

due to the rash and negligent driving of the respondent No.1-driver. Additionally, the post- mortem report of the deceased confirms that the cause of death was an accident, further substantiating the occurrence of the incident. Moreover, after due investigation, the respondent No.1-driver was arrested and charges were framed against him under Sections 279 and 304-A of the Indian Penal Code, 1860.

12. It is trite law that once FIR is registered, and the driver of the offending vehicle is facing trial under penal provisions relating to rash and negligent driving, it constitutes prima facie evidence that the accident was caused due to the rash and negligent driving of the offending vehicle in question.

13. The learned Tribunal further erred in dismissing the claim on the premise that no eyewitness was examined. However, it is a well-

FAO-2340-2006 (O&M) -6- established principle that non-examination of an eyewitness is not fatal to a claim under the Motor Vehicles Act, as strict rules of evidence do not apply to Motor Accident Claims Tribunal proceedings. Hon'ble the Supreme Court in Sunita v. Rajasthan State Transport Corporation, AIR 2020 SC 514 has held that in accident claim cases, the focus should not be on the non- examination of certain "best" eyewitnesses but rather on assessing the evidence available on record based on the touchstone of the preponderance of probabilities. The relevant extract of the judgment passed in Sunita's case (supra) is reproduced as under:-

> "31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This Court, in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eye-witness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.
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> 32. On the issue of negligence by the deceased Sitaram in causing the accident, the Tribunal has referred to the notice issued under Section 134 of the Act (Exh. 7) to the driver of the offending vehicle, respondent No.2. It records that in the said notice, respondent No.2 failed to give any statement indicating that the accident occurred due to any mistake by the rider of the motorcycle, Sitaram. The Tribunal has further

relied upon the evidence of Bhagchand (A.D.2) and also upon the site plan of the accident (Exh. 3) to reach a conclusion that respondent No.2 recklessly drove the speeding bus on the wrong side of the road, into the motorcycle being ridden by Sitaram, who was on the correct side of the road, and caused his death. Whereas, the High Court has disregarded the evidence of Bhagchand. Further, the site plan (Exh. 3) cannot be read in isolation. It will have to be examined in conjunction with the other evidence.

33. The site plan (Exh. 3) has been produced in evidence before the Tribunal by witness A.D. 1 (appellant No.1 herein) and the record seems to indicate that the accident occurred in the middle of the road. However, the exact location of the accident, as marked out in the site plan, has not been explained muchless proved through a competent witness by the respondents to substantiate their defence. Besides, the concerned police official who prepared the site plan has also not been examined. While the existence of the site plan may not be in doubt, it is difficult to accept the theory propounded on the basis of the site plan to record a finding against the appellants regarding negligence attributable to deceased Sitaram, moreso in absence of ocular evidence to prove and explain the contents of the site plan.

34. Be it noted that the evidence of witness A.D.2 (Bhagchand) unequivocally states that the respondent No.2 bus driver was negligent in driving recklessly at a high speed on the wrong FAO-2340-2006 (O&M) -8- side of the road, thus, resulting in the accident which caused the death of Sitaram. It was not open to the High Court to discard this evidence. Additionally, the Tribunal had justly placed reliance on the contents of FIR No.247/2011 (Exh. 1) and charge-sheet (Exh.2) which prima facie indicate the negligence of respondent No.2 in driving the bus. We once again remind ourselves of the dictum in Dulcina Fernandes (supra) and thereafter in Mangla Ram (supra), and answer the factum of negligence of the driver of the offending vehicle against the respondents."

14. Furthermore, the learned Tribunal placed undue reliance on the judgment (Ex. DX) passed by the learned Judicial Magistrate Ist Class, Kharar, wherein respondent No.1, Kuldeep Singh, was acquitted in the criminal case by giving benefit of doubt. It is a settled legal position that findings in a criminal trial do not bind the proceedings before the Motor Accident Claims Tribunal. The standard of proof in a criminal case requires proof beyond a reasonable doubt, whereas, in claim petition under the Motor Vehicles Act, the claimant only needs to establish the case on the preponderance of probabilities. Reference at this stage can be made to the judgment of this Court passed in FAO-85-2007 titled as 'National Insurance Company Limited Vs. Pyari Kaur and others' decided on 21.01.2025. The relevant extracts of the said judgment are reproduced as under:-

"11. So far as the issue whether judgments of Criminal Courts are binding on Civil Courts or Motor Accident Claims Tribunals is no longer res integra, as it has been conclusively settled by various High Courts and the Hon'ble Supreme Court.

> FAO-2340-2006 (O&M) -9- Reference in this regard may be made to the judgment rendered by the Division Bench of the Madras High Court in C.M.A. No.1369 of 2017 titled as 'TNSTC v. P. Shanthi and Others' dated 28.04.2017. In this case, after a detailed examination of relevant decisions, the Madras High Court held as under:-
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> "Mere acquittal in a criminal case does not automatically lead to the inference that there was no negligence on the part of the driver (RW1) of the bus. The standard of proof required in criminal proceedings is distinct from that in claims before the Motor Accident Claims Tribunal. In such claims, the test is based on the preponderance of probabilities rather than proof beyond reasonable doubt."

12. In Vinobabai and Others v. K.S.R.T.C. and Another (1979 ACJ 282), the High Court of Karnataka, addressing this issue, observed as under:-

> "When a driver is convicted in a criminal trial, such conviction becomes admissible in civil proceedings and constitutes prima facie evidence of culpable negligence. Conversely, the acquittal of the driver in a criminal case does not necessarily establish, even prima facie, that the driver was not negligent, as the threshold for establishing criminal culpability is significantly higher than that required for civil liability."

13. In N.K.V. Bros. (P.) Ltd. v. M. Karumai Ammal and Others (AIR 1980 SC 1354), the Hon'ble Supreme Court dealt with a case where a bus hit an overhanging high-tension wire, resulting in multiple fatalities. Although the driver was acquitted in the criminal trial on the premise that the incident was an act of God, the court rejected the plea that the acquittal should influence the civil proceedings, held as under:-

FAO-2340-2006 (O&M) -10- "The standard for proving culpable rashness under Section 304A, IPC, is far more stringent than the negligence required to establish liability under tort law. The Tribunal rightly held the driver liable, as the facts demonstrated negligence on his part, notwithstanding the criminal court's acquittal."

14. In Himachal Road Transport Corporation v. Jarnail Singh and Others (2009 ACJ 2807), the Himachal Pradesh High Court reiterated the principle by holding that:-

> "The acquittal of the driver in a criminal trial does not have a binding effect on the findings of the Motor Accident Claims Tribunal regarding negligence. The Tribunal is required to independently determine negligence based on the principle of preponderance of probabilities."

15. From the above referred to decisions, it is clear that the acquittal in a criminal case does not lead to an automatic inference that there was no negligence on the part of the driver/rider of the vehicle. Further, the acquittal of the driver in the criminal case will have no bearing on the findings to be recorded by the Motor Accident Claims Tribunal."

15. In view of the above, it is evident that the learned Tribunal erred in law by dismissing the claim petition.

16. Consequently, the impugned award is liable to be set aside.

17. With respect to determination of compensation, the record contains evidence of the deceased's earning and his age etc. Consequently, this Court shall adjudicate the compensation in accordance with the documentary evidence on the record.

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18. A perusal of the award shows that the deceased was 28 years old at the time of accident and was stated to be a milk seller. His monthly income was stated to be Rs.10,000/-, but the same was not proved on record. However, taking into consideration the minimum wages prevalent at the time of the accident, which was Rs.1,900/- per month, in accordance with the minimum wages prescribed for unskilled worker in the State of Punjab. Therefore, the income of the deceased is to be assessed as Rs.1,900/- per month.

SETTLED LAW ON COMPENSATION

19. Hon'ble Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation and Another [(2009) 6 Supreme Court Cases 121], laid down the law on assessment of compensation and the relevant paras of the same are as under:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardised deductions. Having a considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one- third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.
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> 31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and FAO-2340-2006 (O&M) -12- living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only d the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

* * * * *

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas[3], Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.

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20. Hon'ble Supreme Court in the case of National

Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

(B) Selection of multiplier depending on age of deceased; (C) Age of deceased on basis for applying multiplier; (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;

(E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh[2]. It has granted Rs.25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the

same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in FAO-2340-2006 (O&M) -14- many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.

* * * * 59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

59.4. In case the deceased was self-employed (or) on a fixed salary, an addition of 40% of the established FAO-2340-2006 (O&M) -15- income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

59.5. For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paras 30 to 32 of Sarla Verma□which we have reproduced hereinbefore. 59.6. The selection of multiplier shall be as indicated in the Table in Sarla Verma[1] read with para 42 of that judgment.

59.7. The age of the deceased should be the basis for applying the multiplier.

59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

21. Hon'ble Supreme Court in the case of Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Others [2018(18) SCC 130] after considering Sarla Verma (supra) and Pranay Sethi (Supra) has settled the law regarding consortium. Relevant paras of the same are reproduced as under:-

> "21. A Constitution Bench of this Court in Pranay Sethi[2] dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is loss of consortium. In legal parlance, "consortium" is a FAO-2340-2006 (O&M) -16- compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.
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> 21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation".

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

21.3. Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognised that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded FAO-2340-2006 (O&M) -17- to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of filial consortium. Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi[2]. In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs 40,000 each for loss of filial consortium.

22. So far as the findings of Issue No. 3 i.e. "Whether respondent No.1 was not possessing a valid driving licence on the day of accident?" is concerned, the learned Tribunal has held as under:-

> "7. On this issue, the evidence has been adduced by the respondent No.3, Jagdish Singh, Clerk, DTO, Ropar has been examined as RW1 who has stated that Kuldeep Singh respondent No.1 was not holding a valid driving license for driving the tractor. He has further stated that for plying the tractor, a separate endorsement was required to be made in the record. There was no such endorsement in the driving license FAO-2340-2006 (O&M) -18- of Kuldeep Singh for driving the tractor. Thus, it could not be said that respondent No.1 was holding a valid driving license at the time of accident. This issue is decided in favour of respondent No.3."

23. However, a careful perusal of the record reveals that the learned Tribunal erred in its findings. The deposition of RW-1 establishes that the driving license of Respondent No. 1 was valid until 17.12.2015 for a motorcycle and motor car, but lacked an endorsement for operating a tractor. In this regard, Hon'ble the Supreme Court, in a Constitution Bench judgment passed in M/S Bajaj Allianz General Insurance Co. Ltd. v. Rambha Devi, has categorically held that a holder of a Light Motor Vehicle (LMV) driving license does not require a separate endorsement to drive a transport vehicle weighing less than 7500 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 FAO-2340-2006 (O&M) -19- ('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.

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.
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> (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.
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> FAO-2340-2006 (O&M) -20- (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'.
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> (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."

24. Reference can be made to the judgment passed by this Court in FAO-3952 of 2006 titled as 'United India Insurance Co and others Vs. Manjit Kaur and others' decided on 07.11.2024. Relevant extracts of the said judgment are reproduced as under:-

> "10. Reference at this stage can be made to a latest judgment of Hon'ble the Supreme Court in a case of M/s Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi & Ors, 2024 INSC 840 wherein Hon'ble the Supreme Court has held 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 TransportVehicles are not entirely separate classes. An overlap exists between the FAO-2340-2006 (O&M) -21-

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.

11. A reference to the judgment in National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 may, therefore be apposite. A three-judge bench of this Court noted that the liability of the insurance company in relation to the owner depends on several factors. The issue of lack of valid driving license was discussed as under:-

> "7. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a FAO-2340-2006 (O&M) -22- car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.
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> 8. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab", "motorcycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence

for "motorcycle without gear", [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxi-cab", "motor-cab" or "omnibus" for which he has no licence. In each case, on evidence led before the Tribunal, a FAO-2340-2006 (O&M) -23- decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

9. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties."

12. This Court in FAO-3947-2007 titled as 'The Oriental Insurance Company Ltd., Chandigarh versus Asha Devi and Others' decided on 04.10.2024 held as under:-

"10. I do not find any infirmity in the reasoning given by the learned Tribunal in rejecting the contention of the appellant/respondent No.2 i.e. Oriental Insurance Company, with respect to the possessing of the driving licence to drive scooter, motorcycle, car, jeep and tractor and not three-wheeler. The issue raised by the learned counsel for the appellant is no longer res-integra and decided by the Hon'ble Apex Court in the case of FAO-2340-2006 (O&M) -24-

"Mukund Dewangan vs. Oriental Insurance Company" 2017(4) TAC 11, wherein it was held 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. The relevant paras of the same are reproduced as under:-

"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 FAO-2340-2006 (O&M) -25-

motor vehicle which earlier found place in section 10(2)(e) to (h) and our conclusion is fortified by the syllabus and rules which wehave 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 AmendmentAct 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.

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(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."

25. In light of the settled legal position laid down by the Hon'ble Supreme Court, the Tribunal's finding that Respondent No. 1 did not possess FAO-2340-2006 (O&M) -27- a valid driving license is legally unsustainable. Consequently, issue No.3 is decided against the insurance company.

RELIEF

26. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. The award dated 06.08.2005 is set aside. The appellant/claimant is entitled to compensation as per the calculations made here-under:-

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.1,900/-
2	Future prospects @ 40%	Rs.760/- (40% of 1,900)
3	Deduction towards personal	Rs.1,330/- {(1,900 + 760) X 1/
4	Total Income	Rs.1,330/- (2,660 - 1,330)
6	Annual Dependency	Rs.2,71,320/- (1,330 X 12 X 1
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
9	Loss of Consortium	Rs.48,000/-
	Filial : Rs.48,000 x 1	
	Total Compensation	Rs.3,55,320/-

27. So far as the interest part is concerned, as held by Hon'ble Supreme Court in Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma 2019 ACJ 3176 and R.Valli and Others VS. Tamil Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107, the appellant/claimant is granted the interest @ 9% per annum on the FAO-2340-2006 (O&M) -28- compensation amount from the date of filing of claim petition till the date of its realization.

28. The respondent No.3-Insurance Company is directed to deposit the amount of compensation along with interest with the learned Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is directed to disburse the amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish her bank account details to the learned Tribunal.

29. Before parting with the judgment, this Court extends its appreciation to Mr. Suvir Dewan, Advocate, for his able assistance to the Court in the present matter. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Suvir Dewan, Advocate, pursuant to the order dated 18.07.2024 passed in FAO-1682-2007, within a period of 20 days from the date of receipt of the copy of this judgment.

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

(SUDEEPTI SHARMA) JUDGE 06.03.2025 Virrendra Whether speaking/non-speaking : Yes Whether reportable : Yes/No