(2014) 04 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 602 of 1999 (OandM)

National Insurance Company Ltd. APPELLANT

Vs

Krishazna Devi RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Citation : (2014) 176 PLR 663

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Neeraj Khanna for Ravinder Arora, Advocate for the Appellant; Hemlata Balhara, AAG, Advocate for the Respondent

Judgement

Ajay Tewari, J.—This appeal has been filed by the insurance company against that portion of the award whereby it has been held that the insurance company would be liable to pay the compensation. The essential facts necessary for deciding this appeal are that the accident was caused by the driver of the insured while driving a tractor. The claim of the insurance company was that since that driver had a Light Motor Vehicles licence, liability to pay the compensation could not be foisted on the insurance company because he was driving a transport vehicle. The Tribunal held that both the vehicles were also describable as Light Motor Vehicles and the driver had a licence to drive a Light Motor Vehicle, the insurance company could not be absolved. Hence the present appeal.

2. Learned counsel for the appellant has relied upon New India Assurance Co. Ltd. Vs. Prabhu Lal, where the Hon''ble Supreme Court held that notwithstanding the fact that a vehicle may be a Light Motor Vehicle, if it is used as a transport vehicle, endorsement of transport vehicle must be there on the licence.

3. Learned AAG has relied upon full bench decision of this Court in National Insurance Co. Ltd. v. Parveen Kumar and others reported as 2005 (1) RCR(Civil) 485, Balbir Singh and another v. Ralla Singh and others (2013-1) 169 PLR 735 and the judgment of the Hon''ble Supreme Court in S. Iyyapan v. M/s. United

India Insurance Company Ltd. and another 2013 (3) RCR(Civil) 654.

4. As regards the first judgment, though it is in favour of the respondent, yet having gone through the decision of the Hon''ble Supreme Court in Prabhu Lal''s case(supra) it would be deemed to be not good law in view of the subsequent declaration of law by their lordships. Balbir Singh''s case(supra) also relies upon National Insurance Co. Ltd. v. Parveen Kumar and others (supra) and does not notice Prabhu Lal''s case(supra). Consequently it cannot held to be binding. As regards the case of S. Iyyapan (supra) their lordships had held that since the driver who had the licence to drive Light Motor Vehicles was driving a maxi cab, the insurance company could not avoid its liability merely because it was a commercial vehicle. Learned counsel for the insurance company has pointed out that this also does not deal with the transport vehicle and as per him the judgment which would be applicable on all fours would be that in Prabhu Lal''s case (supra).

5. In my opinion the stand of learned counsel for the appellant is correct. The judgment which would be binding on this case would be that of Prabhu Lal''s case (supra). In the circumstances the appeal is allowed and it is held that the insurance company is entitled to recover the amount from the respondent No. 6 by filing an execution petition with the same interest as was paid by it.