

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 24th July 2014

Decided on : 25th August, 2014

+ **MAC.APP. 203/2014 and CM Appl.4224/2014**

SATISH CHAND KASANA & ANR. Appellants

Through Mr.Rana Mukherjee, Mr.Pritpal Singh
Nijjar, Mr.Harsh Chopra and
Ms.Kasturika Kaumudi, Advocates.

versus

CHANDRA SHEKHAR YADAV & ANR. Respondents

Through Mr.A.K.Soni, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present appeal, the appellants the driver and owner of the offending vehicle (Tractor-trolley) challenge the Award dated 16.02.2013 passed in a petition filed by the claimants/respondents under Sections 166 and 140 of the Motor Vehicles Act.

2. On 08.07.2009, respondent No.1 was going on a motorcycle along with his friend Sh. Mohan Lal. At Maharaja Hotel, it is said that a tractor trolley hit respondent No.1 and he suffered injuries.

3. Based on the evidence of the parties, the tribunal recorded that the accident took place due to rash and negligent driving of the vehicle driven by appellant No.1.

4. On compensation, the tribunal awarded a total compensation of Rs.11,00,122/- to respondent No.1.

5. On the issue of apportionment of liability, the tribunal held that the appellant No.1 was possessing a driving licence valid for motorcycle and LMV(Non-transport) and the same was not valid for driving a tractor trolley which is a commercial vehicle. The tribunal relied upon the judgment in the case of *Natwar Parikh and Co. Ltd vs. State of Karnataka and Ors., C.A. No. 4631/2000 2005 (7) SCC 364* of the Supreme Court to hold that when a trolley is attached with a tractor, it becomes a commercial vehicle. Based on the said judgment, the tribunal further concluded that for driving a tractor trolley, licence for LMV (commercial) is required. Hence, the tribunal concluded that appellant No.2 was not having a valid licence at the time of the accident and there was a breach of condition of insurance policy. Accordingly, no liability was fastened on respondent No.3 insurance company. However, respondent No.3 was directed to pay the award amount and recover the same from appellants No.1 and 2.

6. Learned counsel for the appellant strenuously urges that the tribunal has erred in granting recovery rights to respondent No.3 insurance company from the appellants. He submits that the judgment of the supreme court in the case of *Natwar Parikh and Co. Ltd vs. State of Karnataka and Ors.(supra)* pertained to a levy under the Karnataka Motor Vehicles Taxation Act and that the matter did not pertain to a tractor trolley. He relied upon a judgment of Punjab and Haryana High Court in the case of *Bajaj Allianz General Insurance Co. Ltd vs. Tarun Kaura & Ors (FAO 2887/2008 decided on 02.03.2010)*, which while interpreting the above judgment of the Supreme Court has held that this judgment cannot mean that a person who has a valid licence for driving a tractor cannot drive a trolley attached to it, as a trolley is an agricultural equipment.

7. We may look at the statutory provisions. Section 2(44) of The Motor Vehicles Act, 1988 defines a tractor as follows:-

“2(44) “tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;”

8. A light motor vehicle is defined to include a tractor and the relevant provision, namely, Section 2(21) reads as follows:-

(21) “light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms;”

9. Similarly, section 2(47) defines a transport vehicle as follows:-

“transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;”

10. Section 2 (14) defines a ‘goods carriage’ as follows:-

"goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods;

11. The Supreme Court in the case of *Natwar Parikh & Co. Ltd. vs. State of Karnataka & Ors., 2005(7) SCC 364* in para 24 held as follows:-

24. ... Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically

propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under Section 2(14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Section 2(47) of the MV Act, 1988." Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature."

12. This was a case pertaining to a tax levied under the Karnataka Motor Vehicle Taxation Act. The appellant in that case had used the vehicle for transporting over-dimensional cargo and was using a drawing vehicle which the appellant call a 'tractor' to push/pull the loaded trailer. Hence, the vehicle being used therein though described as tractor trailer, was a different kind of vehicle.

13. The Punjab & Haryana High Court while interpreting the above judgment in the case of ***Bajaj Allianz General Insurance Co. Ltd. vs. Tarun Kaura & Ors. (FAO 2887/2008 decided on 02.03.2010)*** held as follows:-

"The judgment of the Hon'ble Supreme Court cannot be read to mean, that the person holding a driving license to drive a tractor cannot drive, it with the trolley attached to it. Trolley is an agricultural equipment, therefore, the driver holding a driving license to drive tractor can always drive tractor along with the trolley."

14. The Supreme Court in the case of ***Oriental Insurance Company vs. Brij Mohan, AIR 2007 SC 1971*** held that a tractor fitted with a trailer may or may not be a goods carriage. A tractor was meant to be used for agricultural purposes. A trailer attached to the tractor is necessarily required to be used for agricultural purposes, unless registered otherwise. It further mentioned that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes. The Court further noted that where the tractor and trailer were being used to transport vegetable to the market for purpose of sale, then it could not be termed to be agricultural purpose. Relevant portion of the judgment reads as follows:-

“16. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus necessarily is required to be used for agricultural purposes, unless registered otherwise. It may be, as has been contended by Mrs.K.Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to the market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes....”

15. This High Court in the case of ***New India Assurance Company Ltd. vs. Sanjay Singh & Ors.*** in MAC.APP.561/2012 decided on 8.5.2014 has held that a tractor is a LMV and that no separate endorsement is required on the driving license for driving a tractor which is used for agricultural

purpose and a person having a driving license for driving LMV (Non Transport) can drive a tractor. Relevant portion of the judgment reads as follows:-

“10. No illegality in the order of the learned trial court has been pointed out by the learned counsel for the appellant. Learned Tribunal has dealt with the issue as per the provisions of the law and reached to the conclusion that the tractor is a motor vehicle and also comes within the definition of Section 2 (44) M.V. Act and is also a light motor vehicle within the meaning of Section 2 (21) of Motor Vehicle Act. The tractor was not being used for any commercial purpose. It is also a non-transport vehicle. The appellant has failed to prove that there was violation of terms and conditions of the policy by the insured.”

16. Appellant No.2, Jagmal Singh R2W1 has, in his evidence by way of affidavit, clearly stated that the vehicle was not used as commercial vehicle and it was only used for agricultural purposes. In his cross examination by the counsel for the insurance company, he has denied that the vehicle was used for commercial purposes.

17. Clearly, there is nothing on record to suggest that the tractor trolley was being used for commercial purposes.

18. Hence, it has to be held that the tractor trolley was being used only for agricultural purpose. In the light of the legal position as stated above, the finding of the tribunal that in the absence of an LMV (Commercial) licence the appellant could not drive a tractor trolley for agricultural purpose, cannot be accepted.

19. The admitted fact is that the licence of the appellant No.1, Ex.R2W1/R3 is for MCYL/LMV(NT).

20. The Tribunal has relied upon the evidence of Shri Din Dayal, Record Keeper, Transport Authority who appeared as R-3W1. The said witness in

his evidence has said that the license that was held by the appellant Ex.R-2W1/R-3 does not authorize the driver to drive a tractor.

21. We may now look at the evidence of the said R-3W1. He is only a record keeper at the transport authority. In his cross-examination he has stated as follows:-

“We have been issuing separate licence for tractor i.e., LMV (Commercial). We have not been making separate endorsement for tractor. For tractor trolley the authority issuing LMV (commercial) licence. I have not brought the copy of the rules/notification in this regard. It is wrong to suggest that tractor trolley can be driven by driver having LMV (non transport) licence. It is wrong to suggest that LMV commercial DL required for tractor trolley.”

22. Hence, the evidence of R-3W1 is confusing. At one place he states that for a tractor trolley the authority is issuing the license for LMV (Commercial). At another place he states that it is wrong to suggest that LMV (Commercial) driving license is required for tractor/trolley.

23. The basis for his making the averment that for tractor trolley the authority is issuing a LMV license is not known. He has not brought copy of the applicable rules/notifications in this regard. His competence to depose on issues which have legal ramifications is not known inasmuch as he is holding the post of record keeper. In the light of the statutory provisions especially Section 2(21) of the Motor Vehicles Act and the legal position explained above, his statement cannot be accepted.

24. In the facts of this case, I hold that the tractor or trolley was not being used for commercial purpose. Its use was agriculture. Hence, based on facts of above, the appellant No.1 was having a valid driving license to drive a tractor trolley for agricultural purpose.

25. The appeal is allowed. The directions of the tribunal permitting respondent No.3 insurance company to recover the amount from the appellants, is set aside. Insurance company shall, alone, be liable for the awarded amount.

26. The present appeal is accordingly disposed of. No costs.

JAYANT NATH
(JUDGE)

August 25, 2014
raj