**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**F.A.O No. 1394 of 2008
Date of decision:- 22.09.2015**

ICICI Lombard ...Appellant

Versus

Ishwar Dayal and another ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vijay Pal, Advocate
for the appellant

Mr. Arvind Bansal, Advocate
for respondent Nos. 2 to 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Patiala (for brevity, the tribunal'), vide its award/order dated 01.10.2007 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.2,89,600/-.

Facts not in dispute

2. On 25.04.2006, respondent No. 1 started for Narwana for selling the woods loaded in his tractor trolley bearing No. HR08F-6860 from Pundri along with Roshan Lal, Balbir Singh, Sultan Singh who

were working with him as labourers and when they reached near village Pinjupura, then suddenly a cow came in front of the tractor, due to which respondent No. 1 immediately applied the brakes to save the cow but the tractor trolley turned turtle in the ditches due to load in the trolley and Roshan Lal fell down and was crushed under the tractor. Roshan Lal was taken to the Civil Hospital, Kaithal in the same tractor from where he was referred to PGI Chandigarh but on the way to PGI, Chandigarh, he died. The matter regarding the said accident was got registered by respondent No. 1. The said tractor in question was owned by respondent No. 1 and insured by respondent No. 2

3. On notice of the claim petition, respondent No. 1 filed written statement and stated that due to sudden arrival of a cow in front of the tractor, the accident had occurred and the DDR was also got recorded on the statement of respondent No. 1 himself. There was no rash and negligent driving on his part.

4. Respondent No. 2 in his written statement has contended that the deceased was unauthorised passenger on the tractor and as such the risk of unauthorised passenger was not covered under the Motor Vehicles Act or under the policy issued to respondent No. 1. Further respondent No. 1 was not holding a valid and effective driving licence at the time of the accident.

5. From the pleading of the parties, following issues were framed:-

"1. Whether the accident resulting into the death of Roshan Lal son of Radha Krishan took place on 24.04.2006 at about 8 p.m near village Pinjupura on account of use of tractor No. HR-08-F-6860 driven by respondent No. 1? OPP

2. Whether the claimants are entitled to compensation if so to what amount and from whom? OPP

3. Whether respondent No. 1 was not holding the valid and effective driving licence at the time of alleged accident? OPR2

4. Relief."

Since the claim petition was filed under Section 163-A of the Motor Vehicles Act, the question of negligence on the part of respondent No. 1 was not required to be adjudicated upon. Thus, issue No. 1 was decided in favour of the claimants.

Therefore, issue No. 2 was also decided in favour of the claimants and respondents were held liable jointly and severally to pay the compensation to the claimants. Respondent No. 2 contested this issued and stated that the claimants are not held entitled to compensation as the deceased was not insured and moreover, he was a gratuitous passenger and the offending tractor was not meant for commercial goods, rather the same was meant for agricultural goods but the said tractor was used by respondent No. 1 for transporting woods and as such, the said tractor was being driven by respondent No. 1 in contravention of registration certificate Ex R-2 and insurance policy Ex R3. On the other hand, learned counsel for respondent No. 1 stated that the liability if any would be of Insurance Company as the owner has paid extra premium of Rs.25/- as is evident from the Insurance Premium Computation table. The said tractor was not used in violation of provisions of Motor Vehicles Act or in violation of the Insurance Policy.

The learned Tribunal after going through the Insurance Policy Ex R3 held that respondent No. 1 had paid a sum of Rs.25/- in order to cover the risk qua the coolie and it has come in evidence that deceased was employed by respondent No. 1 for loading and unloading the woods in the said tractor. Thus, the deceased was not a gratuitous passenger and was covered under the terms and conditions of the Insurance Policy.

A perusal of the Insurance Policy makes it very clear that the vehicle of respondent No. 1 was insured with respondent No. 2 and in the computation table it has been clearly stated that Rs.25/- has been paid by respondent No. 1 towards legal liability to be paid to Driver/Conductor/Cleaner (Endt IMT-28) and towards legal liability to Coolie (Endt IMT-39)

For all intents and purposes, the deceased was working with the respondent No. 1 as coolie and was covered under the Policy, as respondent No. 1 had paid Rs.25/- extra towards legal liability to coolie and the deceased was assisting respondent No. 1 to carry out his agricultural activities.

In view of the above, the findings of the learned tribunal does not require any interference by this Court.

The appeal stands dismissed.

22.09.2015 (***RITU BAHRI***)

G Arora ***JUDGE***