IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7256 of 2010 (O&M)
Date of Decision:24.02.2015

Oriental Insurance Company Ltd.

….Appellant

Versus

Smt. Mona and others

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

Mr. Jagbir Singh, Advocate for LRs of respondent No.5.

NAVITA SINGH, J.

1. The Commissioner under Workmen's Compensation Act, Rohtak (Commissioner for short) awarded compensation to the tune of Rs.3,84,426/- to respondents No.1 to 4 on account of death of Sanjay alias Ajay in a motor vehicle accident. The Insurance Company came up in appeal on the ground that liability was to be of the employer only, as there was violation of the policy conditions.

2. Counsel for the appellant argued that the Commissioner erred in holding that the Insurance Company was required to show that the vehicle being a tractor was registered only for purpose of agriculture by producing the registration certificate. Also it was contended that the tractor is a vehicle which was supposed to be used for agricultural purpose and not for commercial purpose. Even if there was Kisan Package Policy under the risk cover, since premium having not been paid for helper and not for the trolley attached to the tractor, the Insurance Company was not liable. The Commissioner further erred in holding that it was a comprehensive policy because of that.

3. Counsel for the employer i.e. respondent No.5 vehemently argued that the Commissioner passed a very well reasoned and legal order. It was for the appellant to have proved during the proceedings below that the tractor was registered for agricultural purpose and there was any forbiddance to use it for commercial purpose. The argument is too far-fetched. Every agriculturist is aware that the tractor is to be used for agriculture purposes and so is the law but all tractor owners flout the policy conditions and use their tractors for all sorts of errands. So much that it is seen on the road that sometime the trolleys are overfilled with `toori' making it a traffic hazard and sometimes big cement beams are attached to the trailer of the tractor and dragged along the road. The tractor owners and/or drivers have the least respect for other people on the road.

4. In any case, it came in evidence that tractor was being used for commercial purpose. The person who died was not driving the vehicle and was sitting on the tractor and though such vehicle is not supposed to carry passengers.

5. Counsel for respondent No.5 argued that the deceased was himself a helper/driver and since premium for the driver stood paid, there was no violation of any policy condition. This argument is again not acceptable, firstly because there is no concept of engaging a helper for a tractor as it is supposed to be driven by one person who will sit on the driver seat and secondly no other person is supposed to be on the tractor while the vehicle is in motion. If the deceased was the helper-cum-driver, then he should have been driving the vehicle or if someone else was driving it, he should not have been sitting on it.

6. The Kisan Package Policy is specially meant for farmers for farming purposes and they are supposed to use a tractor only for agricultural requirement. The officer of the Insurance Company who issued the cover note

appeared as RW1 and stated about the specific premium paid under different heads. The deceased was not covered and there was no risk cover for any helper or any person sitting on the tractor especially when the vehicle was being used for a purpose other than agriculture

7. The courts find it very convenient to saddle the Insurance Company with liability and also have undue soft corner for the claimants in certain cases. Even in situation of application of beneficial legislation, the law cannot be ignored.

8. The appeal is allowed. The Insurance Company is exonerated of the liability and the entire compensation shall be paid by respondent No.5 or by his legal heirs for that matter as the respondent had died during the proceedings.

(NAVITA SINGH)
JUDGE

24.02.2015
Ishwar

Whether to be referred to reporter: Yes