

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

**FAO No. 1917 of 2015 (O&M)
Date of Decision:- 22.07.2015**

Future Generali India Insurance Co. Ltd.

.....Appellant

Versus

Mahender Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Pradeep Kumar, Advocate
for the appellant.

Mr. Vaibhav Parashar, Advocate
for respondent Nos.1 and 2.

Mr. Chirag Kundu, Advocate
for respondent Nos.3 and 4.

SHEKHER DHAWAN, J.

Present appeal is against Award dated 06.02.2015 passed by Motor Accident Claims Tribunal, Faridabad (hereinafter to be referred as 'The Tribunal'), whereby 'The Tribunal' awarded compensation of ₹6,25,600/- on account of death of Narender Singh.

2. Appellant-Insurance Company challenged the Award mainly on the ground that driver of the vehicle was not having any valid driving

licence to drive his tractor-trolley and as such Insurance Company is not liable to pay any compensation and 'The Tribunal' has not appreciated this fact in its correct perspective. Learned counsel for the appellant has also placed reliance upon judgment from Hon'ble Supreme Court in case **Raj Rani and others Vs. Oriental Insurance Co. Ltd. and others, 2009 ACJ 2003**. Said driving license (Ex.P2) was to drive car and tractor and not for trolley. More so, the driving licence was not to drive any transport vehicle. More so, if at all any liability is to be fastened upon appellant-Insurance Company, the liability in this case is based on contributory negligence, as the vehicle had hit from back side. Learned counsel for the appellant took the plea that even as per FIR it was a case of contributory negligence. So, the appeal be accepted or in the alternative the amount of compensation be modified keeping in view the contributory negligence.

3. While arguing on this point, learned counsel for respondents took the plea that 'The Tribunal' has recorded positive findings that the accident had taken place because of rash and negligent driving of respondent No.1. More so, the accident was in the month of January and 'The Tribunal' had returned the finding keeping in view the attending circumstances. Learned counsel for the respondents also took the plea that 'trolley' is just an attachment to the tractor and the driver does not require any separate driving licence. So, the appeal is without any merit and same be dismissed.

4. Having considered the rival contentions raised by learned counsel for both the parties and having gone through the judgment from

Hon'ble Supreme Court in case **Raj Rani's case (supra)**, this Court is of the considered view that the facts of the case in hand are distinguishable from the facts of case of **Raj Rani's**. In this case, the vehicle is parked in the middle of the road during night time of January. As per evidence available on the file, the tractor-trolley was parked in the middle of the road without any parking light, indicator, reflector and safety measures etc. 'The Tribunal' has rightly taken this fact to be material point that tractor-trolley was parked on the left side of the road. There was no fault of the deceased because he was supposed to drive the motorcycle on the left side. The accident had taken place in the month of January when there is fog also. In such foggy weather conditions the driver of the vehicle are expected to be more vigilant and not to park the vehicle on the road giving open invitation to the motor vehicle accident. 'The Tribunal' has rightly negated the plea of contributory negligence on this account.

5. As regards to validity of driving licence, so as to drive tractor-trolley, the matter was before Hon'ble Apex Court in case **Nagashetty Vs. United India Insurance Co. Ltd. and others, AIR 2001 Supreme Court 3356** and Hon'ble Supreme Court observed that under Section 10(a) licence is granted to drive specific categories of motor vehicles. Merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor does not become ineffective. Apex Court also observed that if a person has a valid driving licence to drive a tractor or a motor vehicle he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer

is attached to it and some goods are carried in it. In other words a person having a valid driving licence to drive a particular category or vehicle does not become disable to drive that vehicle merely because a trailer is attached to that vehicle.

6. Similar view was also taken by Hon'ble Division Bench of this Court in case **United India Insurance company Ltd. Vs. Surinder and others, 2004 (4) R.C.R. (Civil) 211**, while interpreting the word “tractor” as been defined in the Motor Vehicles Act, 1988 as under: -

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

As per above definition of word “tractor” shows that tractor itself is not able to carry any load without the equipment. Therefore, any equipment attached to the tractor is a part of the tractor and covered under the insurance policy. Similar view was also taken by a Co-ordinate Bench of this Court in case **New India Assurance co. Ltd. Vs. Bimla and others, 2010(2) R.C.R. (Civil) 27**.

7. In view of the above, the present appeal is without any merit and stands dismissed.

July 22, 2015
naresh.k

(SHEKHER DHAWAN)
Judge