

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4535 of 2013 (O&M)
Date of Decision : 14.10.2015

Oriental Insurance Company Ltd.Appellant

Versus

Surinder and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Sidhu, Advocate
for the appellant-Insurance Company.

None for respondents no. 1 to 4.

Mr. Surinder Dagar, Advocate
for respondents no. 5 to 7.

Surinder Gupta, J.

Whether the Insurance Company can be absolved from its liability to pay the compensation amount or can it be allowed recovery rights against owner and driver of the offending vehicle, if the driver possessing licence for driving the tractor at the time of accident, was driving the tractor attached with trolley, is the short point which arises for consideration in this appeal.

2. As per the case of claimants, Shakuntla alongwith her nephews, Gulab Singh, Shiv Charan and Man Singh had gone to Sohna market on 14.07.2010 for purchasing some household articles. After purchasing the articles, she was returning from the market to her home with Gulab Singh on his motorcycle, which was being driven by Gulab Singh at a moderate speed on his left side. When they reached ahead of village Indri, tractor-trolley bearing No. HR-52-8879 (later referred to as 'the offending vehicle'), which was being

driven by Hassu-respondent no. 1 (respondent no. 5 in this appeal), in a rash and negligent manner, came from backside and hit the motorcycle. With the impact Shakuntla fell down from the motorcycle and was run over by the tractor resulting in her death at the spot. She was 40 years of age and was doing embroidery and tailoring work and selling milk thereby earning ₹ 8000/- per month.

3. In the written statement filed by driver and owner of the offending vehicle the accident was denied. It was alleged that FIR No. 226 dated 14.07.2010 for this accident registered at Police Station Sohna, involving the offending vehicle and respondent no. 1, was false and frivolous. The tractor was, however, insured with respondent no. 3 (appellant), as such, if any liability for payment of compensation is found, the same shall be of the Insurance Company.

4. In the separate written statement filed by the Oriental Insurance Company Ltd., a plea was taken that driver of the offending vehicle i.e. respondent no. 1 was not having valid and effective driving licence at the time of accident, as such, the Insurance Company is not liable to indemnify the insured due to the violation of terms and conditions of the Insurance Company. It was also denied that the offending vehicle was insured with respondent no. 3-Insurance Company. Admitting the accident, it was alleged that the same was caused due to sole negligence of driver of the motorcycle.

5. The Tribunal relied upon the statement of PW-2 Gulab Singh, that the accident had taken place when the

offending vehicle hit his motorcycle from behind, resulting in death of Shakuntla the deceased. The compensation of ₹ 7,60,000/- was assessed and discarding the plea of Insurance Company (appellant) that respondent no. 2-owner of the offending vehicle has violated the terms and conditions of insurance policy, the liability was fastened on the Insurance Company to pay the compensation jointly and severally with respondents no. 1 and 2.

6. Learned counsel for the appellant has argued that admittedly the tractor which caused the accident was attached with trolley. Respondent no. 1 was having the driving licence, Ex. P-2, only to drive the tractor. Once the tractor is attached with trailer it becomes a transport vehicle. Respondent no. 1-Hassu was not authorized to drive a transport vehicle, as such, his driving licence, Ex. P-2, was not a legal and valid one and the Insurance Company, for the breach of terms of insurance policy, is entitled to recover the compensation amount paid by it from owner of the vehicle.

7. To find answer to the above argument of learned counsel for the appellant, observations of Apex Court in paras 5 and 7 in case of **Fahim Ahmad and others vs. United India Insurance Co. Ltd. and others, 2015 (1) SCC (Civil) 258** are relevant and are reproduced as under:-

“5. A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose of construction of underground tank near the farm land for irrigation purpose(s). However,

merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for commercial purpose(s) or purpose(s) other than agricultural purpose(s), i.e., for hire or reward, as contemplated under Section 149(2)(a)(i)(a) of the said Act.

6. xx xx xx xx xx
7. *We may also notice that this Court in **National Insurance Co. Ltd. Vs. V. Chinnamma & Ors., JT 2004 (7) SC 167**, held that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes, but the same 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. Thus, a tractor fitted with a trailer may or may not answer the definition of 'goods carriage' contained in Section 2(14) of the said Act."*

8. The Apex Court observed that it is mandatory for the Insurance Company not only to plead the breach of conditions of insurance policy but also to substantiate the same by adducing positive evidence. In the absence of any evidence, it cannot be presumed that there was breach of the conditions of policy. The perusal of insurance policy, Ex. R-1, shows that the trailer was also insured. There is no evidence on file to suggest that at the time of accident the trailer was being used for commercial purposes or the purposes other than agricultural purposes. The

Apex Court in the case of **Nagashetty vs. United India Insurance Co. Ltd., 2001 (8) SCC 56** has also dilated upon this question and observed as follows:-

- “9. Relying on these definitions Mr. S.C. Sharda submitted that admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted that therefore it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Company could not be made liable. He submitted that the High Court was right in so holding.
10. We are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly under Section 10, a licence is granted to drive specific categories of motor vehicles. **The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective.** If the argument of

*Mr. S.C. Sharda is to be accepted then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. **Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle.***

The tractor or motor vehicle remains a tractor or motor vehicle. 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 of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

11. *In this case we find that the Insurance Company, when issuing the Insurance Policy, had also so understood. The Insurance Policy has been issued for a tractor. In this Insurance Policy, an additional premium of Rs.12/- has been taken for a trailer. Therefore the Insurance Policy covers not just the tractor but also a trailer attached to the tractor. The Insurance Policy provides as follows for the "persons or classes of persons entitled to drive" : -*

"Persons or classes of persons entitled to drive - Any person including insured provided that the person driving holds an effective driving licence at the time

of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that the person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989, limitations as to use"

12. *The policy is for a tractor. The "effective driving licence" is thus for a tractor. The restriction on a learner driving the tractor when used for transporting goods shows that the policy itself contemplates that the tractor could be used for carriage of goods. The tractor by itself could not carry goods. The goods would be carried in a trailer attached to it. That is why the extra premium for trailer. The restriction placed on a person holding a learner's licence i.e. not to drive when goods are being carried is not there for a permanent licence holder. **Thus a permanent licence-holder having an effective/valid licence to drive a tractor can drive even when the tractor is used for carrying goods. When the policy itself so permits, the High Court was wrong in coming to the conclusion that a person having a valid driving licence to drive a tractor would become disqualified to drive the tractor if a trailer was attached to it."***

9. On the other hand, learned counsel for the appellant has placed reliance upon the case in **Subhash Chand and others vs. Satya Rani and others, 2013 (3) Punjab Law Reporter 329**, where a coordinate Bench of this Court has taken

a view that the tractor with trolley attached is a transport vehicle. However, while reaching the above conclusion observations in the case of ***Nagashetty's case (supra)*** were not taken into consideration.

10. In view of the observations of Apex Court in cases of ***Fahim Ahmad*** and ***Nagashetty (supra)***, I find no reason to subscribe to the view taken in the case of ***Subhash Chand's case (supra)***.

11. In view of my above discussion, the question framed for consideration is answered against the appellant. This appeal has no merit.

Dismissed.

October 14, 2015
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters or not? Yes/No