

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7886 of 2014 (O&M)

Date of Decision: March 12, 2015

HDFC ERGO General Insurance Company Ltd.

...Appellant

Versus

Rahila and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGHPresent: Mr.Sanjeev Goyal, Advocate
for the appellant.Mr.Amit Jain, Advocate
for respondents No.1 to 6.Mr.Abhimanyu Singh, Advocate
for respondents No.7 and 8.

INDERJIT SINGH, J.

Appellant HDFC ERGO General Insurance Company Ltd.
has filed this appeal against Rahila, Baby Sinar, Master Hamja and
Master Bilal Mohd. (minors), Harun, Samina, Gafur and Mufeed
respondents challenging the impugned award dated 02.05.2014
passed by learned Motor Accident Claims Tribunal, Mewat (hereinafter
referred to as 'Tribunal').

The brief facts of the case are that Rahila, widow of
Sh.Asruddin, Baby Sinar, Master Hamja, Master Bilal Mohd. (minor
children), Harun and Samina filed claim petition under Section 163-A
of the Motor Vehicles Act, 1988 against Gafur, driver of offending

vehicle bearing registration No.RJ-05RB-0301, Mufeed, owner of offender vehicle and HDFC ERGO General Insurance Company Ltd., insurer of offending vehicle, for grant of compensation to the tune of ₹15 lacs along with interest at the rate of 24% per annum from the date of institution of petition till realization on account of death of Asruddin in a motor vehicular accident.

It is stated in the claim petition that on 15.11.2012 at about 3.00 P.M., Asruddin was coming back after doing labour work on tractor No.RJ-05RB-0301 owned by Mufeed, which was driven by Gafur. When the tractor reached near village Rithat, Gafur overturned the tractor by driving the same rashly and negligently, as a result of which, Asruddin fell down under the tractor. He was shifted to General Hospital, Mandikhera for treatment but due to serious injuries, he was referred to Delhi, however, he succumbed to injuries on his way to the hospital. It has been alleged that the accident took place solely due to rash and negligent driving of tractor in question driven by Gafur.

Respondent No.1 and 2 (in claim petition) in their written statement, denied the accident. It is also alleged that answering respondents have been falsely implicated in this case. It is also stated that if the Court considers that the accident had taken place due to negligence of respondent No.1 Gafur, then insurance company is liable to pay the compensation to the petitioners as the alleged vehicle was fully insured with the insurance company. Respondent No.3 (present appellant) filed its written statement and stated that

deceased was a gratuitous passenger in the alleged vehicle. False FIR has been registered against the driver of the vehicle after delay of 15 days. It is further stated that the vehicle in question has been falsely implicated in this case.

Learned Tribunal framed following issues:-

“1. Whether the accident resulting into death of Asruddin son of Harun took place on 15.11.2012 in the jurisdiction of PS Nagina, due to the accident arising out of use of vehicle No.RJ-05RB-0301 by its driver/respondent No.1?OPP.

2. If issue No.1 is proved, whether the petitioners are entitled to compensation. If so, to what amount and from whom?OPP.

3. Whether respondent No.1 was not holding a valid and effective driving licence on the date of accident?OPR-3.

4. Whether respondent No.2 has violated the terms and conditions of the insurance policy, as alleged. If so, to what effect?OPR-3.

5. Relief.”

Claimants examined PW-1 Harun, PW-2 Islam and PW-3 Jube and closed the evidence. On the other hand, respondents in claim petition had not led any evidence and evidence was closed by order.

The Tribunal after appreciating the evidence, passed impugned award dated 02.05.2014 and awarded compensation to the tune of ₹4,85,100/- to be paid by the respondents jointly and severally along with interest @ 7.5% per annum from the date of filing of petition till its realization.

Aggrieved from this award, appellant insurance company

filed the present appeal.

Notice of motion was issued and learned counsel for respondents appeared and contested the appeal.

Learned counsel for the appellant argued that as the deceased Asruddin was sitting on the Mudguard of the tractor, therefore, Insurance Company is not liable to pay the compensation, as it is the violation of terms and conditions of the insurance policy and further the tractor can be used only for one person i.e. only driver.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***United India Insurance Company Ltd. vs. Serjerao and others, 2008(1) RCR (Civil) 73***, in which a tractor with trolley met with an accident and injuries are suffered by persons travelling in trolley and it is held that the Insurance Company has no liability in respect of the persons travelling in the trollies attached to the tractors. Learned counsel for the appellant further cited judgment passed by the Hon'ble Supreme Court in ***Susheelabai and others vs. Basavaraj and another, 2012 AIR SC (Civil) 115***, in which it is held that in any event, the tractor being a vehicle with one seat, nobody else apart from the driver thereof could travel in the tractor.

Learned counsel for the appellant also cited judgment passed by this Court in ***The Oriental Insurance Company Limited, Chandigarh vs. Shri Anil Kumar and other, 2012 (4) PLR 304***, in

which it is held that for a death and injury to a passenger on a tractor, the Insurance Company could not be made liable, for, there exists no obligation under Section 147 of MV Act to cover the risk for a person who was travelling in a vehicle which was not fit to carry passengers. Learned counsel for the appellant further placed reliance upon the judgment passed by this Court in ***United India Insurance Company Limited vs. Ramji Lal and others, 2010 (4) PLR 436***, in which it is held that the person sitting on the mudguard of the tractor is an unauthorized passenger and his claim is not covered by the requirements of compulsory insurance under Section 147(1), as such, principle of pay and recover under Section 149(4) or 149(5) is not applicable. Learned counsel for the appellant also relied upon the judgment passed by this Court in ***Smt.Chameli Devi and others vs. Mukesh alias Kalu and others, 2014(3) RCR (Civil) 1029***, in which it is held that the tractor was not meant for passengers. Claim is maintainable against driver and owner but not against the Insurance Company.

I have gone through all the above-cited judgments and the same fully apply in the present case.

On the other hand, learned counsel for the respondents cited judgment passed by the Hon'ble Supreme Court in ***Fahim Ahmad and others vs. United India Insurance Co. Ltd. and others, 2014(2) RCR (Civil) 470***. In that case, a tractor carrying sand in the trolley met with an accident. The sand was for the purpose of construction of tank. It was held that merely because it was carrying

sand would not mean that the tractor was being used for commercial purpose. Insurance Company is liable to pay the compensation as there was no breach of Insurance Policy in the facts of the case. I have gone through this cited judgment and same having distinguished facts will not applying in the present case as in the case in hand, the deceased was sitting on the mudguard of the tractor. Learned counsel for the respondents further cited judgment passed by this Court in ***New India Assurance Company Ltd. vs. Bimla and others, 2010(2) RCR (Civil) 27.*** I have gone through the above-cited judgment also and the same will not apply in the present case as in that case labourers were transported in the tractor-trolley to do agricultural work in the fields, which are not the facts of the present case. Learned counsel for the respondents also placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Sai Enterprises vs. Bhimreddy Laxmaiah and another, 2007(2) RCR (Civil) 876.*** This cited judgment will also not apply in the present case as in the written statement before the lower Court, the Insurance Company has not taken specific plea that the deceased was gratuitous passenger on the tractor.

In view of the law cited by learned counsel for the appellant, which is fully applicable in the present case, I find that the Insurance Company is not liable for the claim on account of death of Asruddin, who was sitting on the mudguard of the tractor, fell down and died. The tractor is meant only for one person i.e. driver.

In the facts and circumstances of the present case, the

appellant is not liable to pay the compensation. The impugned award dated 02.05.2014 passed by learned MACT, Mewat is set aside qua appellant HDFC ERGO General Insurance Company Ltd.

Therefore, finding merit in the present appeal, the same is allowed.

March 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE