

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

FAO No.4164 of 2016(O&M)

Date of decision:5.9.2016

United India Insurance Co.

....Appellant

VERSUS

Sonali Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Suman Jain, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.14192-CII of 2016

Prayer in this application is for condoning delay of 15 days in re-filing the appeal.

In view of the averments made in the application supported by an affidavit of Kuldip Singh- clerk of counsel for the appellant, the application is allowed and delay of 15 days in re-filing the appeal stands condoned.

Disposed of accordingly.

FAO No.4164 of 2016

The present appeal has been directed against award dated 24.02.2016 passed by the Motor Accident Claims Tribunal, Faridabad (in short 'the Tribunal') whereby compensation has been awarded in favour of Mrs. Sonali Devi and others with regard to death of Sh. Vivek Tiwari in a motor vehicular accident that took place on 02.01.2015.

The sole submission made by counsel for the appellant is that driver of the offending vehicle i.e. tractor bearing No.HR-51-AT-5028 did

not possess a driving licence to drive a transport vehicle. The insured is guilty of violating the terms and conditions of the contract of insurance, therefore, the insurance company is entitled to have a right of recovery against the insured after satisfying claim of third party i.e. claimants. To bring home his contention, counsel has placed reliance upon notification No.S.O. 1248(E) dated 05.11.2004 issued by the Central Government wherein transport and non-transport vehicles have been described in exercise of jurisdiction envisaged under Section 41(4) of the Motor Vehicles Act, 1988 (in short 'the Act'). It is argued that as per clause (vii) of the notification, the power-tiller and tractor using public roads have been categorized as transport vehicles.

It is further argued that in the case at hand, the offending vehicle was registered in the year 2012 and the accident took place on 02.01.2015, therefore, driver of the offending vehicle was required to hold a driving licence to drive a transport vehicle. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court M/s Natwar Parikh & Co. Ltd. vs. State of Karnataka and others, 2005(4) RCR (Civil) 61.

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the Tribunal.

The tractor has been defined in Section 2(44) of the Act which says 'tractor' means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) but excludes a road-roller. A perusal of the definition of 'tractor' shows that tractor itself cannot carry any load without the equipment.

Transport vehicle has been defined in Section 2 (47) of the Act and the same reads as follows:-

“(47) “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle .”

The Central Government, in exercise of powers conferred under sub-Section (4) of Section 41 of the Act issued the notification dated 05.11.2004 whereby tractor using public road has been specified to be a transport vehicle for the purpose of registration. No amendment has been made by the legislature in the Act qua definition of tractor in Section 2(44) or transport vehicle in Section 2(47). The mere fact that a tractor using public road is required to be registered as a transport vehicle is not sufficient to uphold that driver of the tractor is required to possess a driving licence to drive a transport vehicle.

In M/s Natwar Parikh and Co. Ltd. case (supra), controversy before Hon’ble the Supreme Court was entirely different namely whether the taxation authority under the Karnataka Motor Vehicles Taxation Act, 1957 was right in taxing the ‘tractor-trailer’ as a separate and distinct vehicle different from a tractor and denying exemption sought by the appellant under Section 16 of the said 1957 Act on the ground that the tractor-trailer was a distinct category of “goods carriage” requiring permit under Section 66 of the Motor Vehicles Act, 1988. On the other hand, the Apex Court in Nagashetty Vs. United India Insurance Co. Ltd., 2001(4) RCR (Civil) 597, specifically dealt with question of validity of driving licence by a driver who was driving a tractor with a trailer. The Court refused to accept contention of Sh. S.C. Sharda, Advocate, representing the Insurance Company that merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor (LMV) becomes ineffective. A relevant extract from para 10 of the judgment, reads as follows:-

“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.”

In view of enunciation of law laid down in Nagashetty's case (supra), the appellant cannot derive any advantage to its contention either from the notification aforesaid dated 05.11.2004 or from what has been held in M/s Natwar Parikh and Co. Ltd. case (supra).

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed.

SEPTEMBER 5, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no