242 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6988 of 2015(O&M)
Date of decision:03.05.2016

Ashok Kumar and another

...Appellant(s)

Versus

Ramu Makela @ Ramji Lal and ors.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A.K. Yadav, Advocate,
for the appellant(s).

Mr. Arun Yadav, Advocate,
for respondent Nos. 1 to 3.

Mr. Punit Jain, Advocate,
for Mr. M.B. Jain, Advocate,
for respondent No. 4.

JITENDRA CHAUHAN, J.

The short question which arises for consideration is as to who is liable to pay the amount of compensation awarded by Motor Accidents Claims Tribunal, Rewari (for short 'the Tribunal') in MACT case No. 111 of 2013 vide award dated 14.07.2015.

The brief facts necessary to dispose of this appeal are that on 24.07.2012 deceased, Lalita Devi and her son Parmod (claimant no.3 in the claim petition) were going home on foot after visiting Central School. At about 11:00 a.m. when they reached opposite the Government Senior Secondary School, Bawal, a tractor DI bearing registration No. HR-36Q/6585 attached with a trolley came from behind at a fast speed and struck her as a result of which she fell down and was crushed to death by the tractor trolley. FIR No. 151 dated 24.07.2013 under Sections 279 and 304-A IPC was registered at Police Station Bawal at the instance of Parmod, an eye witness. Claimaing that deceased Lalita, aged 45 years, was earning Rs. 15,000/- per month from dairy business besides which he was working as daily wager, the petitioners have sought compensation to the tune of Rs, 25,00,000/- on account of her death.

The Tribunal assessed the annual income of the deceased at Rs. 36,000/- and applying the multiplier of 11, awarded the compensation of Rs. 4,06,000/- with interest. However, the Tribunal held that since the offending tractor was being used for commercial purposes and the driver was not holding a valid driving licence, the Insurance Company was exonerated. Against the award of the Tribunal, the driver and owner who were held jointly as well as severally liable to pay the compensation have filed the instant first appeal.

The learned counsel for the appellants contends that it was for the Insurance Company to establish that the licence held by the driver of the offending vehicle did not cover his right to drive the vehicle in question. Merely because there is no specific authorization in the driving licence in question, it would not automatically disentitle him from driving it. Since, the authorization given in the driving licence of the driver is for 'light transport vehicle', it would also automatically and by legal implication mean the authorization to drive a goods carrier vehicle as well as vehicle whose unladen weight does not exceed 7500 kg, and as such, the driver of the offending vehicle was holding a valid driving licence and the finding of the learned Tribunal to the effect that the driver was not holding a valid driving licence leading to breach of Insurance Company is liable to be set aside. Consequently, the Insurance Company is liable to indemnify the insured.

Learned counsel for the appellants further submits that there is no evidence on record to show that at the time of accident the vehicle was carrying any goods for commercial purposes, rather it has come in evidence that the trolley was loaded with bricks at the time of accident. The policy was for agricultural use and it cannot be said that there was any breach of the condition of policy on the part of the insured. To buttress his arguments, the learned counsel for the appellants has placed reliance upon **Fahim Ahmad and ors. Vs. United India Insurance Co. Ltd. and ors. 2014 (2) R.C.R. (Civil) 470 (SC)** wherein it has been held that merely because the tractor attached with the trolley was carrying sand would not mean that the tractor was being used for commercial purposes, and as such, the Insurance Company was held liable to pay the compensation.

Per contra, learned counsel for respondent No. 4 submits that learned Tribunal has rightly held that the tractor attached with a trailer was being used for commercial purposes thereby violating the conditions of the policy and as such learned Tribunal has rightly exonerated the Insurance Company.

The ratio of the reported case does not apply to the facts of the instant case since in that case there was nothing on record to show that the tractor was being used for commercial purposes or for purposes other than agricultural i.e. for hire or reward, as contemplated under Section 149 (2)(a)(i)(a) of the Motor Vehicles Act, 1988.

In the instant case, the learned Tribunal has rightly held that the Sewach Bhatta Company was written on the trolley and the trolley was loaded with bricks. These two aspects were sufficient to discharge the initial burden of the Insurance Company to prove that the vehicle was indeed being used for commercial purposes. In these circumstances, the onus shifted on the driver and owner to prove that bricks were being carried for agricultural purpose but they have miserably failed to lead any evidence in this regard. Since the tractor was being used for commercial purposes and the driver was not having valid driving licence, the learned Tribunal was fully justified in transferring the burden of paying the amount of compensation from the Insurance company to the appellants herein.

In the final analysis, this Court finds no merit in this appeal and hence it is dismissed. No order as to costs.

The statutory amount deposited by the appellants be placed at the disposal of the learned Tribunal for disbursement.

03.05.2016 **(JITENDRA CHAUHAN)**
sumit **JUDGE**