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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th January, 2016

+ **MACA No.1053/2011 & CM APPL.21437/2011, 9204/2014**

NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

RAJESH KUMAR & ORS Respondents

Through: Mr. Pradeep L. Sati, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is in appeal against directions in the judgment dated 11.08.2011 of motor accident claims tribunal in motor accident claim petition no.1254/2010 presented on 15.10.2007 by the first respondent herein seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (hereinafter referred to as “the MV Act”) for injuries suffered by him in motor vehicular accident that occurred on 30.05.2003 near Mother Dairy Road, Ganesh Nagar crossing, involving tractor-trolley bearing registration no.UP-23-5872 (hereinafter referred to as “the offending vehicle”). According to the material on record, the offending vehicle was driven at the relevant time and date by the second respondent herein, its owner Rekha Aggarwal having been impleaded as party (third respondent herein). The tribunal

by the impugned judgment awarded compensation in the sum of Rs.1,12,165/- and directed the appellant/insurer to pay the said sum with interest to the claimant. It has been submitted at the outset that award has since been satisfied by the appellant company by way of deposit in the court, *inter-alia*, in terms of the order dated 28.11.2011.

2. Learned counsel for the appellant submitted that the only relief pressed through the appeal at hand is the recovery rights on the ground that the tractor was registered and insured as agricultural vehicle and that the use of trolley as an attachment on a public road amounted to breach of terms and conditions of the policy for which reason the insurer is entitled to be reimbursed of the amount paid as compensation by the registered owner.

3. The issue, as aforesaid, was raised before the tribunal and was dealt with as under :-

“ Sh. Charan Deep Singh, Administrative Officer, New Indian Assurance Company Ltd., R-3W-1 deposed that notice under Order 12 Rule 8 CPC was sent to the driver and legal heir of owner and insured Smt. Rekha Aggarwal. Sh. Charan Deep Singh exhibited the copy of notice as Ex.R-3W-1/A and the policy as R-3W-1/D. He further stated that policy was issued for tractor (for agriculture purpose only) and a trolley was attached with the tractor and trolley was not insured under the policy and hence the insurance company was not liable to pay.

Ld. Counsel for insurance company contended that tractor no.UP-23-5872 was attached with trolley which was not insured and the tractor was insured only for agricultural purpose therefore the insurance company is not liable.

I have gone through the material on record. It is an admitted fact that the tractor bearing no.UP-23-5872 was insured as on the date of accident. The PW-1 has stated that the tractor

trolley was coming from wrong side and hit the petitioner's vehicle. The police has filed chargesheet in the present matter including the Mechanical inspection of the motorcycle as well as of the tractor and trolley. From the material on record, it is not clear as to whether the tractor or the trolley hit the petitioner. The insurance company failed to lead any evidence that the petitioner was hit by a trolley. Merely because a trolley was attached with the tractor is not sufficient to absolve the insurance company of liability.

Since insurance company has admitted the policy as on date of accident therefore respondent no.3 is liable to pay the compensation amount."

4. The learned counsel for the appellant has relied on the following observations of the Supreme Court in *Natwar Parikh & Co. Ltd. v. State of Karnataka*, (2005) 7 SCC 364:-

"Section 2(28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Section 2(46) to mean any vehicle drawn or intended to be drawn by a motor vehicle, it is still included into the definition of the words "motor vehicle" under Section 2(28). Similarly, the word "tractor" is defined in Section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles, etc. A combined reading of the aforesaid definitions under Section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under Section 2(14) and consequently, a "transport vehicle" under Section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is

so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under Section 2(14) as a “goods carriage” and consequently, it falls under the definition of “transport vehicle” under Section 2(47) of the MV Act, 1988.”

5. Having regard to the law on the subject as presented by the counsel for the insurance, the issue arising between the insurer and owner was not as to whether the accident had occurred on account of collision against the tractor or the trolley attached to it. The issue essentially related to the fact whether the tractor could be taken out with a trolley attached to it on the public road without a permit in its regard having been taken out in terms of the requirement of Section 66 of the MV Act.

6. On being asked, the learned counsel for the owner (third respondent) submitted that he would need opportunity to prove that the tractor with trolley had been taken out lawfully on the public road.

7. Both sides fairly agreed that the issue arising as above may be remanded to the tribunal for limited inquiry and adjudication. If the contention of the insurance company is upheld, the tribunal shall be duty bound to grant the recovery rights to it against the owner. Ordered accordingly.

8. For aforementioned purpose, the parties are directed to appear before the tribunal on 28th March, 2016.

9. Statutory deposit, if made, shall be refunded.

10. The amount of compensation deposited in the court in terms of the impugned judgment and interim order shall be released in favour of the claimants.

11. The appeal is disposed of with above observations/directions.

R.K. GAUBA
(JUDGE)

JANUARY 20, 2016/ssc