

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

**FAO No.4858 of 2007 (O&M)  
Date of Decision: April 25, 2017**

**Bijender Kumar and another**

..Appellant(s)

**Versus**

**Satish and another**

...Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Amrita Nagpal, Advocate for  
Mr. Lokesh Sinhal, Advocate  
for the appellants.

Mr. Neeraj Khanna, Advocate and  
Mr. Vipul Sharma, Advocate  
for respondent no.2-insurance company.

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**ANITA CHAUDHRY, J.**

This appeal is by the owner and driver of the vehicle upon whom the liability of payment of compensation has been placed. The insurance company had been exonerated as the tractor was attached with a water tank and was being used for commercial purposes, which was in violation of the terms of the insurance policy.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties

agreed that the matter can be decided on the basis of whatever is available on the record.

An accident had taken place on 17.06.2006 when Satish claimant got down from a bus near Badkhal Flyover on Delhi - Mathura Road. He was going to his village Badkhal on foot and had crossed the flyover when a tractor driven by respondent no.1 rashly and negligently without care or caution came at a high speed and hit him. The claimant fell on the road which resulted in a fracture on the upper thigh. An FIR was registered against respondent no.1 on the next day. The claimant had pleaded that he was bed ridden and had spent a huge amount on his treatment and had filed a claim of Rs.20 lacs. The Tribunal assessed the compensation at Rs.1,50,142/- and since the tractor was being driven in violation of the policy, the insurance company was discharged from its liability. The amount was ordered to be paid by the owner-driver.

The appellant had placed on record some material obtained from the and therefore, to verify it the Co-ordinate Bench had directed the insurance company to place on record the insurance policy, though their stand from the very beginning was that it was a package policy and the tractor could only be used for agricultural purposes.

A copy of the policy has been placed on record.

I have heard both the sides.

It is not in dispute that it was a farmer's package policy and the tractor was insured. The submission on behalf of the appellant was that the tractor was attached with a water tank which was to be used in

the fields and it could not be assumed that the water was being taken for commercial purposes.

The tractor was owned by Asa Ram. He failed to step into the witness box to show that he owned any land. The driver did not step into the witness box to explain the purpose for which water was being taken. The accident occurred near Delhi – Mathura Road. The owner could not show that he had agricultural land nearby. Therefore, the Tribunal had rightly given a finding against the owner-driver that the tractor was being used for business purposes.

There is no infirmity in the findings. The appeal is dismissed.

**(ANITA CHAUDHRY)**  
**JUDGE**

April 25, 2017  
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No