428

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1696-2011 (O&M)
Date of decision : 09.08.2017

Bajaj Allianze General Insurance Company Ltd.

... Appellant(s)

Versus

Shiv Charan and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Subhash Goyal, Advocate
for the appellant/Insurance Company.

Mr. Gopal Sharma, Advocate
for respondent Nos.2 and 3.

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AMIT RAWAL, J. (ORAL)

The appellant/Insurance Company is, in an appeal, against the award dated 11.10.2010 granting compensation of ₹ 4,15,065/- along with interest @ 6% per annum, to the claimants on account of injury suffered by the claimant Shiv Charan/respondent No.1.

Mr. Subhash Goyal, learned counsel appearing on behalf of the appellant(s)/Insurance Company, in order to assail the findings of the Tribunal has raised two fold submissions; i) The Insurance Company vide policy Ex.RW/1/C & RW-3/1 had insured the Tractor bearing registration No.HR-36J-2171 and not the trolley, whereas the respondent No.1/claimant was injured while travelling on the motorcycle bearing Registration No.HR-36H-1004, which had struck behind the trolley on 01.01.2009 at 07.00 p.m., and in the absence of Insurance Policy of the trolley, the Insurance

Company is liable to be absolved from the liability; and ii) The driving licence owned by the driver is for driving the LMV and Tractor only, but once the tractor is attached with the trolley, it becomes a transport vehicle and requires an endorsement from the Competent Authority, thus, caused a breach of terms and conditions of the Insurance Policy and therefore, indemnification clauses cannot be pressed into service. In this regard, RW-2 Amit Verma, Investigator, was examined and tendered in evidence a verification report of the driving licence as Ex.RW-2/1; thus, urges this Court for setting aside the findings under challenge.

On the contrary, Mr. Gopal Sharma, learned counsel appearing on behalf of respondent Nos.2 & 3 submits that the question of trolley being attached with the Tractor, came to be debated on in many judgments rendered by this Court and as well as by the Hon'ble Supreme Court and in this regard, relies upon the *ratio decidendi* culled out by Hon'ble Supreme Court rendered in ***"Fahim Ahmad and others V/s United India Insurance Company Ltd. and others" 2014 (2) RCR (Civil) 470***, to contend that where tractor attached with the trolley, carrying sand would not mean that it was being carried for commercial purpose and entailing into breach of terms and conditions of the Insurance Policy. He also relies upon the following judgments:-

1. *"United India Insurance Company Limited V/s Smt. Kitabo Devi w/o late Sh. Karan Singh" 2010 (52) RCR (Civil) 323;*
2. *"Future General India Insurance Company Ltd. V/s Mahender Singh and others" 2015 (33) RCR (Civil) 95;*
3. *"National Insurance Company Ltd. V/s Kamlesh Rani and others" 2016 (4) PLR 505;*

4. *“United India Insurance Company Ltd. V/s Anita Singhal and others” 2011 (3) RCR (Civil) 520; and*
5. *“Satbir and another V/s Raj Dulari and others” 2011 (10) RCR (Civil) 311.*

to submit that in all the aforementioned judgments, the aforementioned question raised on behalf of the Insurance Company has already been pondered upon by holding that the Insurance Company cannot escape the liability, thus, urges this Court for dismissal of the appeal by upholding the award, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the eloquent argument on the first blush of Mr. Subhash Goyal, appeared to be attractive, but on going through the definition of Tractor as enshrined under sub-Section 44 of Section 2 of the Motor Vehicles Act, 1988 (for short 'the Act'), a “tractor” means a motor vehicle, which is not itself constructed to carry any load, but excludes a road-roller; whereas sub-Section 47 of Section 2 of the Act deals with the definition of a “transport vehicle” which means a public service vehicle, a goods carriage. The finding rendered by the Tribunal in not absolving the Insurance Company from the liability, in my view, is correct one, for, even if, the Insurance Company/appellant had not insured the tractor-trolley, it was held that where a tractor-trolley was being used for transporting the goods or even was parked, when put together, construed to be a goods carriage and necessity of permit would not be a ground, being not the issue involved before this Court. As per the notification dated 13.05.1992 caused by the Central Government, different type of vehicles have been defined and a trailer has fallen in the category of transport vehicle. In my view, it would be wholly irrelevant argument that the tractor and the trolley are separate vehicles and the insurer can seek the absolvement. A similar view has been followed in the judgments referred above and I need not to repeat the findings rendered therein to avoid repetition. In the instant case, admittedly the tractor-trolley was parked on a road and was hit by motorcyclist, whether in such circumstances, the motorcyclist can be held to be negligent to some extent having not taken measures or driving vehicle rashly and negligently. No evidence on this point has been led on behalf of the appellant/Insurance Company to seek the absolvement or discharge to some extent on ground of contributory negligence, thus, the Insurance Company is liable to indemnify the owner viz-a-viz the third party risks.

In view of what has been notice above, I am of the view that both the arguments raised on behalf of the appellant/Insurance Company has not been able to establish the point raised in order to form a different opinion than one rendered by the Tribunal and accordingly, the award, under challenge, is upheld.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

09.08.2017
Yogesh Sharma

Whether speaking/reasoned	**Yes/** ✓	**No**
Whether Reportable	**Yes/**	**No** ✓