

In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 4992 of 2010 (O&M)
Date of Decision: 02.5.2017

United India Insurance Company Ltd.Appellant

Versus

Kashish Midha and othersRespondents

2. F.A.O No. 4993 of 2010 (O&M)

United India Insurance Company Ltd.Appellant

Versus

Nirmla and othersRespondents

3. F.A.O No. 6293 of 2014 (O&M)

Kashish MidhaAppellant

Versus

Sanjeev Kumar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.K.Bashamboo, Advocate
for the appellants.
(in FAO-4992-2010 and 4993-2010) and
for respondent No. 4 (in FAO-6239-2014)

Mr. J.S.Thind, Advocate
for the appellant.
(in FAO-6239-2014) and
for respondent No. 1 (in FAO-4992-2010) and
for respondent No. 6 (in FAO-4993-2010)

Mr. Vinod Kumar, Advocate for
Mr. Harkesh Manuja, Advocate
for respondents No. 2 and 4
(in FAO-4992-2010) and
for respondents No. 3 and 5
(in FAO-4993-2010) and
for respondents No. 1 and 3
(in FAO-6239-2014).

ANITA CHAUDHRY, J

All the three appeals arise out of an accident which occurred on 23.12.2006. Ashok died in that accident. One claim petition was filed by the widow under Section 163-A of the Motor Vehicles Act and the second claim petition was filed by the parents. Both the petitions were consolidated and a common award was passed. It was claimed that Ashok was selling milk and his income was Rs. 3,000/- per month. Ashok was going on his motor cycle and had reached Balaji Dham on Hanumangarh road when a tractor attached with a trolley came from the same side. Ashok was in the process of crossing the tractor trolley when respondent No. 1 turned the trolley towards the right side without giving any signal and struck against the motor cycle leading to severe injuries. Ashok died on the way to the hospital. Besides other grounds, the insurance company took the plea that the tractor was insured for agricultural purposes and the tractor was attached with a trolley loaded with cement tiles and they were not liable to pay the compensation. The Tribunal considered the submissions but rejected the argument of the insurance company though it held that the tractor was insured only for agricultural purposes and not for commercial purposes. It also noted that the trolley was loaded with cement tiles but observed that the tiles could have been used for agricultural purposes such as construction of

platform around the tubewell or for the farm house and for construction of a shed and there was no evidence from the side of the owner and driver and the insurance company was liable to pay the amount. The income was taken at Rs. 3,000/- and 1/3rd was deducted and after applying the multiplier of 18, the compensation was calculated at Rs. 4,32,000/-. Rs. 10,000/- was awarded as loss of consortium, Rs. 5,000/- as funeral expenses and Rs. 5,000/- for loss of estate raising the total to Rs. 4,52,000/-.

Two appeals have been filed by the insurance company disputing the finding vide which the liability had been placed upon them whereas one appeal has been filed by only the widow seeking enhancement. The appeal by Kashish Midha was filed after a delay of 444 days. There was further delay of 929 days in re-filing the appeal after removing the objections.

The submission on behalf of the insurance company is that it is an admitted case of the parties that the tractor trolley was loaded with cement tiles and the tractor was insured for agricultural purposes and the Court has assumed and fastened liability upon them. It was urged that the owner did not step into the witness box to show that he owned any agricultural land whereas in the written statement the plea is that they belonged to well-to-do families and had their own business and the Tribunal has chosen to give a finding by relying upon the authorities which were not applicable to the facts. It was urged that there is a separate tariff for commercial vehicles and if any vehicle is attached with a cart or carriage or trolley then the tariff has to be paid. Reliance was placed upon '*Jai*

Bhagwan and another versus Koshalya and others, FAO No. 660 of

the heads as the appeal was filed under Section 163-A of the Motor Vehicles Act and the amount on the miscellaneous heads would be as per Schedule-II of the Act. Reference was made to ***Mahabir versus Krishan and others FAO-896 of 2000.***

The submission on the other hand was that no evidence was led by the insurance company that the tractor was being used for commercial purposes and the Tribunal had rightly fastened the liability on the insurance company. It was urged that the deceased was earning Rs. 10,000/- per month and the calculations have not been properly made and they were entitled to increase on the miscellaneous heads as well.

At the outset the submissions made on behalf of the claimants have to be rejected for two reasons. Firstly, the claim petition was filed under Section 163-A of the Motor Vehicles Act. The income of the deceased was stated to be Rs. 3,000/- per month. Had the income been over Rs. 40,000/- per annum, the claim petition under Section 163-A of the Motor Vehicles Act would not have been maintainable. I find that the claim petition initially had been filed under Section 166 of the Motor Vehicles Act where the income was stated to be Rs. 10,000/- per month but subsequently, the petition was amended and in April 2010, the amended petition was filed under Section 163-A of the Motor Vehicles Act. The claim petition was converted to one under Section 163-A of the Motor Vehicles Act. There was no evidence with respect to higher income. Therefore, the argument has to be rejected. So far as the amount on the miscellaneous heads is concerned, the petition was filed under Section 163-A of the Motor Vehicles Act and the amount on the miscellaneous heads would be as per Schedule-II of the

only reason given in the application is that the widow could not engage a counsel on account of paucity of funds.

The application for condonation of delay bearing No. CM-16983-C-II-2011 as well as FAO-6239-2011 are dismissed.

Reverting to the submissions on behalf of the insurance company. The issue whether the tractor attached to a trolley should have insurance both for the tractor and trolley and whether it would be required to be covered with a separate policy was examined in **Jai Bhagwan's** case (supra) and it reads as under:-

"5. Learned counsel appearing on behalf of the appellant would contend that Indian Motor Tariff which sets out under Section 4 tariff for commercial vehicles brings categories A to G. Tariff for trailer for category B is applicable under the following circumstances:-

"Any truck, cart, carriage or other vehicle, including agricultural implements, without means of self-propulsion, drawn or hauled by any self-propelled vehicle is referred to as trailer for the purpose of this tariff."

It sets out the tariffs for liability for agricultural/forestry vehicle. This provision cannot be stated, therefore, that a trailer which is used for agricultural purpose does not require any premium to be paid for insurance. The counsel would make reference to a list of miscellaneous and such type of vehicles. It is attached to tariff or miscellaneous special type of tariffs under clause D. In the annexure mentioned in Clause D agricultural tractor is set out in list I and entry 58 "trolleys and goods carrying tractors.". Rule 2(b) defines an agricultural tractor to mean a mechanically propelled four wheel vehicle. A tractor by itself is a non-transport vehicle. Category 'D' spells out in clause 4 as follows:-

"Trailers of special type of vehicles included under this

Section are not to be insured separately. The cover for the vehicle and trailer must be identical."

The counsel seeks to contend that if there is a trailer attached for a special category of vehicle it does not require to be insured. In my view, the argument is fallacious. We have already seen the tariff under category B which sets out the premium payable for a trailer. We have examined that a tractor by itself is not a transport vehicle. It becomes a goods carriage if only it is attached to a trailer which is intended to carry goods. The provision for tariff for miscellaneous types of vehicle in the schedule contains reference to both tractor and trailer. If Clause 4 states that the trailer is not be insured separately, it does not mean that insurance is not necessary for trailers attached to tractors used for agricultural purposes. It only means that an insurer shall not undertake a risk for a trailer separately without reference to a tractor. A tractor and trailer having different registration numbers would still require a comprehensive insurance for both the tractor and trailer if the trailer were to be attached to a tractor and used for any purpose be it agricultural or commercial. That is the way it should be understood is seen from the fact of how even policies are issued.

6. Learned counsel appearing for the insurer has produced before me pro forma of several types of policies which are issued under different forms of package policy. The forms of package policy provide for issuance of policies for (i) farmer's package/tractor only (ii) farmer's policy-tractor with trolley (iii) Class D policy for tractor only and (iv) Class D policy for tractor with trolley. The policy purchased in this case shows that it was a farmer's package policy and the policy has been issued under the third category referred to Class D farmer's package-tractor only. It will be wrong to understand from clause 4 relating to trailer in category D that no premium is necessary for trailers."

In view of the above, it is clear that if a tractor is attached with a trolley generally it becomes a goods carriage which is intended to carry goods. There is separate tariffs for various types of vehicles. The tractor by itself is a non-transport vehicle. There is separate tariff and a premium to be paid for a trolley. In the present case, no separate tariff was paid. The owner did not step into the witness box to state that he was taking the cement tiles for construction on his agricultural land. The Tribunal had wrongly assumed and made out a new case for the owner when the plea in the written statement was contrary to what it had held. The owner-driver had taken a plea that they belonged to well-to-do families and had their own business.

The position of law is settled. There is an admission that the tractor was attached with a trolley which was carrying cement tiles which proves that the trolley was being used for commercial purpose. Therefore, the liability could not have been fastened upon the insurance company and recovery rights should have been granted. Both the appeals filed by the insurance company are partly allowed and recovery rights are given to them to recover the amount from the owner-driver.

FAO Nos. 4992 and 4993 of 2010 are partly allowed and FAO No. 6239 of 2011 and CM-16983-C-II are dismissed.

(ANITA CHAUDHRY)
JUDGE

May 02, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No