THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4973 of 2011
Date of Decision.18.08.2017

The New India Assurance Company Ltd. ....Appellant

Vs

Krishna Devi and another ....Respondents

Present: Mr. Deepak Suri, Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

None for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The insurance company has preferred the appeal against the finding rendered by the Motor Accident Claims Tribunal on issue No.3 fastening the liability upon the insurance company, being the indemnifier.

Mr. Deepak Suri, learned counsel appearing for the appellant submits that the admittedly the deceased, who was sitting on the Rootavator attached to the tractor in the process of ploughing the fields fell down and received grievous injuries, resulting into amputation of his legs. Later on, he succumbed to the injuries in the hospital.

The contention of the appellant is that the Tribunal has assigned no reasons for fastening the liability on the insurance company. In fact, he has drawn attention of the Court to paragraph 15 and 16 of the award, which read as under:-

"15. The copy of insurance policy is Ex.R1. As per the same, the offending tractor was insured with respondent No.3 on the date of accident. However, in order to void its liability,

respondent No.3 insurance company has examined Avtar Chand, its Senior Assistant as RW1. He stated that the insurance policy Ex.R1 covers only tractor and trailer and Rootavator is not covered.

16. The learned counsel for respondent No.3 referred to the above evidence and contended that Rootavator, on which, deceased Jaswant Singh was sitting, was not insured and hence, respondent No.3 insurance company is not liable to pay any compensation. However, after considering the contention, I do not find any merit in the same. At the time of accident, Rootavator was attached to the tractor in question and the tractor was part of Rootavator when accident occurred. Therefore, death of Jaswant Singh occurred due to use of the tractor in question and respondent No.3. Insurance Company could not escape its liability. The insurance policy Ex.R1 was effective on the date of accident. Therefore, it is held that respondents No.2 and 3, being owner and insurer, respectively, are liable to pay the compensation to the claimant and respondent No.3 insurance company shall be liable to indemnify the insured. It is further held that respondent No.1 being the driver is not liable to pay any compensation under Section 163-A of the Motor Vehicles Act, 1988. In view of the above, this issue is decided against respondent No.3 insurance company."

The driver-owner before the Tribunal did not contest the case as they were afraid of being fastened with liability, owing to the negligence on their part, thus, the finding rendered on issue No.3 is liable to be set aside.

The claimant-respondent No.1 has put in appearance through Mr. Madan Gupta, Advocate but today there is no representation. Other respondents have also been served.

I have heard learned counsel for the parties and appraised the paper book. The relevant part of Para 24 of the claim petition, narrating facts and circumstances, reads as under:-

> *"That on 5.11.2007, Jaswant Singh (since deceased) along with respondent No.1 Dharam Singh had gone to his fields for ploughing the fields with the Tractor No.HR-07F/5854. Dharam Singh with the help of the above said Tractor had been ploughing the fields and Jaswant Singh was sitting on the Daul. At about 5.30 P.M., Dharam Singh asked Jaswant Singh to help him and to put pressure on the Rootavator (Ploughing Machine) which was attached with the tractor. Jaswant Singh in order to put pressured placed his foot on the Rootavator and respondent No.1 drove the tractor and started ploughing the fields and suddenly the foot of Jaswant Singh slipped and fell down and both the legs of Jaswant Singh came under the Rootavator and amputated. The respondent No.1 stopped the tractor and took out Jaswant Singh who was entangled with the Rootavator. Jaswant Singh was being taken to the hospital but he died in the way to hospital due to the injuries suffered by him*
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> *Jaswant Singh has died due to the injuries suffered by*

> *him while in the use of the vehicle i.e. tractor bearing registration No.HR-07F/5854. As such, the claimant is entitled for compensation under the provisions of Section 163-A of the Motor Vehicles Act and all the respondents being driver, owner and insurer of the vehicle are liable to pay the compensation to the claimants.*
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> *xxxxx xxxx xxxxx"*

On conjoint reading of the finding and pleadings, I am of the view that the case set up by the claimants was that the deceased on the asking of the owner-Dharam Singh sat on the Rootavator in order to put pressure. It is settled law that the tractor being driven in agricultural fields, no person is permitted to sit on the agricultural implement for tilling the land as it has sharp edged blades which can be very fatal and unfortunately, the deceased had become victim of the same. Admittedly, the insurance company had insured the tractor. It is not the case of a tractor trolley being plied for agricultural activities and can claim the indemnification, in view of the law laid down by Hon'ble Supreme Court in ***Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others 2014(14) SCC 148*** that the tractor trolley if plied for the purpose of agricultural work and the accident took place, the insurance company cannot deny the indemnification. Be that as it may but the fact remains that in this case both the deceased and the driver were negligent in putting the pressure on the Rootavator for the purpose of tilling the land. If at all, there was no pressure, the driver would have opted for putting the sand bags on the Rootavator but not a human being. In my view, the insurance company is totally absolved from the liability. Viewed it from another angle, if Jaswant Singh was gratuitous passenger, even then the insurance company was entitled to deny the indemnification.

In view of the above observations, I am of the view that the finding of the Tribunal, extracted above, under issue No.3 is liable to be modified, in essence, the insurance company is absolved from the liability. The liability is shifted upon the owner and driver. The claimants are entitled to seek execution of the amount of compensation i.e. ₹2,97,400/- with interest @9% per annum from the date of filing of the claim petition till realization from the insurance company but the insurance company shall be entitled to recover the same from the owner and driver of the offending tractor. The amount of ₹25,000/- deposited before this Court shall be transmitted to the Tribunal for part payment of the award, if not satisfied. If the award has already been satisfied by the insurance company, it shall be entitled to recover the same from the owner and driver of the offending tractor in accordance with law.

The award stands modified and the appeal of the insurance company is allowed with recovery rights against the owner and driver of the offending tractor.

(AMIT RAWAL)
JUDGE

August 18, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No