IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3234-2012 (O&M)
Date of Decision:- 05.09.2017

National Insurance Company Limited

.....Appellant

Versus

Usha and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. Pankaj Midha, Advocate
for respondent Nos.1 to 6.

Mr. Sansar Kundu, Advocate
for respondent Nos.7 to 9.

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RITU BAHRI, J. (Oral)

Appellant-Insurance Company has come up in appeal against the award of the Tribunal dated 02.03.2012 whereby the claim petition under Section 166 of the Motor Vehicle Act, 1988, has been allowed in favour of the claimants by granting compensation of ₹5,28,400/- on account of death of Rajbir in a motor vehicular accident took place on 06.05.2011.

Insurance Company has not challenged the award on the quantum of compensation. The sole ground to challenge the award is whether the agricultural fields where the accident occurred is a 'public place', within the meaning of Section 2(34) of the Motor Vehicles Act, 1988, so as to fasten the liability against the insurer for the compensation awarded by the Tribunal.

Perusal of registration certificate (Ex.P2) shows that it was an earth moving machine means excavator having cubic capacity 76. Excavator means a large machine being used for digging and moving earth. It is a mechanically propelled vehicle having four wheels fitted with engine having 76 BHP. The Tribunal termed as a "vehicle" as defined in Section 2(28) of the Motor Vehicles Act.

Learned counsel for the appellant is not disputing that initially the FIR (Ex.P3) was registered under Section 302 read with Section 34 IPC but on investigations the FIR was converted under Section 279 and 304A IPC. The main ground to challenge the award is that the JCB machine was plied in an agricultural field and the deceased had gone to his fields to supervise the operation of lifting of earth from their field by the JCB machine and since the machine was being driven in a rash and negligent manner, the deceased was run over by it resulting into serious and fatal injuries. JCB excavator was not being used at a public place. As per Section 147(1)(b)(1) of the Motor Vehicles Act, the Insurance Company is not liable to make the payment of compensation as at the time of accident the JCB machine was being put to use in a field for digging of the earth, the same was not being plied at a public place and hence, the Insurance Company cannot be held liable to indemnify the owner qua the accident in question.

Learned counsel for respondent Nos.1 to 6 has referred to a judgment of the Madhya Pradesh High Court passed in case **Oriental Insurance Company Ltd.** **Vs**. **Jamnabhai and others**, **2003 ACJ 127**; judgments from the Andhra Pradesh High Court passed in cases **P. Muse Khan and others** **Vs**. **M. Gopala Krishnaiah and another**, **2004 ACJ 1306**; **Gangineni Pitchamma and another** **Vs**. **Polia Balakrishna and another**, **2013 ACJ 30** and contends that the aspect with regard to use of JCB machine on an agriculture field has been examined and it has been held that the agricultural fields where the accident took place is a public place, within the meaning of Section 2(34) of the Act and thus the requirement under Section 147(1)(b)(i) is satisfied and the Insurance Company cannot be absolved of its liability for payment of compensation awarded by the Tribunal.

After hearing the learned counsel for the parties, the appeal filed by the Insurance Company is liable to dismissed.

The definition of 'public place' as per Section 2(34) of the Motor Vehicles Act is as under: -

> " 'Public Place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right to access, and includes and place or stand at which passengers are picked up or set down by a stage carriage"

This definition has came up for consideration in **Jamnabai and others** **case (supra)** whereby the Insurance Company had challenged the award on the ground that the accident taken place in a private place and not in public place, therefore, the Motor Vehicles Act was not applicable. The accident had taken place near the fields and the Division Bench while examining the definition of "public place" held that it had to be construed liberally, broadly and pragmatically and not in a pedantic and narrow sense with a view to advance the cause of justice and to defeat to same. The accident had taken in the fields of "Shivgiri Maharaj" and this field could not be held to be a private place in the strict sense of the term. It was observed further that generally the fields may be owned and possessed by a particular land owner but that does not mean that no one can pass through the same unless there is a specific prohibition from doing so. Consequently, it has held that the open fields where the accident had taken place would be covered under the definition of public place as per the Motor Vehicles Act.

The Andhra Pradesh High Court in the case of **P.Muse Khan and others** **(supra)** has considered the case where the accident had taken place in the agricultural field. In this case the vehicle was a bore-well support lorry, which was engaged to dig a bore-well in the fields of Shanker Reddy. During the course of drilling, the accident took place which resulting into death of deceased. Following the ratio of law laid down by the Full Bench of the Madras High Court in **United India Insurance Company Limited** **Vs**. **Parvathi Devi and others**, **1999(2) ACJ 1520** it was held that if the accident had taken place on an agricultural field it would be covered under the definition of public place as per Section 2(34) of the Act.

Thereafter, the Andhra Pradesh High Court in the case of **Gangineni Ptichamma's (supra)** was examining the claim petition filed by widow and son and where the insurer had denied its liability on the ground that the accident did not take place in a public place and the Tribunal had dismissed the claim petition, however, in appeal, the High Court had set aside the award and held that the definition of 'public place' under Section 2(34) of the Act was wide and required liberal interpretation. In paragraph Nos.7 and 8 it was observed as under: -

> "7. Though the expression "public place" has been employed in various provisions of the Act, dealing with the use of motor vehicles, the Parliament had expressly omitted the same in Section 140 of the Act. The result would be that the liability to pay compensation under that provision would arise, whether or not the accident occurred in a public place or in a purely private place. Therefore, the view taken by the Tribunal that the compensation is not payable, since the accident occurred in an agricultural field cannot be sustained.
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> 8. Even otherwise, the definition of "public place" under sub-section (34) of Section 2 of the Act is too wide in its purport. It not only takes into its fold, the roads, streets or other public place, but also any place to which public have a right of access and includes any place or stand at which passengers are picked up. In the context of social security measure provided for under Chapters X to XII of the Act, a liberal interpretation needs to be adopted and any place, which is not purely private in nature or to which the ordinary people cannot have access without specific permission, deserves to be treated as a public place."

In the facts of the present case, the ratio of above-said three judgments is directly applicable where the definition of 'public place' under Section 2(34) of the Act has been examined with respect to agricultural field and has been held that the agricultural fields where the accident took place is a ‘public place’ and the requirement under Section 147(1)(b)(i) of the Act is satisfied.

Thus, the appeal filed by the appellant-Insurance Company is accordingly dismissed.

September 05, 2017 **(RITU BAHRI)**
naresh.k JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No