

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

F.A.O. No. 2083 of 2013 (O&M)

Date of Decision:- 21.02.2017

The New India Insurance Co. Ltd.

....Appellant

vs.

Shiv Kumar Yadav (since deceased through LRs) and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. D.K. Prajapati, Advocate,
for the appellant.

Mr. Vikram Bali, Advocate for respondent No. 1.

Mr. Sanjeev Patiyal, Advocate for respondents No. 2 and 3.

DAYA CHAUDHARY, J. (Oral)

The present appeal has been filed by Insurance Company to challenge the impugned award dated 24.1.2013 passed by the Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal') under the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') whereby the claimant (respondent No.1) has been awarded compensation of ₹ 7,43,400/- along with interest @ 6% per annum from the date of filing of claim petition till its actual realization, on account of injuries sustained by the claimant in a motor vehicular accident which took place on 13.11.2009.

As per case of the claimant filed before the Tribunal on 13.11.2009, he was coming back home by driving his motor-cycle No.

HR99EH-5928 from Kulhariwala, District Solan to Himshikha Colony, Pinjore. When he reached near village Dhamala at about 7.30 p.m., a tractor trolley, make Holland, which was being driven in a rash and negligent manner, while going ahead of motor cycle of claimant, took a turn towards village Dhamala without giving any indication. Consequent whereupon, the claimant was hit by tractor trolley and fell down on the road. He suffered multiple and grievous injuries and was admitted in Civil Hospital, Chandimandir wherein he remained admitted for one month. The left leg of the claimant was amputated below knee cap and an iron rod was inserted in the left arm after operation.

The claim petition was contested by the Insurance Company by way of filing written statement on the ground that the driver of tractor trolley was not having valid and effective driving licence at the time of alleged accident and also that no accident took place with the tractor trolley.

The claim petition of the claimant was allowed vide award dated 24.1.2013 and claimant was held entitled to ₹ 6,48,000/- on account of loss of income and by considering his disability to the extent of 60%, he was also held entitled to 60% of the assessed income i.e. ₹ 3,88,000/- towards future loss of income, ₹ 3,24,600/- for affixation of artificial limb and ₹ 30,000/- for transportation charges, attendant expenses and special diet. Considering all heads and applying multiplier of 9, he was awarded compensation to the tune of ₹ 7,43,400/- along with interest @ 6% per annum from the date of filing petition till actual realization.

Aggrieved by said award, the appellant-Insurance Company has approached this Court by way of filing the present appeal.

Learned counsel for the appellant submits that the amount of compensation is on the higher side as no documentary evidence was produced regarding employment of the insured but still, income was assessed as ₹ 6,000/- per month and multiplier was applied on income of ₹ 6000/-. Learned counsel also submits that the learned Tribunal awarded ₹ 3,88,800/- i.e. 60% of the assessed income towards future loss of income on account of 60% disability suffered by him which is also on the higher side. It is also the argument of learned counsel for the appellant that the driver of the offending tractor was not having a valid and effective licence as it was issued only to drive scooter/motorcycle/ car/jeep/tractor whereas he was driving the tractor trolley at the time of accident. There was violation of terms and conditions of the policy and insurance company should have been granted recovery rights. Learned counsel further submits that the claimant has died during the pendency of the appeal and he cannot be held entitled for amount towards pain and suffering. At the end, learned counsel for the appellant submits that the learned Tribunal has wrongly relied upon judgment rendered in case **Nagashetty vs. United India Assurance Co. Ltd., (2001) 4 RCR (Civil) 597 (Supreme Court)** whereas this judgment is not applicable on the facts and circumstances of the case. Learned counsel for the appellant has relied upon judgment of Hon'ble the Supreme Court passed in **M/s Natwar Parikh & Co. Ltd. vs. State of Karnataka & others**, 2005 (4) RCR (Civil) 61 and judgments of this Court rendered in F.A.O. No. 3768 of 2014 titled as **New India Assurance Company Ltd. vs. Meeta Devi and others**, decided on 31.3.2015 and **The New India Assurance Company Limited vs. Sohan Lal and others**, 2013

(1) Law Herald 819 in support of his contentions.

Learned counsel for the claimants submits that the award of the Tribunal is well reasoned and each and every argument of Insurance company has been discussed. Trailer attached to the tractor was not being used for any commercial purpose and it does not make the driving licence invalid in view of judgment of this Court rendered in case **United India Insurance Company Limited vs. Surinder and others**, 2004 (4) RCR (Civil) 211. As per aforesaid judgment, the definition of 'tractor' includes any equipment, including trailer attached to it and is considered as a part of tractor and is covered under the insurance policy. Learned counsel also submits that the compensation awarded to claimant cannot be said to be on the higher side and has relied upon a judgment of this Court passed in F.A.O. No. 5745 of 2012 titled as **Sanjay Kumar vs. Ankush and others**, decided on 25.02.2014 in support of his contentions.

Learned counsel for respondents No. 2 and 3 has also relied upon judgment of Hon'ble the Apex Court passed in case **Fahim Ahmad and others vs. United India Insurance Co. Ltd. and others**, 2015 (1) SCC (Civil) 258 and a judgment of this Court passed in **Surinder and others case (supra)**, in support of his contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned award and other documents available on the file.

Filing of claim petition by the insured and passing of the award in favour of the claimant and awarding of compensation are not disputed.

Aggrieved by the award passed in favour of the claimant, the

New India Insurance Company Limited has filed the present appeal.

Claimant Shiv Kumar Yadav died during pendency of proceedings before this Court and his legal representatives were brought on record. The award passed by the learned Tribunal has been challenged mainly on the ground that the amount of compensation is on the higher side; the claimant is not entitled for amount awarded towards pain and agony as he has died during pendency of the proceedings; the driver of the offending vehicle was not having valid driving licence as he was driving tractor trolley whereas the driving licence was issued for driving a tractor only. The claim petition filed by injured (now deceased) was allowed and an amount of ₹ 7,43,400/- has been awarded along with interest @ 6% per annum from the date of filing of the petition till actual realization under different heads (₹ 3,88,800+ 324,600+30,000= 7,43,400/-). The respondents i.e. driver/owner and insurance company were held entitled to pay compensation jointly and severally.

Admittedly, the offending vehicle i.e. tractor was insured with the appellant-insurance company. Now, the question to be considered is as to whether any agricultural instrument attached to the tractor is deemed to be insured with the tractor. The word 'tractor' has been defined in the Act which is as under:-

“The tractor means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose) or propulsion; but excludes a road-roller.”

On perusal of definition of the word 'tractor', it transpires that tractor itself is not able to carry any load without the equipment and as such, any equipment attached to the tractor is a part of tractor and is covered

under the insurance policy.

In the present case, the trailer was attached with the tractor but nothing has come on record to show that the tractor was being used for any commercial purpose or there was any violation of terms and conditions of the policy issued by the appellant-insurance company. Even, it has not been pointed out in the argument raised by learned counsel for the insurance company that the tractor was being used for any commercial purpose or purposes other than the agricultural purpose(s) as contemplated under Section 149(2)(a)(i)(a) of the Act. The judgment relied upon by learned counsel for the appellant in **Sohan Lal's case (supra)** is not applicable in the present case as it has not been proved on record that the tractor along with trailer was being used for any commercial purpose other than agriculture. The issue that the trailer attached with the tractor is a part of tractor was the subject-matter of consideration before a Division Bench of this Court in **United India Insurance Co. Ltd. vs. Pritpal Singh and others, 1996 (2) RRR 335** wherein the following observation was made:-

“5.Definition of “motor vehicle” or “vehicle” is comprehensive so as to include any mechanically propelled vehicle adapted for use upon roads irrespective of the source of power and includes a trailer. “Trailer” has been defined separately but is also included in the definition of the “motor vehicle/vehicle”. Therefore, even though a trailer may be drawn by a motor vehicle, it by itself is a motor vehicle and both the tractor and the trailer taken together would constitute a

transport vehicle. If the trailer/trolley is not driven by a tractor, it does not become a vehicle and does not have any independent identity. The very fact that the trailer has been included within the definition of “motor vehicle” clearly shows that the legislature did not intend to exclude a tractor together with a trailer/trolley from the definition of the “motor vehicle”.

The definitions of trailer, tractor, motor vehicle, transport vehicle and goods carrier have been defined under Section 2 of the Act and for reference, the same are being reproduced hereunder:

“Section 2(28) is a comprehensive definition of the words “motor vehicle”. Although, a “trailer” is separately defined under section 2(46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words “motor vehicle” under section 2(28). Similarly, the word “tractor” is defined in section 2(44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words “motor vehicle” have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words “motor vehicle” in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforesaid definitions under section 2, reproduced

hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor- trailer would constitute a "goods carriage" under section 2(14) and consequently, a "transport vehicle" under section 2(47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the tractor-trailer in the present case falls under section 2 (14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under section 2(47) of the M.V.Act, 1988."

The argument of learned counsel for the appellant-Insurance company that the injured died during pendency of the proceedings and he is not entitled for any amount awarded under the head pain and agony is without any substance. Claimant submits that after accident as the claimant remained under pain and suffering after accident and it cannot be said that the injured at that time and is not entitled for amount granted towards pain

and sufferings and he has died after passing of the award by the Tribunal.

Keeping in view the facts and position of law, as discussed above, there is no force in the argument raised by learned counsel for the appellant. The claimants have rightly been granted compensation by the learned Tribunal which cannot be said to be on the higher side.

In view of the ratio of judgment passed in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, the claimants are entitled to a multiplier of 11 instead of 9 as awarded by the Tribunal. Although, no appeal has been filed by the claimants for enhancement of compensation but by exercising powers under the Act, the award passed by the Tribunal is modified to the extent that the multiplier of 11 instead of 9 be applied.

Accordingly, the learned Tribunal is directed to calculate the amount of compensation by applying multiplier of 11 and release the amount of compensation, if not already released. In case, the amount awarded by the Tribunal has already been released, then the difference of amount by applying multiplier of 11 be released within a period of two months from the date of receipt of copy of the order.

Appeal stands disposed of accordingly.

February 21, 2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes