

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

F.A.O. No. 2418 of 2010(O&M)

Date of Decision: 26.10.2018

United India Insurance Co. Ltd.

.....Appellant.

Versus

Chiman Lal and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sanjiv Pabbi, Advocate
for the appellant.

Mr. Maninder Sidhu, Advocate
for respondents no.5 and 6.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company challenging award dated 25.02.2010, passed by the learned Motor Accident Claims Tribunal, Sirsa.

Brief facts necessary for the adjudication of the case are that respondent no.1-Chaman Lal, one Kamlesh wife of Raju, Pawan Kumar son of Billa Ram and Rani Devi (deceased) were coming from Deepak Cotton Factory, Dabwali Road, Mandi Kalanwali after unloading the cotton crop in the said factory on a tractor bearing registration No. PB-31-C-2368, The tractor was being driven by respondent no.5-Rakesh. They were going to Kissan Agro, Centre Mandi Kalanwali. When the said tractor reached near Bishna Mal Jain School, Rani Devi (deceased) and the said Kamlesh, were sitting on the mudguard of the tractor in question. Rani Devi fell down because of the tractor passing over a speed breaker on the road. Resultantly, Rani Devi suffered injuries and she died due to the injuries received by her in the accident. Report No.11 (Ex.P-2) was lodged on the statement of

Chaman Lal at Police Station Kalanwali on 30.12.2007.

Petition under Section 163-A of the Motor Vehicle Act, 1988 (for short 'the Act') was filed by the claimants seeking compensation on account of death of Kamlesh.

Claim was resisted by the respondents. Following issues were framed by the learned Tribunal:-

1. Whether Smt. Rani wife of Chiman Lal died due to the injuries allegedly suffered by her in a vehicular accident which caused by the respondent no.1 while driving tractor bearing reg. no. PB-31-C-2368, rashly and negligently, if so its effect? OPP, which was later altered to “Whether smt. Rani wife of Chiman Lal died due to the injuries allegedly suffered by her in a vehicular accident out of the use of Tractor No. PB-31-C-2368 driven by respondent no.1, as alleged in the petition? OPP”
2. Whether the petitioners are entitled to be awarded any compensation, if so to what extent and from whom?OPP
3. Whether the instant claim petition is not maintainable in the present form and the petitioner has no locus-standi to file it?OPR
4. Whether the instant petition has been filed by the petitioners in active collusion with the respondents no.1 and 2, if so its effect?OPR
5. Whether the insured of vehicle no. PB-31-C-2368 has violated any term or condition of the insurance policy in question, if so its effect?OPR
6. Relief.

Learned Tribunal on consideration of the evidence on record, held that Rani Devi died due to the injuries suffered by her in the accident

arising out of the use of the offending tractor driven by respondent no.-5-
Rakesh.

A sum of ₹2,98,000/- alongwith interest at the rate of 7.5 %from the date of filing of the petition till realization was awarded to the claimants.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant argues that the tractor trolley in question was in-fact being used for commercial purpose. Therefore, there being a specific infraction of the insurance policy, the company cannot be held liable to pay the compensation in any manner. It is further submitted that the deceased was travelling on the mudguard of the tractor thus there was no negligence on the part of tractor driver. The insurance company cannot be held liable. Quantum of compensation is not under challenge. It is thus prayed that the insurance company be discharged of its liability to pay the compensation.

Learned counsel for respondents no.5 and 6 i.e. the driver and the owner of the offending tractor trolley refutes the abovesaid averments and submits that the insurance company has been rightly held liable to pay the compensation.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

In the claim petition, it is specifically averred that the deceased- Rani Devi along with Kamlesh and Pawan Kumar were coming back from Deepak Cotton Factory, Dabhwali Road, Mandi Kalawali after unloading the cotton crop at the said factory. It is specifically pleaded that the deceased

along with other two persons were working as labourers for unloading the cotton crop. It is specifically stated by PW-1-Chiman Lal, that the deceased was working as a labourer and had gone on the tractor for unloading of the cotton crop from the tractor at the factory while returning from the factory, two of the labourers were sitting in the trolley, whereas the remaining three on the mudguard of the tractor. PW-2-Bhoop Singh, ASI, Police Station Kalanwali, proved Rojnamcha Entry no. 11 dated 30.12.2007, of Police Station Kalanwali.

RW-1-Pawan Kumar, Manager Deepak Cotton Factory, examined by the insurance company, specifically admitted that supply of the produce of the cultivators is received as a result of sale purchase transactions. It is the categoric admission of RW-1 that the tractor trolley came along with labour, who unloaded the supply. RW-1 further deposed that on 29.12.2007 his factory received a supply of 24 Qtls.34 Kg from Kisan Agro. The name of the farmer from whom the supply was purchased was not mentioned in the record.

At this juncture, it is relevant to note that RW-1, clearly admitted that the supply was received from the farmers and whenever his factory used to purchase the supply, it instructed the farmer to unload the produce in its premises itself. Weighment of the supply was conducted in the factory. Therefore, to say that the tractor trolley was being used for a commercial purpose, is not made out merely because the produce was stated to be purchased through commission agency/agents. This is so for the reason that RW-1 specifically admitted that the supply in question was received directly from the farmers. It has been held by the Hon'ble Supreme Court in

Fahim Ahmad and others Vs. United India Insurance Company Limited, 2014(2) R.C.R (Civil) 470, that a tractor trolley cannot be termed to be a 'goods carriage'. There is no requirement of permit. In the present case, it is clearly proved on record that the said tractor trolley was being used for agriculture purpose. It cannot be held that the tractor-trolley was being used for commercial purposes. It has been held in **New India Assurance Company Limited Vs. Sandeep and others 2018(2) Law Herald 1163**, that the insurance company is liable to pay the compensation in a case where tractor in question was being used for agriculture purposes and the deceased was travelling on the tractor as a daily wager. Therefore, the insurance company cannot escape its liability on this account.

In the present case, the claimants filed a petition under Section-163-A of the Act and they have successfully proved on record, that the deceased was a labourer, travelling on the tractor for unloading of the cotton crop. Needless to say the petition having being filed under Section 163-A of the Act, there was no necessity to prove any rash and negligent act on the part of the driver of the offending vehicle.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 25.02.2010 passed by the learned MACT, Sirsa, which calls for interference by this Court.

Appeal is accordingly dismissed with no order as to costs.

October 26,2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.