

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

FAO No.2228 of 2012

Date of Decision.17.01.2018

Mangat Ram

.....Appellant

Vs

Phullo Devi and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Krishan Singh, Advocate
for the appellant.

Mr. Chandandeep Singh, Advocate
for respondent No.4.

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AMIT RAWAL J.(ORAL)

The present appeal has been preferred by the owner and driver of the tractor-trolley bearing registration No.HR-02B-2751 against the award passed by the Tribunal whereby recovery rights have been given to the insurance company of the amount of compensation against the claimants.

Learned counsel appearing on behalf of the appellant submitted that the Tribunal has committed illegality and perversity in giving the recovery rights to the insurance company on the premise that the driving licence of the driver of the tractor was not having an endorsement of commercial vehicle, though the unladen weight of the vehicle was less than 7500 kilograms.

Therefore, as per Section 2(21) of the Motor Vehicles Act, the tractor would fall in LMV category and no endorsement of commercial vehicle is required, thus, the finding rendered the Tribunal on the issue of liability is liable to be modified. In support of his contention, he relies upon the judgment of Hon'ble Supreme Court in **Fahim Ahmed and others Vs. United India Insurance**

Company Limited and others (2014) 14 SCC 148.

Per contra, learned counsel appearing on behalf of the insurance company submitted that once the trolley was not insured with the insurance company and it had been used for commercial purpose, the driving licence should have an endorsement of commercial vehicle and in the absence of the same, there was breach of terms and conditions of the insurance policy, thus, the Tribunal has rightly provided recovery rights to the insurance company.

I have heard learned counsel for the parties and appraised the paper book. The issue on the use of tractor trolley is no longer res integra in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Fahim Ahmed's case (supra)**. The relevant paragraph of the same reads as under:-

“6. A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose of construction of underground tank near the farm land for irrigation purpose(s). However, merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for commercial purpose(s) or purpose(s) other than agricultural purpose(s), i.e., for hire or reward, as contemplated under [Section 149\(2\)\(a\)\(i\)\(a\)](#) of the said Act.”

In view of the aforementioned, the finding rendered by the Tribunal giving recovery rights to the insurance company on the premise that the driving licence carrying the endorsement of LMV would not be sufficient requirement for driving a tractor trolley, is wholly misplaced.

Resultantly, the finding rendered by the Tribunal on issue No.3 is set aside

and the appeal is allowed. The liability to satisfy the claim shall be on the insurance company.

January 17, 2018
Pankaj*

(AMIT RAWAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No