IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.46 of 2013 (O&M)
Date of decision: 03.05.2018

Maha Singh and another .... Appellants

Versus

Meena and others ..... Respondents

2. FAO No.48 of 2013 (O&M)

Maha Singh and another .... Appellants

Versus

Ramesh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Rajkapoor Malik, Advocate
for the appellants.

Mr. Vinod Chaudhri, Advocate
for the Insurance Company.

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Avneesh Jhingan, J.

The present two appeals have been filed against the award dated 03.05.2012 passed by Motor Accidents Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal').

An accident took place on 16.08.2011, it proved fatal for Daljit and Raju rider on motorcycle bearing registration No.HR-01-T-6797. At about 1.00/1.30 p.m., near village Karsindhu, the motorcycle was struck by a rashly and negligently driven tractor bearing registration No.HR-31-C-2569 (for short, 'the offending vehicle'). As a result of accident, both the riders of the motorcycle lost their lives. FIR No.124 dated 16.08.2011 was registered at Police Station Uchana.

Two claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of deceased Daljit and Raju.

The Tribunal held that the accident was a result of contributory negligence of the driver of the tractor and the motorcycle. The ratio was held as 75:25. The compensation was awarded in both the claim petitions. It was held that the owner and the driver of the tractor would be liable to pay the compensation. The Insurance Company was absolved on the ground that there was breach of terms and conditions of the policy as the tractor was being used for commercial purpose.

The owner and the driver of the offending tractor have filed these two appeals being aggrieved that Insurance Company has been absolved from its liability. In FAO No.46 of 2013, respondents No.1 to 4 are the claimants and respondent No.5 is the insurer of the tractor and in FAO No.48 of 2013, respondents No.1 and 2 are the claimants and respondent No.3 is the insurer of the tractor.

The relevant facts for adjudication of these appeals are that the tractor was registered and insured for the purpose of agricultural use. The registration certificate was produced on record to establish that Phool Singh son of Bir Singh was the owner of the tractor. FIR No.124 dated

16.08.2011 was registered on the statement of Wazir Singh-the father of Daljit. In the FIR, it was mentioned that the tractor at the time of accident was loaded with bricks and tractor belongs to Shiv Brick Kiln, Karsindhu. The fact that the tractor at the time of the accident was loaded with bricks is admitted by the appellants as per the pleadings in appeal. Para 10 of the grounds of appeal reads as under :-

> *"That the Id. Tribunal has also erred in holding the present appellants liable for payment of compensation and wrongly exonerated the Insurance company from its liability being insurer of the offending tractor in the present case. Ld. Tribunal has wrongly held that the offending tractor was used for the commercial purpose at the time accident in question No evidence has been Ied by the insurance company to prove this fact that at the time of accident that Tractor was used for commercial purpose. In fact the tractor was Ioaded with the bricks and these bricks were carried by the tractor only for the construction of boundary wall of the plot appellant no.2."*

As per the said pleading, bricks were being carried in the tractor for construction of boundary wall of plot of appellant No.2. The insurer in their written statement raised a preliminary objection that there was contravention of terms and conditions of the insurance policy. The para 7 of the preliminary objections is quoted as under :-

> *"That tractor No.HR-31C-2569 was also being plied in contravention of terms and conditions of Insurance Policy. As per version of F.I.R., it is abundantly clear that Tractor in question was being used for transportation of bricks and it was engaged with Shiv Brick Kiln, Vill. Karsindhu. Thus, the owner of said Tractor did not comply with the terms and conditions of Insurance Policy, because this Tractor was being used for commercial purpose at the time of alleged accident, whereas Tractor is an agricultural implement which is meant for use only agricultural and forestry purpose. Even road tax is also exempted for the registration of Tractor being an agricultural implement. Thus it can not be used for carrying passengers, transporting goods or any other type of commercial purpose for hire and reward. These terms and conditions are clearly stated in the Insurance Policy of a Tractor. So, in the instant case, in view of these contraventions of Policy, the Insurance Company is not liable in any manner to indemnify the insured at all."*

On the basis of these pleadings, the issue was framed by the

Tribunal whether respondents No.1 and 2 had violated the terms and conditions of the Insurance Policy. The Tribunal while adjudicating the issue took note of the fact that as per the statement of Wazir Singh (PW5), the bricks were being transported in the tractor from Shiv Brick Kiln, Karsindhu. It was further noted that respondents No.1 and 2 have not disputed the above fact. The reliance was placed upon the insurance policy as Ex.R4 and registration certificate as Ex.R3 to show that the tractor was registered and insured for agricultural purpose only. The Tribunal held that insurance policy does not cover hire or reward or for racing pace making reliability trial or speed testing. The Insurance Company was exonerated from the liability to pay compensation.

The issue involved in the present appeal is whether merely on the fact that the tractor was loaded with bricks at the time of the accident itself would be enough to conclude that the tractor was being used for commercial purposes?

The answer, in the facts of present case, is no.

It is established that if the tractor was being used for commercial purposes then it will not be covered by the insurance policy.

Regarding the preliminary objection raised, the issue was framed. The insurer had raised the plea of breach of condition of policy. But apart from the pleadings, no evidence was adduced to substantiate the violation of terms and conditions of the policy. Even if it is ignored in the appeal that the appellants have pleaded that bricks were being taken for construction of boundary wall of appellant No.2, even then merely because bricks were being carried would not mean that tractor was being used for commercial purpose and consequently, there was a breach of condition of policy on the part of insured. The mere facts of bricks being carried does not prove hire or reward as contemplated under Section 149(2)(a)(i)(a) of the Motor Vehicles Act, 1988. It was mandatory for the insurer not only to plead the breach but also to prove the same by adducing positive evidence in respect of the same. Breach of terms and conditions of the policy cannot be presumed. The burden was on the Insurance Company to prove that vehicle was plied in breach of the terms and conditions. The reliance on the contents of the FIR to state that the vehicle was of Shiv Brick Kiln, Karsindhu does not advance the case of the insurer. As per the registration certificate Ex-R3, the tractor was owned by Phool Singh son of Bir Singh. The insurer in the written statement pleaded that the tractor was engaged with Shiv Brick Kiln, Karsindhu but the said pleading was not backed up by any written or oral evidence.

Learned counsel for the insurer-respondent argued that it is a matter of common knowledge that tractors are engaged for carrying material etc. In the absence of any evidence on record, such common knowledge cannot be relied upon for deciding the factual aspect. It was required to be proved that the tractor was being used for other than agricultural purpose and the goods being carried were of another person for his business activities. There is no such material to prove the commercial use of the tractor.

The appeals are allowed. The awards are modified to the extent that the owner, driver and insurer of the tractor are jointly and severally liable to pay compensation awarded by the Tribunal.

(AVNEESH JHINGAN)
JUDGE

03.05.2018
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1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes