In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5978 of 2013(O&M)
Date of Decision: 27.8.2018

Parsandi and others

---Appellants

versus

Vinod and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjeev K. Panwar, Advocate and
Mr. Ravi Malik, Advocate
for the appellants

Mr. Ashwani Talwar, Advocate,
for the insurance company

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<u>Rekha Mittal, J.</u>

The legal representatives of Hari Singh (since deceased) owner of offending vehicle i.e. tractor No. HR-30-H 6763 are in appeal to assail findings of the Motor Accidents Claims Tribunal, Palwal whereby the insured and driver have been held guilty for violating the terms and conditions of insurance policy on the basis whereof, the insurance company has been held entitled to recover amount of compensation from the insured after satisfying the award towards claimants.

Counsel for the appellant would argue that the Tribunal framed issue No. 3 to the following effect:-

> "Whether respondents No. 1 and 2 have violated the terms and conditions of insurance policy, if so to what effect? OPR3."

The vehicle in question i.e. tractor was insured for agricultural and forestry purpose. No such plea was raised by the insurance company that the vehicle was being used for non-agriculture purpose or for hire or reward, in violation of the policy conditions. It is further argued that the mere fact that sugarcane was being carried in the trailor attached with the tractor is not sufficient to record a finding that the vehicle was either being used for non-agriculture purpose or the same was used for commercial purpose, therefore, findings of the Tribunal on issue No. 3 cannot be allowed to sustain and liable to be set aside.

Counsel representing the insurance company has supported findings of the Tribunal by referring to statements of injured Vinod PW1 and Dharminder PW2 who had stated that a trailor was attached to the offending vehicle at the time of accident and sugarcane was loaded in the trailor.

I have heard counsel for the parties, perused the paper book particularly findings of the Tribunal on issue No. 3.

Indisputably, the tractor was insured for agriculture and forestry purpose. No such plea was raised by the insurance company that the vehicle was being used for non-agriculture purpose. There is nothing on record suggestive of the fact that sugarcane carried in the trailor belonged to a third person or the vehicle was used for hire or reward.

As the insurance company did not raise a specific plea with regard to use of the vehicle for the purpose other than permitted under the policy, there was no opportunity with the insured to explain his position in this regard. In this view of the matter, it can safely be held that the Tribunal has misdirected itself by holding that since sugarcane was loaded in the trailor attached to the tractor, the same was used in violation of the policy conditions entitling the insurance company to press for right of recovery against the insured. As a consequence, findings recorded by the Tribunal on issue No. 3 are liable to be set aside and ordered accordingly.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed. As a natural corollary, insurance company shall be jointly and severally liable to pay compensation to the claimant by way of indemnification of the insured without any right of recovery. No order as to costs.

(Rekha Mittal)
Judge

27.8.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No