

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO NO. 6145 OF 2013

RESERVED ON: SEPTEMBER 26, 2018

DATE OF DECISION: DECEMBER 21, 2018

Future General India Insurance CompanyAppellant

Versus

Krishan Pal and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Satpal Dhamija, Advocate for the appellant.

Mr.Rahul Srivastava, Advocate for respondent No.3.

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TEJINDER SINGH DHINDSA, J.

A claim petition filed by Krishan Pal and Smt.Sheela Devi under Section 166 of the Motor Vehicles Act, 1988 (herein referred to as 'the Act') seeking compensation to the tune of Rs.5 lakhs on account of death of their son Sonu in a motor vehicular accident that took place on 23.4.2010 came to be decided by the Motor Accident Claims Tribunal, Sonapat vide award dated 12.9.2013 and a compensation amount of Rs.3,36,000/- was awarded. The liability to pay the compensation amount was held to be joint and several upon the respondents including the Insurance Company.

Instant appeal has been filed by the appellant- Insurance Company assailing the award dated 12.9.2013 passed by the Tribunal and confining the scope thereof as regards

recovery rights having not been granted to recover the compensation amount from the driver-cum-owner of the offending vehicle.

Briefly, it may be noticed that the claim petition had been filed by the claimants i.e. parents of deceased Sonu on the averments that on 23.4.2010, Sonu had proceeded along with Rampat who was the owner and driver of a Combine Harvester Machine for harvesting the fields. At about 5.30 p.m. when Rampat was driving the harvester bearing registration No.HR-10P-4132, he had struck against Sonu who fell down and succumbed to the injuries suffered. FIR No.121 dated 24.4.2010, under Sections 279, 338 and 304-A of the Indian Penal Code was registered at Police Station Khekra, District Bhagpat on the statement of one Rohtash. Claimants asserted that Sonu was 21 years at the time of his death, was healthy and able-bodied and was earning Rs.6,000/- per month. An amount of Rs.5 lakhs was claimed towards compensation.

Claim petition was resisted by the driver-cum-owner of the Combine Harvester by filing a written statement in which even though the factum of accident was admitted but rash and negligent driving that had been attributed, was denied. The owner-cum-driver stated that the accident took place while he was in the process of backing the Combine Harvester and as such, Sonu had died on account of his own fault. He further stated that the Combine Harvester Machine was insured with the Insurance Company (respondent No.2) and the Insurance cover note was valid from 3.4.2010 to 2.4.2011 and as such, would cover time

and date of the accident.

Insurance Company filed a separate written statement taking a stand that driver-cum-owner of the offending vehicle was not holding a valid and effective driving licence at the time of the accident.

Upon the pleadings of the parties, the following issues were framed by the Tribunal:

"1. Whether the accident in question resulting in causing death of Sonu s/o Krishan Pal due to rash and negligent driving of vehicle bearing Reg.No.HR-10P/4132 by respondent No.1?OPP

2. If issue No.1 is proved in the affirmative, what compensation the claimants are entitled to and from whom? OPP

3. Whether the vehicle in question was being plied against the terms and conditions of the insurance policy and company is absolved its liability? OPR-2

4. Relief."

As regards Issue No.1, Tribunal recorded a finding that the accident in question resulting in the death of Sonu took place due to rash and negligent driving of offending vehicle bearing registration No.HR-10P-4132. Suffice it to observe that such finding has not been assailed by the appellant-Insurance Company or for that matter the owner-cum-driver of the vehicle. The same, as such, has attained finality.

Insofar as Issues No.2 and 3 are concerned, the Tribunal had held the claimants to be entitled to a compensation amount of Rs.3,36,000/-. The liability to pay the compensation amount had been held to be joint and several.

Learned counsel representing the appellant-Insurance Company has argued that respondent No.3-Rampat who was

owner-cum-driver of the insured vehicle i.e. Combine Harvester did not hold a valid and effective driving licence. It is urged that as per driving licence, Exhibit R1, Rampat was only authorized to drive scooter, motor-cycle, car and tractor. It is vehemently contended that since respondent No.3 was not authorized to drive the Combine Harvester Machine, there was a wilful breach on the part of the owner-cum-driver of the offending vehicle and under such circumstances, the Tribunal has erred in not granting in favour of the Insurance Company recovery rights so as to recover the compensation amount from respondent No.3.

Learned counsel representing respondent No.3 has, however, supported the award dated 12.9.2013 and submits that Rampat on the date of accident was holding a valid driving licence and was authorized to drive a tractor which would also cover a Combine Harvester. The offending vehicle was duly insured at the time of accident and as such, the Insurance Company cannot escape its liability as regards the compensation amount awarded in favour of the claimants.

I have heard learned counsel for the parties at length and have perused the case paper book as also records of the case.

“Tractor” is defined under Section 2, sub-clause (44) of the Act and the same is re-produced as under:

“Section 2, sub-clause (44): “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller.”

Section 10 of the Act deals with the form and contents of licences to drive. Section 10, sub-clause (2) entitles the holder of a driving licence to drive a motor vehicle of one or more of the following classes i.e. motor-cycle without gear; motor-cycle with gear; invalid carriage; light motor vehicle; transport vehicle; road roller and motor vehicle of a specified description.

It is seen that Combine Harvester is neither separately defined under Section 2 of the Act nor does it fall under any separate clause mentioned under Section 10 of the Act.

In **National Insurance Company Limited v. Swaran Singh and others**, 2004(2) RCR (Civil) 114, it was held that if on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and some other causes, having no nexus with driver not possessing the requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning the driving licence.

In the present case, learned counsel for the appellant-Insurance Company has not raised any submission as regards the accident in question resulting in the death of Sonu having any nexus on account of the driver-cum-owner, Rampat not possessing a licence authorizing him to drive a Combine Harvester.

Even otherwise, Combine Harvester does not fall in any separate class of vehicle under Section 10 of the Act. Even under Section 2 of the Act, there is no definition for a Combine Harvester. A tractor stands defined under Section 2, sub-clause

(44) of the Act and means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion), but excludes a road roller. Concededly, respondent No.3 held a valid driving licence to drive a tractor. Learned counsel for the appellant-Insurance Company would not dispute that even a Combine Harvester would be a vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion. It can, thus, safely be concluded that the driving method of the vehicle for which respondent No.3 held a valid driving licence was the same as that of the offending vehicle.

In view of the above, the sole contention raised by learned counsel for the appellant-Insurance Company that respondent No.3 did not possess a valid driving licence and as such, there was a breach of contract between the parties is without merit and the same is rejected.

There is no merit in the appeal. Appeal, as such, is dismissed and the award dated 12.9.2013 passed by the Motor Accident Claims Tribunal, Sonapat is affirmed.

Appeal dismissed.

DECEMBER 21, 2018
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note:	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
	<i>Whether Reportable:</i>	<i>Yes/No</i>