

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**1. FAO No. 6513 of 2016 (O&M)
Date of Decision : 30.10.2018**

Rajender and anotherAppellants

Versus

Krishna and anotherRespondents

2. FAO No. 6519 of 2016 (O&M)

Rajender and anotherAppellants

Versus

Krishna and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.P.S. Mann, Advocate
for appellants in both the appeals.

Mr. Imraan Farooqi, Advocate
for Mr. Sanjeev K. Panwar, Advocate
for respondent no. 1 in FAO-6513-2016 and
for respondents no. 1 to 3 in FAO-6519-2016.

Mr. Rajbir Singh, Advocate
for respondent no. 2 in FAO-6513-2016 and
for respondent no. 4 in FAO-6519-2016.

Surinder Gupta, J.

Two separate claim petitions, as per provisions of Section 166 of the Motor Vehicles Act, seeking compensation for death of Mahesh Kumar and his son, namely, Azad, were filed by Krishna wife of Mahesh Kumar, his son Varun and mother Chander Pali and separately by Krishna, which were allowed by the Motor Accident Claims Tribunal Palwal (later referred to as 'the Tribunal') and compensation of ₹8,75,000/- on account of death of Mahesh Kumar and ₹3,75,000/- for death of minor son Azad was allowed.

While exonerating insurer of the tractor bearing registration no. HR-50C-5065 (later referred to as 'the offending vehicle') involved in the accident its

driver and owner were held jointly and severally liable to make payment of the compensation.

2. Against award passed by the Tribunal, Rajender son of Mani Chand, driver of the offending vehicle and Vijay Singh son of Mani Chand, owner of the offending vehicle have filed above captioned separate appeals, which are being disposed of by this common judgment.

3. I take facts relating to the accident as mentioned in para 2 of the award passed by the Tribunal, which are reproduced as follows:-

“2. Brief common facts of the case, as pleaded in both the above mentioned petitions are that on 10.4.2015, claimant no.1 along with her husband Mahesh Kumar and son Azad, aged about 4 years (since deceased) was travelling in a tractor bearing registration no. HR-50C-5065 (hereinafter to be mentioned as the tractor in question) and they were going from village Bhiduki to Hodal. A trolley loaded with wheat was also attached with the tractor. This tractor was being driven by the respondent no.1 in a rash and negligent manner and also at a high speed. Claimant no.1 along with her husband Mahesh Kumar was sitting on the mud-guard of the tractor while their minor son Azad was kept by Mahesh Kumar in his hands. They along with some passers-by asked the respondent no.1 not to drive the tractor in such a rash and negligent manner, but he did not pay any heed to their request and continued to drive it in the same manner. Around 6.45 p.m. when it had just crossed village Khirbi while being driven by the respondent no.1 rashly and negligently, the husband of claimant no.1 along with his son Azad fell from the mud-guard of the tractor due to jerks and were crushed under

the tyre of the trolley of the tractor due to which they sustained multiple and grievous injuries which ultimately proved fatal to them causing their death. The respondent no.1 fled away from the spot after causing the accident. A case bearing FIR No. 222 was registered on 11.4.2015, under sections 279 and 304-A of IPC at police station Hodal in respect of the accident in question.”

4. Learned counsel for appellants has argued that both the deceased were sitting on the tractor (offending vehicle) and were themselves liable for their death as they had jumped from the tractor. At the time of accident, the offending vehicle was carrying the trolley loaded with wheat, as such, driver of the tractor could not drive it in a rash and negligent manner. At the most it was a case of contributory negligence as deceased-Mahesh Kumar was sitting on the mudguard of the offending vehicle with his 4 years son in his lap. Wife of the deceased-Mahesh Kumar was also sitting on the mudguard but had not fallen down which belie the story of claimants (respondents in these appeals) that driver of the offending vehicle was rash and negligent at the time of accident. Even in the criminal case registered against appellant no. 1- Rajender, he has been acquitted, which shows that he was not rash and negligent at the time of accident. He has further argued that insurance company while insuring the offending vehicle had charged premium of ₹50/- for loss of life of the employees as per provisions of IMT-29. Even if the deceased were sitting on the mudguard of the offending vehicle, the insurance company as per insurance policy cannot escape its liability as appellants were taking them to unload wheat in trolley as such deceased-Mahesh Kumar was their employee.

was caused due to rash and negligent driving of the offending vehicle by its driver. The appellants are trying to take benefit of poor drafting of claim petition wherein counsel for claimants has mentioned that the deceased jumped from the tractor. In fact he wanted to convey that the tractor was being driven in a rash and negligent manner at a very high speed and due to high speed of the offending vehicle, deceased-Mahesh Kumar alongwith his son had a jump on the mudguard of the tractor, fell down and came under its tyre. Wife of deceased-Mahesh Kumar did not fall down as she had caught the side railing on mudguard of the offending vehicle. IMT-29 does not protect the claim of appellants who have nowhere claimed that deceased-Mahesh Kumar was their employee and this term is only for private cars and motorized two wheelers.

6. Firstly, I consider the submission of learned counsel for appellants that accident was not caused due to rash and negligent driving of the tractor by appellant no. 1-Rajender. Claimants in claim petition have described the manner of accident in para 23 of the claim petition, which reads as follows:-

“23.The said tractor was being driven by the respondent no. 1 in a rash, reckless and negligent manner and at a very high speed and the petitioner no. 1 and her husband were sitting upon the seats of the tractor {(besides driver seat upon Marghat (mudguard))} and Azad was kept by Mahesh Kumar in his hands. The petitioner no. 1 and her husband and some passerby asked respondent no. 1 not to drive the tractor in such a rash and negligent manner, but he did not care for their requests and continued to drive the tractor in rash and negligent manner and at a very high speed and at about 6.45 p.m. when the said tractor

just crossed vill. Khirbi, due to rash, negligent and high speed driving of the tractor by the respondent no. 1, the husband of petitioner no. 1 namely, Mahesh Kumar alongwith his son Azad jumped from the seat of the tractor and they both came under tyre of the trolley of the offending tractor and as a result of which, they both sustained multiple and grievous injuries on their persons and vital parts of their bodies, which proved fatal to them as they both died of the same. After the accident, the respondent no. 1 fled away after leaving the offending tractor at the spot. This accident took place due to sole rash and negligent driving of respondent no. 1 while driving the offending tractor bearing no. HR-50C-5065.”

7. It appears that while drafting claim petition the word “jumped from seat” has been inappropriately used. From entire averments describing the accident, it is apparent that due to rash and negligent driving and speed of the offending vehicle, husband of claimant no. 1-Krishna had a jump on the seat of tractor and fell down. In case they had jumped from the tractor they would not have come under its tyre. Even otherwise there was no reason for deceased-Mahesh Kumar to jump from the offending vehicle with his 4 years old son in lap.

8. Learned Tribunal while discussing the evidence regarding the rash and negligent driving of the offending vehicle has observed as follows:-

“21. PW-2 Ram Kishan, who was an eye-witness to the accident as well as lodger of the first information report Ex.P-4 deposed in support of the averments in the petitions by stating that the tractor in question was driven by the respondent no.1 in a rash, reckless and negligent manner and as well as at a high speed.

*He corroborated the version in the FIR by stating that due to high speed and rash and negligent driving of the truck (sic tractor) in question, the deceased Mahesh Kumar and his son Azad, who were sitting on the mud-guard had fallen down from the same due to jerks and jumping of the tractor in question and had sustained injuries.....During cross-examination, he took a different stand by stating that Mahesh Kumar and his son had fallen down at their own. He did not say that they had tried to alight from the tractor and accident had taken place due to this reason. In such circumstances, in my opinion, there is no reason to disbelieve the statement of **PW-2 Ram Kishan**, which inspires full confidence for proving that the accident had taken place due to rash and negligent driving of the tractor in question as they had fallen down from the same due to jerks and had sustained fatal injuries leading to their death.”*

9. The accident in this case is admitted. From testimonies of PW-2 Ram Kishan and claimant-Krishna, who appeared as PW-3, it was duly proved before the Tribunal that accident was caused due to rash and negligent driving of the offending vehicle by appellant no. 1-Rajender and I find no infirmity in the findings of the Tribunal on this score calling for any interference. The argument of learned counsel for appellants to this effect, as such, is discarded.

10. While showing copy of the insurance policy, learned counsel for appellants has argued that premium of ₹50/- for employees as per IMT-29 was charged by the insurance company, which shows that deceased-Mahesh Kumar, who was being taken on the tractor to unload the wheat, was covered

“IMT. 29. LEGAL LIABILITY TO EMPLOYEES OF THE INSURED OTHER THAN PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER WHO MAY BE TRAVELLING OR DRIVING IN THE EMPLOYER’S CAR {Private Cars only/ Motorized two wheelers (not for hire or reward)}

In consideration of the payment of an additional premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured’s liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more than employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured.*

Subject otherwise to the terms, conditions limitations and exceptions of this Policy.

NB. To insert the number of employees for which the premium has been paid.”

It is evident that charging of premium of ₹50/- by the insurance

company does not entitle the appellants to carry the passengers on the mudguard of the tractor. Admittedly, the tractor was insured with capacity of only one person including the driver. Mudguard of the tractor is not a place to carry the passengers, as such, the liability of the insurance company for the death of gratuitous passenger on the tractor was rightly discarded by the Tribunal and learned counsel for the appellants has not been able to cite any law to the contrary during course of arguments.

12. As a sequel of my above discussion, I find no legal or factual infirmity in the award passed by the Tribunal calling for any interference in these appeals, which have no merit.

13. Dismissed.

October 30, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No