

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1005 of 2018 (O&M)
Date of decision: 18.07.2018

Parveen and another Appellants

Versus

Prince and another Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Ms. Sharmila Sharma, Advocate for the appellants.

B.S. Walia, J. (Oral)

CM No.3479-CII of 2018

For the reasons as are mentioned in the application, the same is allowed. Delay of 39 days in late filing of the appeal is condoned subject to all just exceptions.

CM No.14050-CII of 2018

For the reasons as are mentioned in the application, the same is allowed and copy of Mechanical Report, Annexure A-4 is taken on record.

Main Case

[1] Challenge in the instant appeal is to the grant of recovery rights to the

Insurance Company against the appellants i.e. owner-cum-driver of the

offending vehicle. The case as set up by the appellant was that a FIR was registered by the father of injured respondent No.1 i.e. (PW-1) mentioning registration number of the offending tractor as HR 42C – 1389, but, subsequently a supplementary statement (Ex.P-92) was made on 19.01.2017 implicating the appellants by giving their tractor number i.e.HR 42B – 9985.

[2] The Learned Motor Accident Claims Tribunal, Sonipat ('Tribunal' – for short) held that the eye-witness account of the claimant on oath by way of supplementary statement (Ex.P-92) before the Police on 19.01.2017 giving the number of the offending tractor i.e. HR 42B – 9985 owned by the appellants could not be brushed aside merely because the claimants father who was not even an eye-witness to the accident had made a statement to the Police mentioning wrong registration number of the offending vehicle.

[3] The learned Tribunal relied on the testimony of PW-4 i.e. investigating officer who deposed that he had recorded the statement of the claimant that the registration number of the offending tractor was HR 42B – 9985, that the same had been found and seized by him on the spot itself and further that when seized, the tractor was in a damaged condition. On the basis of the same, the learned Tribunal held that the possibility of false implication was ruled out.

[4] Admittedly, the injured-respondent No.1/claimant was travelling on the mudguard of the tractor. It is settled law that a tractor is not meant for passengers, therefore, it is evident that although appellant No.1 himself was driving the tractor, yet he was negligent in permitting respondent No.1-injured/claimant for riding on the mudguard of the tractor. In **AIR 2012 SC (Civil) 115** titled as **Susheelabai and others vs Basavaraj and another** it was held that a tractor being a vehicle with one seat, nobody other than its

Oriental Insurance Company Limited vs Shri Anil Kumar and others, 2012 (4) PLR 304 held that the Insurance Company cannot be made liable on account of the death and injury of a passenger on a tractor as there exists no obligation under Section 147 of the Motor Vehicles Act to cover the risk for a person travelling on a vehicle which was not authorized to carry passengers. In **United India Insurance Company Limited vs Ramji Lal and others, 2010 (4) PLR 436** it has been held that a person sitting on the mudguard of the tractor is an unauthorized passenger. In **Smt. Chameli Devi and others vs Mukesh @ Kalu and others, 2014 (3) RCR (Civil) 1029**, this Court has held that since a tractor is not meant for carrying a passenger, a claim is maintainable against the driver and owner but not against the Insurance Company.

[5] In the light of the position as noted above as also the Mechanical Report (Annexure A-4) which reflects that tractor No.HR 44B – 9985 was in a damaged condition, it is evident that it was tractor No.HR 44B – 9985 which was the offending vehicle. Since a tractor is not meant to carry a passenger, and in the instant case a passenger was carried on the tractor in addition to the driver, and suffered injuries as a result of an accident, no claim is maintainable against the Insurance Company though it is maintainable against the driver and owner of the said vehicle.

[6] In the light of the position as noted above, no fault can be found with the Award passed by the learned Tribunal awarding compensation to respondent No.1/claimant against the appellants on account of injuries suffered while travelling on the offending tractor as a passenger besides giving recovery rights to the Insurance Company in respect thereto.

[7] Accordingly, finding no merit in the appeal, the same is dismissed in limine. Amount of ₹ 25,000/- deposited by the appellants with the Registry of this Court is directed to be transferred to the Executing Court.

18.07.2018
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(B.S. Walia)
Judge

1. Whether speaking/reasoned

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Yes/No.
2. Whether reportable

:

Yes/No