

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4045 of 2017

Date of Decision: 19.04.2018

Mahabir Singh and anr.

.....Appellants

Vs.

Sanjay Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Deepak Goyal, Advocate, for the appellants.

Mr.Raghav Sharma, Advocate, for respondents No.1 and 2.

Mr.Vinod Gupta, Advocate, for
respondent No.3/Insurance Company.

RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the appellants/respondents No.1 and 2 i.e. Driver and Owner of the offending vehicle(for short 'the appellants'), against award dated 18.01.2017, passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') vide which recovery rights have been given to the respondent/Insurance Company against the appellants.

On 20.03.2014, at about 2:30 P.M., Aksit, since deceased along with other child Ankush @ Vicky was playing in village Niwarsi, near house of his maternal grand father. In the meantime, offending tractor bearing registration No.HR-05-AE-5677 being driven by respondent No.1 in a rash and negligent manner and at a high speed came and struck against the deceased after coming on the wrong side of the road/street. The above

the accident, he was shifted to Civil Hospital Ladwa where he was declared dead. Thus, it is alleged that accident took place due to sole rash and negligent driving of respondent No.1 and consequently, case FIR No.53 dated 20.03.2014 for the offence under Sections 279, 304-A IPC was registered against respondent No.1 at Police Station, Ladwa. Both the parties are not disputing that the accident took place on the rash and negligent driving of respondent No.1/Driver.

However, on the issue No.2, the compensation of Rs.4,25,000/- was assessed on account of death of Akshit.

On issue Nos.2A, 3 and 4, , the learned Tribunal has held that Tractor has been owned by M/s Ganpati Foods and respondent No.1 was employed as a driver on the tractor by the said firm and he would be paid salary by the firm and as per Insurance Policy Ex.R5, the same was got insured for a commercial vehicle. The question was decided that respondent No.1 was having a driving licence RW1 by which he was entitled to drive motorcycle/Scooter with gear, light motor vehicle tractor and light motor vehicle non transport. There was not separate endorsement for driving tractor trolley as it was a transport vehicle keeping in view the judgment relied upon in the case of New India Assurance Company Limited Vs. Prabhu Lal 2008(1) RCR (Civil) 198 (SC) and Subhash Chand and others Vs. Satya Rani and others, 2013(3) The Punjab Law Reporter 329 (P&H) wherein, it was held that tractor in question falls within the category of a transport vehicle and since it was being used for commercial purpose and it was actually insured under the commercial vehicle package policy, therefore, respondent No.1 on the date of accident was not possessing a

handed the tractor trolley to respondent No.1 for driving, committed breach of terms and conditions of the insurance policy and without any endorsement of transport vehicle, the driving licence Ex.R1 was not valid and owner and driver were held liable to make payment of compensation. The Insurance Company was directed to make the payment of compensation and given recovery rights to recover the amount from driver and owner.

Learned counsel for the appellants has referred to the judgment passed by the Hon'ble Supreme Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited 2017 Law Suit (SC)735**, in which it has been held that if a driver has a licence to drive Light Motor Vehicle, no separate endorsement for driving the heavy vehicle is required and the driving licence cannot be held invalid for any transport vehicle. Counsel for the parties are not disputing the law laid down by the Hon'ble Apex Court.

In view of the above, the present appeal is allowed and finding given by the learned Tribunal to recover the amount of compensation from the driver and owner i.e. appellant is set aside and the Award is being modified to the extent that all the respondents No.1 to 3 i.e. Driver, Owner and Insurance Company are liable to make pay jointly and severally.

(RITU BAHRI)
JUDGE

19.04.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No