IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2440 of 2004 (O&M)
Date of decision: March 7, 2019

Ajay Kumar and others

...Appellants

Versus

Darshana Devi and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Harmeet Sharma, Advocate,
for the appellants.

Mr. Paul S. Saini, Advocate,
for respondent No.4—Insurance Company.

JAISHREE THAKUR, J.

1. This appeal seeks to challenge the award dated 3.12.2003 passed by the Motor Accident Claims Tribunal, Hoshiarpur, wherein the Insurance Company has been given right to recover the amount of compensation given the claimants on account of death of Baldev Singh.

2. In brief, the facts are that on 8.10.2000 deceased Baldev Singh, went to village Deorha (HP) on SonaLika Tractor Trolley which was being driven by Ajay Kumar—appellant No.1. One labour Ravinder Singh was also on the tractor-trolley. They left for Hoshiarpur in order to sell the safeda wood loaded in the tractor-trolley. Both Baldev Singh and Ravinder Singh were sitting on the left mudguard. At about 7 p.m. when the tractor-trolley reached in the area of village Barthind (Jharing) near Chambwala Choe (rivulet) bridge, the tractor trolley after crossing the rivulet water, was

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ascending and the front portion of the tractor was uplifted and as a result of which Baldev Singh fell down and came underneath the left tyre of the tractor and died on the spot. Alleging that the accident in question had taken place due to carelessness and negligent driving of appellant No.1, FIR No. 32 dated 19.3.2001 under Section 279/304-A IPC was registered at Police Station Mukerian, District Hoshiarpur on the basis of the statement of Darshana Devi widow of Baldev Singh and also filed a claim petition, claiming compensation on account of death of Baldev Singh. Appellant No.1 (driver of the tractor/trolley), the New India Insurance company, Dasuya, Mohinder Singh, Baldev Singh, Joginder Singh and Des Raj (owners of the offending tractor trolley) were arrayed as respondents No. 2 to 6 respectively.

3. On notice, appellant No.1 filed the written statement raising preliminary objections that the appellant was neither the owner nor the driver of the tractor at the time of accident and he has been unnecessarily been dragged in the present proceedings and Mohinder Singh, Joginder Singh, Des Raj and Sunil Kumar are the necessary parties being owners and driver.

4. Respondent No.2—New India Assurance Company Limited also filed written statement taking preliminary objections that the claim petition is bad for non-joinder of necessary parties; that the offending tractor was being driven by a driver who did not hold a valid driving licence and the claim petition has been filed by the claimants in collusion with respondent No.1 to get compensation from the insurance company.

5. On the pleadings of the parties, the following issues were

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framed by the Tribunal on 12.8.2003.

1. *Whether Baldev Singh died in motor vehicle accident which took place on 8.10.2k at about 7.00 p.m. In the area of village Barhing (Jharing) due to rash and negligent driving of the offending Sopnalika (international) A.F. Tractor Trolley by Ajay Kumar respondent no.1? OPA*
2. *Whether the respondent No.1 was not having any valid driving licence at the time of accident? OPR-2*
3. *Whether the present claim petition is bad for non-joinder of necessary party ? OPR-2*
4. *Whether the present claim petition is not maintainable? OPR-2*
5. *To what amount of compensation, the claimants are entitled and from whom? OPA*
6. *Relief.*

6. After scrutiny of the evidence brought on record, the Tribunal, while deciding issue No.1, held the accident took place due to rash and negligent driving of the offending vehicle being driven by Ajay Kumar—appellant No.1 herein, while further deciding issue No.2, it was held that Ajay Kumar—appellant No.1 was not holding a valid driving licence. Issues No. 3 and 4 were also decided against the insurance company. While deciding issue No. 5, the Tribunal awarded compensation of ₹2,04,000/- in favour of the claimants and it was ordered that at the insurance company shall be entitled to recover the amount of compensation to be paid by it from the owners of the offending tractor. This is how the said award has come to challenge in the instant appeal by the owner of the offending tractor, wherein right of recovery has been allowed to the Insurance Company.

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7. Learned counsel for the appellants submits that the award passed by the Tribunal is not sustainable in law. It is submitted that appellant No.1 was not driving the offending vehicle at the time of accident and, in fact, it was Sunil Kumar was the driving the offending vehicle. It is further submitted that mere registration of a criminal case against appellant No.1 would not be relevant unless the trial is concluded and the appellant No.1 is held guilty in that case.

8. Per contra, learned counsel appearing on behalf of the respondent—insurance company submits that the Tribunal after detailed discussion of the evidence brought on record and the relevant law, has held that the accident had taken place on account of rash and negligent driving of offending vehicle being driven by appellant No.1 and as such no interference is called for in the instant appeal. It is further submitted that the tractor trolley does not fall within the categories of 'vehicles' for carrying passengers, and, therefore, the insurance company cannot be fastened with the liability. It is further submitted that the tractor was attached with a trolley and the deceased was a gratuitous passenger and as such the insurance company could not be made liable to indemnify the deceased, particularly when the driver did not have a valid and effective licence to drive the offending vehicle. In support of his contentions, he relies on **United India Insurance Company Limited Versus Ramji Lal and others 2010 (4) PLR 436** and **Smt. Chameli Devi and others Versus Mukesh alias Kalu and others 2014 (3) R.C.R. (Civil) 1029.**

9. I have heard counsel for the parties and gone through the impugned award as well as case law.

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10. A perusal of the impugned award would show that an application was moved by the appellants for impleading Sunil Kumar as respondent, being the driver of the offending vehicle, but the same was declined and that order attained finality and also as per the statement of Des Raj (AW3) itself, the tractor was being driven by Ajay Kumar at the time of accident. Therefore, the arguments, as raised by the learned counsel for the appellants that it was Sunil Kumar who was driving the offending vehicle cannot be sustained on the face of the record and the Tribunal has rightly held that it was appellant No.1 who was driving the offending vehicle at the time of the accident.

11. The sole question that arises for consideration in the present appeal is, whether the insurance company could be made liable to indemnify the deceased, on the face of the record that the offending vehicle was being driven by a person who was not holding an effective and valid licence and whether the deceased was an unauthorised passenger as the tractor trolley is not meant for carrying passengers?

12. The questions as framed are no longer res-integra, as it has been held in a catena of judgments that a tractor is not meant for passengers and as such insurance company cannot be fastened with any liability arising out of accident if any. Reference in this regard can be made to the judgment in the case of **United India Insurance Company Limited (supra)**, wherein this Court came to hold that a tractor is not meant for carrying passengers, which has only a sitting capacity for a driver, while further holding that there is no insurance cover for a person sitting on the mudguard of a tractor and, therefore, the insurance company cannot be fastened with the liability

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in case of any untoward incident.

13. Similar is the view that has been taken in **Smt. Chameli Devi's case (supra),** wherein it has been held that a tractor is not meant for passengers and if a person sitting on the mudguard falls and suffers a fatal accident, the claim against the insurance company would not be maintainable. It was held that he was a gratuitous passenger and that claim would only be maintainable against the driver and the owner of the offending vehicle.

14. This is the consistent view held by the Courts in several judgments rendered in **National Insurance Co. Ltd. V. Chinnamma 2004 (4) R.C.R. (Civil) 300**, **The Oriental Insurance Company Limited Versus Ishwanti and others 2012 (3) PLR 840**, **HDFC ERGO General Insurance Company Ltd. Versus Rahila and others 2015 (3) PLR 560**, and **Bajaj Allianz General Insurance Co. Ltd. Versus Kailash Devi and others 2018 (1) PLR 681.**

15. Therefore, in the instant case since the passenger was a gratuitous passenger, the Tribunal rightly held that the insurance company would be at liberty to recover the amount of compensation from the owner/driver.

16. In view of the above, there is no illegality or infirmity in the award so impugned warranting interference by this Court. Consequently, the appeal is dismissed.

March 7, 2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No

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