

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 2345 of 2012 (O&M)

DECIDED ON: JANUARY 18, 2019

RELIANCE GENERAL INSURANCE COMPANY LTD

.....APPELLANT

Versus

SMT. SAVITRI DEVI AND OTHERS

.....RESPONDENTS

AND

F.A.O. No. 2346 of 2012 (O&M)

RELIANCE GENERAL INSURANCE COMPANY LTD

.....APPELLANT

VERSUS

SMT. BIMLA DEVI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tajender Joshi, Advocate
for the appellant.

Mr. Tara Chand Dhanwal, Advocate
for respondents No.4 and 5.

Mr. Varun Mittal, Advocate for
Mr. Vikas Mohan Gupta, Advocate
for respondent No.8.

AVNEESH JHINGAN, J.(oral)

The insurer of tractor bearing registration No. HR-16-F-8912
(hereinafter referred to as 'offending vehicle') has filed two separate appeals
against the award dated 29.11.2011 passed by the Motor Accident Claims
Tribunal, Bhiwani (for short 'the Tribunal') awarding compensation on
account of death of Man Singh and compensation on account of injury

sustained by Bimla Devi.

The facts in brief necessary for adjudication of the present appeal are that on 04.03.2009, Man Singh alongwith Bimla Devi and others was travelling in a jeep bearing registration No. HR-10-B-2807. On their way, the jeep was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Man Singh and Bimla Devi sustained injuries and were shifted to Sarvodya Hospital, Hisar. Man Singh succumbed to his injuries on 06.03.2009. FIR No. 30, dated 06.03.2009 was registered at Police Station Siwani.

Two separate claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') claiming compensation for the death of Man Singh and another claiming compensation for the injuries sustained by Bimla Devi.

The Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation. The Tribunal awarded a sum of ₹6,13,559/- as compensation alongwith interest @6% per annum to the legal heirs of Man Singh and a sum of ₹73,944/- was awarded to Bimla Devi alongwith interest @6% per annum.

In the claim petition filed by the legal heirs of Man Singh, it was pleaded that he was an ex-army personnel and doing agriculture work on 243 kanals of land. The Tribunal assessed the monthly income of the deceased as ₹10,000/- per month, 1/3rd deduction made for self-expenses and multiplier of 7 was applied. The amount awarded included ₹37,500/- under the conventional heads.

documents produced by them.

Learned counsel for the appellant raised four contentions:

- 1) The Tribunal erred in holding the insurer liable to pay the compensation, as the driver of the offending vehicle was holding licence to drive Light Motor Vehicle (LMV) whereas, he was driving the offending vehicle without any endorsement on the licence.
- 2) At the time of accident, the offending vehicle had a trolley attached with it, hence, the route permit was required as the offending vehicle was a goods carrying vehicle.
- 3) The claimants failed to prove the involvement of the offending vehicle, as FIR was registered without mentioning the registration number of the offending vehicle and the name of the driver.
- 4) The monthly income of the deceased assessed by the Tribunal is on the higher side.

Learned counsel appearing for driver and owner defends the award and contends that there is no evidence adduced by the appellant before the Tribunal to prove the issues raised in appeal now.

The contention raised by learned counsel for the appellant lacks merit.

It would be pertinent to note that following issues were framed by the Tribunal:

1. Whether the accident which occurred on 04.03.2009 at about 6.30 PM caused death of Maan Singh son of Har Chand and caused injuries to petitioner Bimla Devi due to rash and negligent driving of respondent No.1 while driving tractor bearing registration No. HR-16F/8912 as alleged? OPP

2. If issue No.1 is proved, whether the petitioners are entitled for

compensation, if so, to what amount and from whom? OPP

3. Whether petition is not maintainable in its present form? OPR
4. Whether the petitioners have no locus standi or cause of action to file the present petition? OPR
5. Whether the driver of the offending vehicle was not holding the valid driving licence on the date of accident? OPR
6. Whether the respondent No.3 is not liable to indemnify to respondent No.2? OPR-3
7. Whether the petition is bad for non joinder of necessary parties? OPR
8. Whether Tribunal Court has no jurisdiction to try and decided the present petition? OPR
9. Whether the petitioners are estopped by their own act and conduct to file the petition? OPR
10. Relief.”

The claimants after framing the issues discharged the onus cast upon them under Section 166 of the Act. One of the claimant Bimla Devi, who was injured in the said accident was the eye witness to the accident and deposed before the Tribunal to prove that the offending vehicle was involved in the accident and the accident was caused due to the rash and negligent driving of the offending vehicle. The said evidence was not rebutted by the respondents before the Tribunal. In para 21 of the award, the Tribunal has specifically recorded that the issues No.3 to 9 were not pressed by the respondents and no evidence in support of those issues was produced. These factual issues are being raised for the first time in the appeal. In the absence of any evidence produced before the Tribunal, the same cannot be gone into at this stage. The validity of driving licence was not challenged before the

Vehicle is valid for driving the offending vehicle is no longer res-integra.

Supreme Court in *Mukund Dewangan versus Oriental*

Insurance Co. Ltd., (2017) 14 SCC 663 held as under:-

“54. The vehicle involved was a tractor which was used for carrying goods. The goods were carried in a trailer attached to it. It was held that if a driver was holding an effective licence to drive a tractor, he could validly drive the tractor attached to a trailer. The contention that it was a transport vehicle, as the tractor was attached to a trailer and as such the driver was not holding a valid licence, was rejected. This Court has laid down thus:

“9. Relying on these definitions, Mr. S.C. Sharda submitted that admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted that therefore it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Co. could not be made liable. He submitted that the High Court was right in so holding.

10. We are unable to accept the submissions of Mr.S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly Under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C.Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car ora trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results.

Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

(emphasis supplied)

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Section 10(2) (a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

XXX XXX XXX

'Light motor vehicle' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with

Section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act

No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. And holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2) (d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

It was held that no separate endorsement is required to drive transport vehicle of a light motor vehicle classes i.e. LMV, tractor or road roller, the unladen weight of which does not exceed 7500 kg. The driving

licence for such vehicles would be a valid licence to drive transport vehicles

of the said class.

The Supreme Court in the latest decision of *Sant Lal versus Rajesh and others, (2017) 8 SCC 590* following the decision of the *Mukund Dewangan's case (Supra)* held that driver holding a driving licence effective for driving LMV class or driving a tractor needs no separate endorsement on the driving licence regarding transport vehicles if trolley is attached to tractor. The answer to first aspect of contention is decided against the appellant i.e. tractor attached with trolley can be driven by a licence holder of tractor and LMV.

The second contention of learned counsel for the appellant that the trolley was attached with the offending vehicle, hence, it became a goods carrying vehicle is not well founded.

There is nothing on record to establish that some goods were loaded in the trolley.

Moreover, a Division Bench of this Court in case of *United India Insurance Company Ltd. Versus Surinder, 2004(4) R.C.R. (Civil) 211* held that as under:-

The offending vehicle i.e. Tractor was insured comprehensively against a premium of Rs.2,076/- with the appellant-company. Now the question to be seen is whether any agriculture instrument attached to the tractor is deemed to be insured along with the tractor. The word 'tractor' has been defined in the Motor Vehicles Act, 1988 as under:-

“The tractor means a motor vehicle which is not itself constructed to carry any load other than (the equipments used for the purpose) or propulsion but excludes a road roller.”

A perusal of the definition of word 'tractor' shows that tractor itself is not able to carry anyload without the equipments. Therefore, any equipment attached to the tractor is a part of the tractor and covered under the insurance policy.

It was held that any equipment attached to tractor becomes part of tractor and is covered in definition of tractor under Section 2(44) of the Act.

The contention raised by learned counsel for the appellant that registration number and the name of the driver of the offending vehicle was not mentioned in the FIR does not enhance his case.

Bimla Devi was the eye witness to the accident. She made a deposition before the Tribunal. Moreover, the driver and owner nowhere took a plea that they were falsely implicated in the accident. Suffice to say that the said issue was never pressed before the Tribunal.

The grievance raised with regard to the monthly income assessed by the Tribunal deserves rejection. The deceased was an ex-army personnel having 243 kanals of land and involved in cultivation of the same. Keeping in view the facts of the case and considering that he had two sources of earning i.e pension and from agricultural land, the Tribunal rightly assessed the monthly earning as ₹10,000/-. No ground has been made for interfering with the income assessed by Tribunal. Moreover, the amount awarded under the conventional heads by the Tribunal is on the lower side. Taking into consideration the facts in entirety, the monthly income assessed by the Tribunal is upheld.

Both the appeals being without merits, are dismissed.

(AVNEESH JHINGAN)
JUDGE

JANUARY 18, 2019
SHAM

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No