In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2689 of 2013(O&M)
Date of Decision:11.2.2019

Jagdish Lal and another

---Appellants

vs.

Parwinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Rajbir Singh, Advocate
for the appellants

Mr. R.M.Sharma, Advocate
for respondent No. 2

Mr. Vikas Mohan Gupta, Advocate
for respondent No. 4

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<u>Rekha Mittal, J.</u>

The owner and driver of tractor bearing Engine No. 5131298667128 chasis No. 913111187304 are in appeal against award dated 1.4.2013 passed by the Motor Accidents Claims Tribunal, Sangrur (in short "the Tribunal") whereby the insurance company has been exonerated of liability to pay compensation and compensation has been held to be payable by the appellants being owner and driver of offending vehicle.

Parwinder Kaur and others, respondents. No. 1 to 3 filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short "the Act") claiming compensation on account of death of Ajaib Singh in a motor vehicular accident that took place on 14.9.2008. The Tribunal assessed compensation of Rs. 6,59,936/-, to be paid by respondents No. 1 and 2 therein but insurance company-respondent No. 3 was exonerated of liability to pay compensation in view of findings recorded in para 14 of the award.

Counsel for the appellants would argue that no specific issue was framed by the Tribunal if the vehicle in question was being used for commercial purpose, in violation of terms and conditions of insurance policy. It is argued that testimony of Darshan Singh RW1 has been wrongly construed in order to say that bricks belonging to Tarsem Chand, owner of brick kiln were being carried in the trolley attached with the tractor. Another submission made by counsel is that in the present case, the policy Ex. R4 is a farmer's package policy, therefore, the provisions of tariff for miscellaneous and special types of vehicle (Class-D) would be governing the policy in question and as a consequence, the insured is entitle to benefit of Section 4 of India Motor Tariff regulations dealing with tariff for commercial vehicles and accordingly, even if the vehicle in question is being used for hire or reward, the insurance company cannot escape its liability to pay compensation.

Counsel representing the insurance company has supported findings recorded by the Tribunal exonerating the insurance company of liability to pay compensation.

I have heard counsel for the parties, perused the paper book and records.

The insurance company, in reply, raised a specific plea that the tractor in question was insured for agricultural purpose but at the time of alleged accident, the same was plied for commercial purpose, thus, the insured had breached the terms and conditions of the policy and the insurance company is not liable to pay compensation. No doubt, the Tribunal did not frame a specific issue on this aspect of the matter, but the Tribunal framed issue No. 2 as to from whom the claimants are entitle to receive compensation. Issue No. 2 framed by the Tribunal, reads as follows:-

> "If issue No. 1 is proved in favour of the claimants, whether the claimants are entitled to receive the compensation from the respondents, if so, what extent and from whom? OPP"

The first question for consideration of the Court is whether the vehicle in question was being used for a purpose other than agriculture. To determine this question, reference to testimony of Darshan Singh, driver of the offending vehicle is material and relevant. Darshan Singh tendered into evidence his affidavit by way of examination in chief. In cross examination by counsel for the insurance company, he had stated that he was working as driver with Tarsem Chand, owner of tractor bearing No. PB-13T-4762 for the last about 7-8 years and Tarsem Chand is brick kiln owner. A relevant extract from his cross examination reads as follows:-

> "I am working as driver for the last 7-8 years with Tarsem Chand owner of the tractor No. PN 13 T- 4762. Tarsem Chand is brick kiln owner. At the time of taken of possession of tractor in question by the police same was loaded with bricks. Volunteered. The possession was taken from the fields of Fatehgarh but I cannot tell

> name of the owner of the fields. We use the tractor for agriculture purposes. The brick was brought from Tarsem Chand to built the kotha in his fields. There is no permit of tractor. I have no land. I proceeded from the kiln at about 12-00 p.m. On 14.9.2008. My tractor trolly was taken in possession by the police from the brick kiln of Tarsem Chand. It is wrong to suggest that my tractor trolly took in possession from near village Jakhepal towards village Dula Singh Wala on 14.9.2008. It is wrong to suggest that the tractor in question is used for commercial purposes."

There is no dispute that tractor is owned by Jagdish Lal appellant-respondent 2 before the Tribunal. Jagdish Lal did not appear in the witness box to explain as to how the bricks from brick kiln of Tarsem Chand were carried in the trolley attached to the tractor for the purpose of building a kotha in the fields of Tarsem Chand. Tarsem Chand has also not appeared in the witness box to explain as to how this tractor attached with trolley was being used for the purpose of transporting bricks from his brick kiln to his fields for building kotha. In the given circumstances, it can safely be held that tractor was being used for a purpose other than agriculture, in violation of the terms and conditions of policy issued for agricultural purpose only. In the policy titled 'Farmer's Package Policy' there is reference to agriculture tractor in two columns making reference to premium of Rs. 3517/- with detail OD premium Rs. 2142/- and TP premium Rs. 1375/-. In this view of the matter, I do not find any reason to differ with findings of the Tribunal that tractor in question was being used for a purpose other than for which the same was insured as per the terms and conditions of policy Ex. R4.

Counsel for the appellants has raised an issue that since the agricultural tractor falls within the list of miscellaneous and special types of vehicles at Sr. No. 1 and keeping in view the tariff for miscellaneous and special types of vehicle (Class-D) even the commercial vehicles policy would govern the policy for agricultural tractor, therefore, even if the vehicle was used for hire or reward, the insurance company can not escape its liability to pay compensation. This contention raised by counsel for the appellants is patently misconceived and untenable.

In India Motor Tariff dealing with tariff for miscellaneous and special types of vehicle, para 2 deals with use for hire or reward. Clause (i) of para 2 says that in all cases other than agricultural and forestry vehicles, mobile shops .... Vehicles, the standard policy allows use of the vehicles for hire or reward.

In para 7.A policy schedule wording regarding "limitations as to use" and Driver clause.

Limitations as to use says, reads thus:-

i. Agricultural and Forestry Vehicles

Use only for agricultural and forestry purposes.

The Policy does not cover

(1) Use for hire or reward or for racing pace making reliability trial or speed testing.

(2) xxx xxx

(3) xxx xxx xxx."

A plain but careful reading of the aforesaid extract from para 2 and 7.A of tariff for miscellaneous and special types of vehicle leaves no manner of doubt that an agricultural tractor cannot be used for hire or reward in absence of any special contract between the insured and insurer permitting such use on payment of special premium. In this view of the matter, the appellants cannot derive any advantage to their contention from the tariff provided for commercial vehicles and miscellaneous and special types of vehicle.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

11.2.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No