IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1043 of 2016 (O&M)
Date of decision : 20.12.2019
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National Insurance Company Ltd.
................Appellant

vs.

Smt. Angrej Pati and others
.................Respondents

2) FAO No. 7147 of 2016 (O&M)
...

Shamsher Singh and another
................Appellants

vs.

Smt. Angrej Pati and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.C. Kapoor, Advocate for the appellant
in FAO-1043-2016 and
for respondent No.6 in FAO-7147-2016

Mr. Vijay Pal, Advocate for the appellants in
FAO-7147-2016 and
for respondents No. 6 and 7 in FAO-1043-2016

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H. S. Madaan, J.

By this common order, I intend to dispose of FAO 1043 of 2016, titled as 'National Insurance Company Ltd. vs. Smt. Angrej Pati and others' and FAO-7147-2016, titled as 'Shamsher Singh and another vs. Smt. Angrej Pati and others', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that Smt. Angrej Pati, aged 40 years, widow, Miss Nishu, aged 20 years, Miss Renu, aged 17 years – daughters and Vikram, aged 14 years minor son and Smt. Om Pati, aged 65 years – mother of Bijender Singh, a victim of a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, against respondents i.e. Shamsher Singh – driver, Wazir Singh – owner and the National Insurance Company Limited, Hisar – insurer of tractor bearing registration No. HR 80-8874 (hereinafter to be referred as 'the offending vehicle'), claiming compensation to the tune of Rs.20 lacs with interest.

As per version of the petitioners-claimants on 3.5.2014, deceased Bijender Singh was returning to his village Pabra, District Hisar, from Barwala, District Hisar, on his moped No. HR-20-W-3299. When he reached ahead of village Khedar on Khedar-Pabra road, village Khedar, in the meanwhile the offending vehicle, being driven by respondent No.1 – Shamsher Singh, in a rash and negligent manner, came from opposite side and hit frontal tyre of the offending vehicle rammed into Moped of deceased Bijender Singh by going on wrong side. Resultantly, Bijender Singh fell down on the road and received multiple grievous injuries. Lilu Ram, brother of Bijender Singh, who was following him on his motorcycle, shifted him to Janta Hospital, Barwala, but due to his serious condition, he was shifted to Jindal Hospital, Hisar. However, Bijender Singh succumbed to his injuries on 13.5.2014. FIR No. 186 dated 3.5.2014, for offences under Sections 279, 337 IPC was registered against respondent No.1 – Shamsher Singh at Police Station Barwala.

According to the petitioner – claimants, Bijender Singh was aged about 40 years and was running a grocery shop, a milk diary farm besides being engaged in avocation of agriculture and he was earning Rs.40,000/- per month from all those avocations. The petitioners were fully dependent upon his earnings. On account of death of Bijender Singh, the petitioners – claimants had suffered a great set back.

On being put to notice, all the three respondents appeared. Respondents No. 1 and 2 filed a joint written statement, wherein they raised several legal objections. On merits, the material assertions in the claim petition were refuted, contending that no such accident had taken place and a false criminal case had been registered against respondent No.1 by the petitioners in connivance with the police. However, according to the answering respondents, the tractor was insured with respondent No.3 – Insurance company. In the end such respondent prayed for dismissal of the claim petition.

In the written statement filed by respondent No.3 – Insurance company, it had taken various legal objections and statutory defences, contending that respondent No.1 was not having a valid and effective driving licence at the time of the accident. As a matter of fact, no such accident had taken place and the tractor in question had been falsely involved in the case just to grab the compensation. The Insurance company also prayed for dismissal of the claim petition.

No replication was filed.

From the pleadings of the party, following issues were framed :-

1. Whether accident in question occurred due to rash and negligent driving of the offending vehicle tractor bearing No. HR-80-8874 by respondent No.1 ? OPP
2. Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent? OPP
3. Whether the present petition of the petitioners is not maintainable in law? OPR
4. Relief.

Parties lead evidence in support of their respective claims.

In order to prove their case, the petitioner-claimant No.1-Angrej Pati herself appeared as PW-1 and further examined Vinod Kumar, Criminal Ahlmad of the Court of Sh. Mukesh Kumar, Judicial Magistrate Ist Class, Hisar as PW-2, Subhash – Clerk, N.C. Jindal Hospital, Hisar as PW-3, Dr. Shantanu Rawat, N.C. Jindal Hospital, Hisar as PW-4, Lilu Ram – eye witness as PW-5 and thereafter closed the evidence after tendering certain documents.

On the other hand, respondents examined Rattan Kumar, Senior Assistant, National Insurance Company, Hisar, as RW-1 and closed the evidence after tendering certain documents.

After hearing arguments, the Motor Accident Claims Tribunal, Hisar (hereinafter to be referred to as 'the Tribunal'), gave issue wise findings and vide award dated 20.10.2015, accepted the claim petition and awarded compensation of Rs.13,49,500/- to the petitioners – claimants by the respondents alongwith interest @ 7.5% per annum, from the date of filing of claim petition till actual realization, besides costs of the petition. However, it was directed that respondent No.3 – Insurance company shall pay the amount of compensation to the petitioners at the first instance and then later on would recover the amount from respondents No.1 and 2.

The mode and manner of the payment of compensation and its apportionment are duly mentioned in the impugned award.

The Insurance company felt aggrieved by the impugned award has filed an appeal bearing FAO-1043-2016. Whereas the driver and owner of the offending vehicle, namely, Shamsher Singh and Wazir Singh, being dissatisfied with the impugned award, have preferred an appeal bearing FAO 7147-2016.

Notice of the appeals was given to the respective respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

The Tribunal, on analysis of the evidence adduced before it, has come to the conclusion that the accident in question had been caused by respondent No.1 by driving the offending vehicle in a rash and negligent manner. The finding is proper and appropriate and does not call for any interference.

While deciding issue No.2, the Tribunal has quantified the compensation as 10,12,500/- (t**total compensation Rs.13,49,500/-**.) Though the amount awarded under the conventional heads is somewhat on the higher side, but when this fact is to be taken into consideration that no addition towards future prospects has been made, the extra amount awarded under the conventional heads gets off set by non- addition of amount towards future prospects. Therefore, I do not see any reason to reduce the amount of compensation.

Now, coming to the liability to pay the compensation, the Tribunal has observed that policy Exhibit R-2 shows that although the tractor was insured but no premium for the trolley had been paid by owner i.e. respondent No.2. Therefore, respondent No.3 was absolved of its liability to pay compensation but it was directed that respondent No.3 at the first instance would be liable to pay the amount of compensation with liberty to recover the same from respondents No.1 and 2. This direction had left the respondents No. 1 and 2 as well as respondent No.3 aggrieved.

First coming to the grievance of the Insurance company, this is with regard to direction to pay the compensation amount at the first instance.

I find that rather than issuing such type of direction and granting recovery rights to the Insurance company, under the circumstances, the Insurance company was required to be held jointly and severally liable alongwith other two respondents to pay the compensation amount. The Tribunal has though referred to judgment by ***Allahabad High Court in Liyakat Ali vs. Smt. Chunni Devi, Order No. 600 of 2009, decided on 16.7.2010 (Allahabad)***, wherein it was observed :-

> " In view of the above, we observed that the trailer/trolley, which is attached with the tractor is a part of the tractor, which was duly insured from the insurance company. Hence, the insurance company cannot escape from its liability to pay compensation by taking the plea that the trailer was not separately insured.
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> But in the instant case, fact remains that at the time of accident, the trolley which was attached with the tractor was carrying the Iron Rods and Bricks for the purpose of construction of a room to cover the pakki boring as admitted by the appellant in paragraph-3 of the affidavit. Transportation of iron rods and bricks is certainly not an agricultural activity. The tractor was insured only for the purpose of agricultural activity. The tractor will have to be used only for agricultural purpose not for any other purpose including the construction of a room. Thus, there is a violation of the terms and conditions of the

insurance policy. When it is so, then we are of the view that in the instant case, the insurance company is not liable to pay the compensation and the owner of the tractor will have to pay the compensation."

The first para of the observation, clearly goes to show that trailer/trolley, attached with a tractor is part of the tractor and if the tractor is duly insured with the Insurance company, then it cannot escape liability to pay compensation by taking a plea that trailer was not separately insured. Though as per facts of the case, trolley attached with the tractor was carrying the iron rods and bricks for the purpose of construction of a room to cover the pakki boring as admitted by the appellant in paragraph 3 of the affidavit and that was not found to be an agricultural activity. In the present case, there is nothing to show that the tractor trolley was carrying any material, much less relating to non-agricultural activity or that it was being plied for a purpose other than agricultural activity, therefore, no separate premium for trolley was required to be paid.

Learned counsel for the Insurance company has referred to judgment of this Court in ***FAO No. 660 of 2010, titled as 'Jai Bhagwan and another vs. Koshalya and others', decided on 29.4.2014,*** in support of his contention that when the accident is caused by trolley and not the tractor, which is insured, the Insurance company should be exonerated of the liability. Another judgment referred to by him was ***New India Assurance Company Limited vs.***

Sohan Lal and others 2014 ACJ 1583, in that respect.

In a Division Bench judgment of this Court, ***United India Insurance Company Ltd. vs. Surinder and others 2004 (4) RCR (Civil) 211***, it was observed that definition of 'tractor' includes any equipment, including trailer attached to it and is considered as a part of tractor and is covered under the insurance policy.

In the Apex Court judgment ***Nagashetty Vs. United India Insurance Co. Ltd. 2001(4) RCR (Civil) 597*** , it was observed that a valid driving license for driving a tractor includes driving of tractor with trailer as well and mere fact that a trailer was added to the tractor in itself would not make the driving licence invalid. Thus no violation of terms and conditions of Insurance policy comes out to be there and respondent No.3 – Insurance company is jointly and severally liable alongwith respondents No.1 and 2 to pay the compensation to the claimants, since it comes out from the record that the tractor in question was duly insured with the Insurance company at the relevant time. Therefore, the appeal filed by the Insurance company i.e. FAO 1043-2016 is without any merit and the same is dismissed accordingly.

The appeal filed by driver and owner i.e. FAO 7147-2016 stand allowed. The impugned award is modified to the extent that liability to pay the compensation is held to be joint and several of all the three respondents.

(H.S. Madaan)
Judge

20.12.2019
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No