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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1545 of 2016 (O&M)
and XOBJC No. 210-CII-2016
Date of decision: 28.08.2019

Beant Singh and another **...Appellants**

V/s.

The New India Assurance Company and another **...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.S. Sahu, Advocate for the appellants.

Mr. Sukhdarshan Singh, Advocate
for respondent No. 1.

Mr. Sandeep Kotla, Advocate for the
cross-objector/respondent No. 2.

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__RITU BAHRI, J. (Oral).__

The present appeal has been filed by the driver Beant Singh and owner Harjeet Singh against the award dated 08.01.2016 whereby compensation of Rs.6,00,000/- has been awarded to the claimant-Rimple on account of injuries suffered by him. The Tribunal, while allowing the claim petition under Section 166 of the Motor Vehicles Act, 1988, liability of making the payment of compensation has been fastened upon the driver and owner jointly and severally besides interest @ 7.5% per annum from the date of filing of the claim petition upto the date of actual realization, and the insurance company has been absolved of its liability of making compensation and in this backdrop the appeal has been filed by the owner and driver on 09.03.2016.

Brief facts of the case are that on 27.05.2013, the claimant was going to village Buraj for some personal work by driving his motor cycle Hero Honda CD Dawn. His elder brother Sukhmahender Singh and his cousin Manjeet Chand son of Raj Chand, resident of village Burj who had come to village Munshiwali, were also going to village Burj on another motorcycle just behind the motorcycle of the petitioner. At about 9:00 p.m. when they reached near Dhani of Pal Singh in the area of village Chando Kalan, a Tractor-trolley bearing engine & chasis No. NNHJ00825 (hereinafter referred to as the 'offending vehicle') loaded with sand was standing in the middle of the road without any reflector, parking lights and fencing and the motorcycle of the claimant by the left hand side struck against back portion of the tractor-trolley as a result of which, he fell down on the road with the motorcycle and received multiple grievous and serious injuries. His brother Sukhmahender Singh and cousin Manjeet Chand who was just coming behind on another motorcycle called his another brother Sunil and then brought him to CHC, Ratia where he was medico-legally examined. Thereafter due to multiple grievous and serious injuries, he was referred to higher centre and was admitted to Sarvodaya Hospital, where he was declared unfit to make statement.

On the above facts, the claim petition was entertained and after getting the written statements from respondents No. 1 and 2 and respondent No. 3 separately following issues were framed:-

> "1. Whether the accident involving the vehicle bearing engine & chasis No. NNHJ00825 took place due to rash and negligent driving of respondent no. 1 and in which the claimant received injuries, if so, its effect? OPP.

1. If issue no. 1 is proved in affirmative, whether the claimant is entitled to receive any compensation, how much and from whom? OPP.
2. Whether there was violation of terms and conditions of policy of insurance by the insured, if so its effect? OPR.
3. Relief."

Finding on issue No. 1 is not in dispute between the parties that the accident took place on account of wrongful act and conduct by respondent No. 1 by parking the tractor-trolley in the middle of the road without any reflector, parking lights and fencing. An FIR No. 246 dated 31.05.2013 under Sections 283, 337 and 338 IPC was registered against respondent No. 1 at Police Station Ratia, challan (Ex.P97) and chargesheet was also filed against the driver. The driver of the offending vehicle did not step into witness box and adverse inference was drawn against him as per the judgments of ***Raju and others V/s. Sukhwinder Singh and others*** 2006(4) RCR (Civil) 82 and ***Girdhari Lal V/s. Radhey Sham and others,*** 1993(2) PLR 109.

At issues No. 2 and 3, the Tribunal has assessed the compensation as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Pain & suffering	Rs.49,000/-
(ii)	Disability	Rs.1,20,000/-
(iii)	Medical expenses	Rs.3,20,000/-
(iv)	Loss of earning capacity	Rs.51,000/-
(v)	Transportation charges	Rs.30,000/-
(vi)	Special diet and attendant charges	Rs.30,000/-
	TOTAL	**Rs.6,00,000/-**

Thereafter the Tribunal has proceeded to assess the liability of making payment of compensation. At this stage, the Tribunal has held that the stationary trolley was loaded with sand and in this backdrop the tractor would fall in the category of transport vehicle. After going through the evidence, the Tribunal came to a conclusion that as per the certified copy of seizure memo (Ex.P102), the tractor bearing engine & chasis No. NNHJ 00825 along with trolley were taken into possession by the police on 04.06.2013. Ex.P103 is the certified copy of disclosure statement of Beant Singh which shows that due to overloading the sand, rim of trolley was broken and the trolley parked in the middle of the road without any reflector or indicator on. The motorcycle of the petitioner had hit against the rear portion of the trolley which was in the stationary condition and was parked in the middle of the road. Ex.P106 is the copy of mechanical report of tractor-trolley which shows that the brake and steering system of the tractor are OK whereas the rear left side portion of the trolley was "bend". Since the tractor was not attached with the trolley at the time of alleged mishap and only the trolley without any number was lying parked in the middle of the road, there was no evidence to show that the trolley in question was actually pertained to the tractor bearing engine & chasis No. NNHJ008259 as there was no registration number and identification mark on the said trolley.

Ex.R1 is the photocopy of the registration certificate of tractor No.PB13AF1584 which is in the name of Harjit Singh son of Lakhwinder Singh. Ex.R3 and Ex.R4 are the policy schedule cum certificate of insurance which shows that tractor bearing engine & chasis No. NNHJ008259 was duly insured with insurance company and no extra premium was paid regarding the trolley and there was no separate insurance cover regarding the trolley in question. The Tribunal thereafter proceeded the judgment of

Mam Chand and another V/s. Sunita Devi and others, FAO No. 3966 of 2010 and ***New India Assurance Company Limited V/s. Ansuya and others 1989 ACJ 400*** and came to a conclusion that if tractor and trolley, both are insured with the insurance company on the relevant date of the accident then the insurance company will be liable to make the payment of compensation and since in the insurance policy Ex.R3 and R4 only the tractor was insured, the insurance company was absolved of the liability to make payment of compensation.

Learned counsel for the owner and driver has argued that there is no provision to get the separate insurance for a trolley. Once a tractor is insured, no separate insurance policy is required to be taken for the trolley. He has referred to a Supreme Court judgment passed in ***Fahid Ahmad and others V/s. United India Insurance Co. Ltd. and others*** Civil Appeal No. 6220 of 2008, 2015 (1) SCC (Civil) 258 to contend that if a tractor carrying sand in a trolley had met with an accident, it would not mean that tractor is being used for commercial purposes and it would not amount to breach of insurance policy and insurance company was liable to make the payment of compensation. He has further referred the following judgments passed by this Court to support his contention:-

1. ***Satbir and another V/s. Raj Dulari and others FAO No. 3896 of 2008,***
2. ***United India Insurance Company Limited V/s. Smt. Kitabo Devi w/o late Sh. Karan Singh, FAO Nos. 697, 698, 699 and 700 of 1998***
3. ***The New India Insurance Co. Ltd. V/s. Shiv Kumar Yadav (Since deceased through LRs) and others FAO No. 2083 of 2013***

4. ***Balak Ram and another V/s. Binder Kumar @ Balwinder Kumar and another FAO Nos. 3102 and 4441 of 2012***
5. ***Maha Singh and another V/s. Meena and others FAO No. 46 of 2013 and***
6. ***Maha Singh and another V/s. Ramesh and others FAO No. 48 of 2013***

He further argued that under the Motor Vehicles Act, 1988, if the trolley is attached to a tractor, it will constitute only one vehicle within the definition of Light Motor Vehicle and there is no requirement of having any separate driving licence or special permit to ply the goods in the same. If the tractor is being used for commercial purposes, the insurance company can be absolved of its liability to make payment of compensation which in the presence case, was not being done by the owner of the tractor.

Learned counsel for the appellants has produced the attested copy of the insurance policy. The insurance policy is commercial vehicle package policy and chasis and engine No. is NNHJ-00825. This number is also reflected in the award itself by referring to the insurance policy (Annexure R-3 and R-4). A perusal of this insurance policy shows that it had been issued for MM/Mahindra tractor and the last premium was received on 13.05.2013. In the category of type of vehicle, it is described as traction engine tractors agricultural and forestry and the issuing office is Bhatinda Branch. The insurance policy was a commercial vehicle package policy and the vehicle could attach the trolley for agricultural and forestry purposes and hence no separate insurance policy was required to be taken for the trolley. The ratio of the judgment of the Supreme Court in ***Fahim Ahmad and others V/s. United India Insurance Co. Ltd. and others***

2015(1) SCC (Civil) 258 is directly applicable to the facts of the present case and hence the owner had the valid insurance policy to attach the trolley with the tractor. Hence, finding of the Tribunal on issue No. 3 is reversed as there was no violation of terms and conditions of the insurance policy Ex.R3 and R4 by the appellants by attaching the trolley to the tractor.

The appeal is being allowed and the liability to make the payment of compensation is held joint and several to all the respondents.

XOBJC No. 210-CII-2016

The cross objection has been filed by respondent No. 2/claimant who has been awarded compensation of Rs.6,00,000/- alongwith interest @ 7.5% on account of suffering disability.

As per the disability certificate Ex.P1, the claimant has suffered 63% disability on account of loss of total vision of right eye and further total profond loss of hearing of right ear and mild SNHL of left ear. This disability certificate was proved by PW1 Dr. Vinod Sharma who assessed the disability of eye to the extent of 30% and further of both ears as 50% and the total disability is 63%. On the basis of evidence of PW1 Dr. Vinod Sharma, the loss of earning capacity of the claimant was assessed as 10% keeping in view that the claimant Rimple admitted in his cross examination that he was doing the work of plumber as he was doing prior to the accident. Rimple was doing the work as a plumber/mason, the income of the claimant is assessed as Rs.5,500/- p.m. keeping in view the minimum wages prevalent in State of Haryana in 2013.

To meet the ends of justice, the compensation is hereby reassessed keeping in view the judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and***

others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Annual Income	Rs.5,500 X12=Rs.66,000/-
(ii)	Loss of earning capacity, (after applying multiplier of 17 and 10% disability)	Rs.66,000X17X10%=Rs.1,12,200/-
(iii)	Disability	Rs.1,20,000/-
(iv)	Medical expenses	Rs.3,20,000/-
(v)	Transportation charges	Rs.30,000/-
(vi)	Special diet and attendant charges	Rs.30,000/-
(vii)	Pain and suffering	Rs.50,000/-
	TOTAL COMPENSATION AWARDED	**Rs.6,62,200/-**
	ENHANCED AMOUNT OF COMPENSATION	**Rs.6,62,200-6,00,000/-= Rs.62,200/-**

The enhanced amount of compensation of **Rs.62,200/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others,*** Civil Appeal No. 4528 of 2019. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the cross-objection is allowed.

(RITU BAHRI)
JUDGE

28.08.2019
Divyanshi

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