IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1716 of 2016 (O&M)
Date of decision : 5.4.2019
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Lajjawati
................Appellant

vs.

Taj Mohammed @ Tajju and others
.................Respondents

2) FAO No. 6153 of 2016 (O&M)

...

Babneet Singh
................Appellant

vs.

Lajjawati and others
.................Respondents

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

Present: Mr. Ayush Gupta, Advocate for the appellant in FAO-1716-2016 and for respondents No. 1 and 2 in FAO-6153-2016

Mr. Arvinder Arora, Advocate for the appellant in FAO -6153-2016 and for respondent No.2 in FAO-1716-2016

Mr. Sachin Ohri, Advocate for respondent No.5 in FAO- 1716- 2016 and FAO 6153-2016

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H. S. Madaan, J.

Vide this judgment, I intend to dispose of two appeals, bearing FAO-1716- 2016 titled as 'Lajjawati vs.Taj Mohammed @ Tajju and others' and FAO-6153-2016 titled as 'Babneet Singh vs. Lajjawati and others' as both these appeals have arisen out of the same accident.

On account of death of Pardeep Kumar, in a motor vehicular accident which took place on 13.1.2015 in the area of village Akbarpur, Tehsil Naraingarh, District Ambala, statedly on account of rash and negligent driving of tractor – trolley bearing registration No.HR-04E-9053 by respondent No.1 Taj Mohammed @ Tajju, legal representatives of deceased, namely, his mother Lajjawati, aged about 52 years, father Sant Ram aged about 57 years, brother Adesh Kumar aged about 14 years and sister Khushbu aged about 12 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents Taj Mohammed @ Tajju - driver, Babneet Singh – owner and Future Generali India Insurance Company Ltd., Ambala Cantt. - insurer of the tractor – trolley bearing registration No. HR-04E-9053 (hereinafter referred to as 'the offending vehicle'), claiming compensation to the tune of Rs.40 lacs.

After contest by all the three respondents, the claim petition was accepted by Motor Accident Claims Tribunal, Ambala, vide award dated 6.1.2016 and compensation of Rs.4,87,000/- besides Rs.50,000/- on account of loss of love and affection was awarded to the claimants.

The Insurance company was granted recovery rights holding that respondent No.1 was not having a valid and effective driving licence, for the reason that though he was authorized to drive the tractor, but since a trolley was attached with the tractor, it came within the definition of transport vehicle and respondent No.1 was not competent to drive the transport vehicle. Resultantly, there took place violation of terms and conditions of Insurance policy absolving the respondent-Insurance company of its liability to pay the compensation to the claimants.

The claimants were of the view that compensation awarded to them was on lower side, whereas the owner of the tractor- trolley – insured was aggrieved by the fact that the respondent – insurance company had been granted the right to recover the amount of compensation paid/payable by it to the claimants, under the award from owner – insured. Both of them have filed separate appeals which are being disposed of together for the reason of their having arisen out of the same accident.

Notices of the appeals were given to the respondents therein, who put in appearance in the Court.

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

At the very outset, it may be stated that the learned counsel for the parties stated that FAO No.1716 of 2016 filed by the claimants be decided in terms of judgment ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** and I find that it should be so done.

A perusal of the award goes to show that the Tribunal had taken age of the deceased as 25 years and his monthly income to be Rs.7,000/- treating him as a skilled labourer. However, no addition towards future prospects was made. In ***Pranay Sethi's case (Supra)***, it has been observed that when the deceased was self employed or getting a fixed salary, then 40% of the monthly income should be added towards future prospects, if the age of the deceased was below 40 years. It is so in the present case. Thus making addition of 40% to the the monthly income of deceased, the amount is arrived at Rs.7,000 + 2,800 = Rs.9,800/-. Since the deceased was a bachelor, in terms of the authority ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77*** 50% of the amount has to be deducted towards personal expenses. Doing that, the monthly dependency of the claimants comes out to Rs.4,900/-. The annual dependency is worked out to Rs.4,900 X 12 = 58,800/-.

Considering the age of the deceased, the Tribunal has correctly used the multiplier of 17. In that way, the total dependency is worked out to Rs.58,800 x 17 = Rs.9,99,600/-.

The Tribunal has awarded a sum of Rs.25,000/- to the claimants towards funeral expenses and Rs.50,000/- on account of loss of love and affection. However, in view of the authority ***Pranay Sethi's case (Supra)***, the claimants are entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- on account of loss of estate. Therefore, total compensation is worked out to Rs.9,99,600 + 30,000 = Rs.10,29,600/-.

The Tribunal has already awarded compensation of Rs.4,87,000/- besides Rs.50,000/- (Rs.5,37,000/-) on account of loss of love and affection to the claimants.

In that way the claimants are held entitled to additional compensation of Rs.4,92,600/- (Rs.10,29,600 – 5,37,000). the claimants are also held entitled to interest @ 7.5% per annum on the additional compensation, from the date of filing of appeal till actual realization. Other terms and conditions with regard to payment shall remain the same as in the original award.

The Tribunal has come to the conclusion that respondent No.1, though was authorized to drive a tractor, but since trolley was attached with the tractor, in that way it became a transport vehicle which respondent No.1 was not competent to drive. In absence of special endorsement on his driving license. Therefore, terms and conditions of the insurance policy were violated, entitling the insurance company to recover the amount made by it to the claimants under the award, from respondent No.2 insured.

However, such reasoning given by the trial Court is faulty. In authority ***Fahim Ahmad and others Vs. United India Insurance Co. Ltd. and others, 2014(2) RCR(Civil) 470***, a three Judges Bench of Hon'ble Supreme Court dealing with a case for grant of compensation under Section 166 of the Motor Vehicles Act when a tractor carrying sand in the trolley met with an accident and sand was for the purpose of construction of tank, it was observed that merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and there was no breach of insurance policy, therefore, liability could not be fastened on the owner of tractor and insurance company was liable to pay the compensation.

Now the crucial question to be decided is as to whether merely by attachment of trolley with a tractor, it comes within a definition of a transport vehicle. The Tribunal has relied upon judgment in ***M/s Natwar Parikh & Co. Ltd. vs. State of Karnataka and others 2005 (4) RCR (Civil) 61,*** while coming to this conclusion. However, those observations had been made keeping in view the facts of the said case. In that judgment it was observed that the case falls under Section 2(14) as a 'good carriage' and consequently, it falls under the definition of 'transport vehicle' under Section 2(47) of the Motor Vehicles Act, 1988. However, facts of this case were quite different. Therefore, the Tribunal was not justified in coming to the conclusion that a special endorsement on the licence was required to drive the tractor trolley. The Hon'ble Supreme Court in ***Nagashetty Vs. United India Insurance Co. Ltd., 2001(4) RCR(Civil) 597*** had taken the view that a valid driving licence 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 will not make the driving licence invalid. It was further observed that 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. A Co-ordinate Bench of this Court in ***Oriental***

Insurance Company Ltd. Versus Surinder and others, 2016(1) PLR 78 while relying upon the law laid by the Apex Court Court in case of ***Fahim Ahmad's case*** and ***Nagashetty's case*** has observed that a person authorized to drive a tractor could validly drive the tractor trolley. In another judgment by a Co-ordinate Bench of this Court i.e. ***New India Assurance Co. Ltd. Versus Smt.Kanta and others, 2015 (5) Law Herald 4352,*** it was held that a driver, who possessed licence for driving the tractor at the time of accident could drive the tractor attached with trolley and insurance company was liable. In a judgment by another Co-ordinate Bench i.e. ***Future General India Insurance Co. Ltd. Versus Mahender Singh and others, 2015(3) Law Herald 2575***, it was observed that a person having a valid driving licence to drive a particular category of vehicle does not become disable to drive that vehicle merely because a trailer is attached to tractor and tractor was used for carrying goods and that licence to drive a tractor does not become ineffective. It was observed that a motor vehicle which is not itself constructed to carry any load without the equipment, therefore, any equipment attached to the tractor is a part of the tractor and covered under the insurance policy. A Division Bench of this Court in case ***United India Insurance Company Ltd. Vs. Surinder and others, 2004(4) RCR(Civil) 211*** was referred to in that regard. In a recent judgment, the Apex Court has clarified the law on the subject in authority ***Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017(4) RCR(Civil)111*** wherein it was observed as under :-

"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 carried 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 drive 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."

Therefore, finding recorded by the Tribunal on issue No.3 is reversed and issue in question is decided against the insurance company. Resultantly, the recovery rights granted to the insurance company also stand withdrawn. Rather liability to pay the amount shall be joint and several as between all the respondents.

Accordingly, claimant's appeal FAO No. 1716 of 2016 is partly allowed and FAO No.6153 of 2016 filed by the owner-insured is allowed.

(H.S. Madaan)
Judge

5.4.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No