**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 28.08.2019

1. FAO No.942 of 2015 (O&M)

Narender Dalal

….Appellant

Versus

Tata AIG General Insurance Company and others

….Respondents

1. FAO No.2206 of 2015 (O&M)

Narender Dalal

….Appellant

Versus

Tata AIG General Insurance Company and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Sharma, Advocate,
for the appellant(s).

Ms. Vandana Malhotra, Advocate,
for respondent No.1-Insurance Company.

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RITU BAHRI J. (Oral)

This judgment shall dispose of FAO No.942 of 2015 and FAO No.2206 of 2015 together as common questions of law and facts are involved in both the appeals.

FAO No.942 of 2015 has been filed by Narender Dalal (Owner of offending vehicle) against the award dated 02.08.2014 passed by the Motor Accident Claims Tribunal, Jhajjar in Claim Petition No.161 of 2012, whereby compensation of Rs.3,50,000/- has been awarded in favour of claimants-respondent Nos. 2 to 4 on account of death of Lakshya (aged one year) in motor vehicular accident, which took place on 06.06.2012. Claimants are parents and minor brother of deceased Lakshya.

FAO No.2206 of 2015 has been filed by the appellant against the said award passed in Claim Petition No.162 of 2012, whereby compensation of Rs.3,75,000/- has been awarded in favour of claimant-Meenakshi (respondent No.2 herein) on account of injuries received in the same accident.

Brief facts of the case are that on 06.06.2012, claimants and Lakshya (since deceased) were on their way to home. When they reached near Navjyoti High School, Badli Road, Bahadurgarh, a tractor bearing registration No. HR-12-B-5347 being driven by Veerpal (respondent No.1 before the Tribunal) in a rash and negligent manner, came from behind and hit Meenakshi, mother of deceased, who was carrying him (deceased), as a result of which, Lakshya fell down on the road and was run over by the water tanker attached with the tractor. Due to this, Lakshya received multiple injuries and died on the spot. In this accident, Meenakshi also suffered injuries. With regard to the accident, FIR No.244 dated 06.06.2012, under Sections 279/337/304-A of IPC was registered at Police Station, City, Bahadurgarh against the driver on the statement of Naveen. Consequently, claimants filed two separate claim petitions before the Tribunal.

On the basis of evidence led by the parties, Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver and thus, returned finding on issue No.1 in favour of the claimants.

While deciding Claim Petition No.161 of 2012, the Tribunal has observed that Lakshya-deceased was aged about one year at the time of death/accident. Accordingly, compensation of Rs.3,50,000/- was awarded in favour of claimant Nos.1 and 2 (parents) along with interest at the rate of 6% per annum from the date of filing of the petitioner till realization.

Similarly, while deciding claim petition No.162 of 2012, the compensation in favour of injured-Meenakshi was awarded as under:-

Sr.	Heads	Amount
1.	On account of expenses on medicines.	59,000/-
2.	On account of pain and sufferings	Rs.35,000/-
3.	On account of expenses on future treatment	Rs.50,000/-
4.	On account of loss of amenity	Rs.1,50,000/-
5.	On account of expenses on transportation	Rs.30,000/-
6.	On account of expenses on attendant charges	Rs.40,000/-
7.	On account of special diet etc.	Rs.1,000/-
	Total	Rs.3,75,000/-

Ultimately, claimant-Meenakshi was awarded a sum of Rs.3,75,000/- along with interest at the rate of 6% per annum from the date of filing of petition till realization.

While awarding compensation, liability of the Insurance Company has been absolved. The Insurance Company has been given recovery rights to recover the amount from driver-Veerpal and owner-Narinder Dalal. On issue No.7, the Tribunal has given a finding that the owner had violated the terms and conditions of the insurance policy. The tractor, which was attached with two water tankers was required for forestry purpose and respondent No.2 was using the said tractor for agricultural purposes. He had attached two water tankers against the provisions of the Motor Vehicle Act and hence, it had violated the terms and conditions of the insurance policy. In this background, recovery rights were given to the Insurance Company.

Feeling dissatisfied with the impugned award, owner-Narender Dalal has preferred the present appeal.

Learned counsel for the appellant(s) has referred to the judgment passed by this Court in ***Jai Bhagwan and another vs. Koshalya and others,*** FAO No.660 of 2010 (decided on 29.04.2014) to contend that if, a tractor-trailer is not insured and an accident is caused with the tractor-trailer, then in that backdrop, the Insurance Company can be absolved. However, in case the accident had taken place with the use of the tractor itself, then even if, the tractor is attached with water tanker, it would not absolve the Insurance Company to make payment of compensation.

Learned counsel for respondent No.1-Insurance Company has referred to another judgment passed by this Court in ***New India Assurance Company Limited vs. Sohan Lal and others,*** 2013 (1) PLR 706, to contend that if, there was insurance only for tractor and no insurance for the trailer, then the insurer will not be liable to make payment of the compensation and the claim will lie against owner of the tractor, which caused the accident.

After hearing learned counsel for the parties, both these appeals deserve to be allowed.

In the facts of the present case, the tractor was insured for forestry purpose and driver was taking water tankers for the purpose of forestry. A perusal of the insurance policy Ex.R4 shows that it was valid from 05.06.2012 to 04.06.2013 and the premium paid is

Rs.3946/-. The Schedule of premium shows that compulsory PA cover for owner-driver to the tune of Rs.100/- has been paid and the liability is to the extent of Rs.2,00,000/-. There is a legal liability to person employed for loading-unloading. For that purpose, Rs.50/- were also paid. Accordingly, total liability premium of Rs.1608/- was paid. Limitation to use the vehicle is for agricultural and forestry purpose. It is further provided that the policy does not cover (i) use for hire or reward or for racing, pace making, reliability trial or speed testing; (ii) use for the carriage of passengers for hire or reward and (iii) use whilst drawing a greater number of trailers in all than is permitted by law.

A perusal of the impugned award shows that when the tractor hit Smt. Meenakshi, mother of deceased Lakshya, it was attached with two water tankers. A finding has been given that attaching of two water tankers was against the provisions of the Motor Vehicle Act.

Learned counsel for the Insurance Company-respondent No.1 has not been able to refer any provisions of the Motor Vehicle Act, where attachment of two water tankers with the tractor was against the law. As per condition of the insurance policy Ex.R4, tractor in question could not used for agriculture and forestry purposes and it could use trailers not more than what was permitted by law. Further, extra premium of Rs.50/- had been paid for persons employed for loading-unloading. Hence, attachment of water tankers, per se, was not against the provisions of the Motor Vehicle Act.

While referring to the judgment passed in ***<u>Sohan Lal's</u>*** case (supra), as referred to by learned counsel for the Insurance Company, this Court had referred to the Insurance Motor Tariff Advisory Committee (IMT), which makes separate stipulations for tariffs for insurance for trailers independently of the tariffs for insurance of a tractor or a motor vehicle. The relevant IMT provisions are reproduced as under:-

> 7. Keeping in mind these distinct provisions, the insurance motor tariffs which are calculated on the basis of recommendations of the Tariffs Committee are to be examined. The Insurance Motor Tariff Advisory Committee (IMT, as it is called), a statutory body established under the Insurance Act under Part 2B makes separate stipulations for tariffs for insurance for trailers independently of the tariffs for insurance of a tractor or a motor vehicle. The relevant IMT provisions are reproduced:
>
> **IMT. 30. TRAILERS. (Applicable to Private Cars Only)** In consideration of the payment of an additional premium it is hereby understood and agreed that the indemnity granted by this policy shall extend to apply to the Trailer (Registration No.......)"
>
> Provided always that -
>
> 1. *the IDV of such Trailer shall be deemed not to exceed ………*
> 2. the term "Trailer" shall not include its contents or anything contained thereon.
> 3. such indemnity shall not apply in respect of death or bodily injury to any person being conveyed by the said Trailer otherwise than by reason of or in pursuance of a contract of employment. Subject otherwise to the terms, conditions limitations and exceptions of this Policy.
>
> * Delete in the case of Liability to the public Risks only policies.
>
> ** Insert value of trailer as declared at inception of insurance or any renewal thereof **IMT.48. Agricultural and Forestry Vehicles And Other Miscellaneous vehicles with Trailers attached - Extended Cover** It is hereby declared and agreed that in consideration of an additional premium of Rs…….., the indemnity provided by this Policy shall apply in respect of any trailer (including Agricultural Implements such as Ploughs, Harrows and the like) described in the under noted Schedule of trailers as though it were a vehicle described in the Schedule and had set against it in the Schedule the value set against it in the under noted Schedule of trailers.
>
> Provided that the Insurer shall be under no liability under Section I of the Policy in respect of breakage of any part of the agricultural trailer or implements caused by ground obstructions.
>
> **Schedule of Trailers**
>
> * Description
>
> * Insert make, number or some other means of identification. Threshing Machines, Drums, Bailing Machines, Trusses and Tiers must be

identified as such.

Subject otherwise to the terms, exceptions, conditions and limitations of this Policy.

NOTE :

In the case of Liability only Policies, the Endorsement must be suitably amended.

IMT

IMT.53. Specified Attachments (Special Type Vehicles)

It is hereby declared and agreed that while any attachment in the under noted "Schedule of attachments" is attached to the Motor Vehicle or is detached and out of use the indemnity provided by this Policy shall apply in respect of any such attachment as though it were the Motor Vehicle and had set against it in the Schedule the value set against it in the under noted "Schedule of Attachments

Schedule of Trailers

* Description

* Insert make, number or some other means of identification.

NOTE :

In the case of pedestrian controlled tractors insert in "Description" in the Schedule of Attachments "any standard attachment of the ... Tractor supplied by the makers."

IMT.56. Trailers (Road Transit Only)

In consideration of the payment of an additional premium it is hereby understood and agreed that insurance by Section I and II of this Policy shall extend to the Motor Vehicle (mechanically propelled or otherwise) attached to the Motor Vehicle for the purpose of being towed Provided always that

1. the insurer shall not be liable under this Policy in respect of damage to property conveyed by the towed vehicle.

2. the insurer shall not be liable under this Policy in respect of accident loss damage and/or liability caused sustained or incurred whilst the vehicle insured is towing a greater number of vehicles than is permitted by law.

These provisions identify distinct types of trailers that could be used, some as purely goods carriages, some for agricultural operations and some merely declared as special attachment. A special relevance for us is IMT 53 and IMT 56 which deal with use of trailers for distinct purposes. The actual tariffs payable as premiums to cover the risk to persons who are carried in the trailers or to whom death or injury occurs by the use of trailer are notified through independent provisions, which are not reproduced here because they undergo periodical changes from time to time. IMT 56 contemplates payment of an additional premium as it is understood by Sections I and II of the policy dealing with the liability to third parties and own damage respectively would be applicable to these attachments as well. The proviso under IMT 56 contemplates two situations: (i) that the liability of the insurer cannot arise in case of damage to the trailer; (ii) when the vehicle, say, such as a tractor is towing a greater number of vehicles than what is permissible by law. Having set down all the relevant provisions relating to the user of a trailer attached to a tractor, it becomes relevant for us to also examine some of the cases which have dealt with accidents caused involving a trailer."

In the aforesaid judgment, it has been further observed as under:-

"10. The case that squarely raised the issue and the answer it found to require insurance for the trailer independently arose in ***The Oriental Insurance Co. Ltd. vs. N. Chandrashekaran and Ors. 1997 ACJ 512***. The court held after adverting to the definition of tractor and trailer "if the tractor draws a trailer and the accident is caused by such tractor-trailer, then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured."

In the present case, as per insurance policy Ex.R4, the vehicle had been insured for agriculture and forestry purpose and extra premium had been paid for driver/owner and persons employed for loading-unloading. Restrictions to attach the trailer/tanker was only to the extent, it was permissible by law. The tractor, in the present case, was used for forestry purposes and two water tankers were attached therewith. No provision of Motor Vehicle Act has been shown, whereby two water tankers were not permitted to be attached with a tractor. Hence, for all intents and purposes, the insurance policy covered the attachment of water tankers with the tractor at the time of issuing the policy Ex.R4. Moreover, the accident in question had taken place with the tractor and not with the water tankers.

The said tractor was insured for forestry and agriculture purposes as per policy Ex.R4. Hence, as per judgment passed in ***Jai Bhagwan's*** case (supra), the question, whether attachment of two water tankers had violated the terms and conditions of the insurance policy, will not be relevant. Moreover, it being a comprehensive policy, the insurance company (respondent No.1 herein) cannot be absolved of its liability to make payment of compensation.

In view of the above, the impugned award dated 02.08.2014 is modified to the extent that the Insurance Company (respondent No.1 herein) will not have any recovery right against the owner and driver of the offending vehicle i.e. tractor and the liability of all the respondents (in claim petition) shall be joint and several.

Both the appeals i.e. FAO No.942 of 2015 and FAO No.2206 of 2015 stand allowed accordingly.

(RITU BAHRI)
JUDGE

28.08.2019
ajp

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