

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

FAO-7765-2016(O&M)

Date of decision:-2.4.2019

Surjit Singh

...Appellant

Versus

Dinesh Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arvinnder Arora, Advocate
for the appellant.

Ms.Madhu Sharma, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that petitioners/claimants Sh.Dinesh Kumar, aged about 40 years and his wife Smt.Kanta Rani, aged about 39 years, parents of Vishakha, an unfortunate victim of a road side accident had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Nasib Singh – driver, Surjit Singh – owner and National Assurance Company Ltd. - insurer of tractor bearing registration No.PB-23A-7277 (hereinafter referred to as the offending vehicle, claiming compensation to the tune of Rs.10 lacs.

As per the case of the claimants on 17.6.2014 Ms. Vishakha along with her classmate Ms.Diksha of village Rajju Majra, Tehsil

Naraingarh, District Ambala had gone to Naraingarh for taking tuition; that at about 11:00 a.m., when both of them were returning to their village riding two wheeler, scooter make Hero Pleasure having registration No.HR-04E-8577 and had reached near Petrol Pump of village Barsu Majra, Tehsil Naraingarh, in the meanwhile the offending vehicle being driven by respondent No.1 - Nasib Singh in a rash and negligent manner without blowing horn came from Naraingarh side and struck against the scooter, as a result both the riders fell down on the road; that the wheel of the trolley ran over head of Vishakha with the result, she died at the spot, whereas her friend Diksha sustained multiple injuries; that respondent No.1 – Nasib Singh had run away from the spot after the accident, but he was apprehended by the people at some distance from the place of accident; that Diksha was taken to General Hospital, Naraingarh for treatment; that post-mortem examination on the deadbody of deceased Vishakha was conducted at that very hospital; that formal FIR No.133 dated 17.6.2014 for the offences under Sections 279, 337 and 304-A IPC with regard to the accident was registered at Police Station Naraingarh against respondent No.1 – Nasib Singh on the basis of statement of claimant Dinesh Kumar – father of the deceased. According to the claimants, at the time of her death, the deceased was a healthy young girl of 15 years; that she was a brilliant student studying in 10+1 class.

On notice, the respondents appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 filed a separate written statement. In the joint written statement filed by respondents No.1 and 2, they have raised several preliminary objections challenging the

maintainability of the petition and dubbing it as false and frivolous petition. On merits, such respondents denied the involvement of the offending vehicle in the accident rather stated that a false FIR has been registered against respondent No.1 by involving the said truck, however, such respondents admitted that the offending vehicle belongs to respondent No.2.

In the written statement filed by it, the respondent No.3 – insurance company also raised various legal objections with regard to the maintainability of the claim petition; locus standi of the petitioners to file the same; the petition being bad for misjoinder and non-joinder of the necessary parties and respondent No.1 not having a valid and effective driving licence. According to such respondent, the offending vehicle in question was being driven in violation of the terms and conditions of the insurance policy at the time of accident. On merits, material assertions were refuted. Such respondent took up a plea that the accident had taken place solely due to rash and negligent driving by deceased Vishakha, who was driving the scooter without having any valid and effective driving licence and without wearing helmet and crossing the road without caring for the traffic.

In the end, all the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident in question took place on account of use of Tractor No.PB-23A-7277 by respondent no.1 Nasib Singh,

resulting into death of Vishakha, as alleged.

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, how much and from whom? OPP.
3. Whether respondent no.2 has violated the terms and conditions of the Insurance Policy and the respondent no.3 is not liable to indemnify the respondent No.2? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, vide Award dated 3.11.2016, the claim petition was allowed with costs by the Tribunal and compensation of Rs.3,52,000/- with interest @ 7.5% per annum was granted in favour of the claimants payable by the respondents jointly and severally. The Insurance Company was found entitled to recover this amount from the respondent No.2 - insured.

This award left the respondent No.2 – owner of the offending vehicle aggrieved and he had approached this Court by filing the present appeal.

Notice of the appeal was given to the respondents. Initially respondents No.1 and 2 had appeared through counsel, however subsequently, there was no representation on behalf of respondent No.2.

I have heard learned counsel for the appellant and respondent No.3 besides going through the record.

The Tribunal while deciding issue No.3 has observed that at the time of accident, the offending tractor No.PB-23A-7277 was attached

with a trolley, which was loaded with fertilizer, as such it is to be considered as a transport vehicle and a special endorsement was required on the driving licence under Section 3 of the Motor Vehicles Act and if there is no special endorsement regarding the transport vehicle, the driver cannot be said to be duly licensed. The Tribunal has relied upon judgment by three Judges Bench of the Apex Court in **Natwar Parikh & Co. Ltd. Vs. State of Karnataka, 2006, Accidents Claims Journal (1)**. However, in para No.39 and 40 of the award, the observations are somewhat different. For ready reference, those paras are reproduced as under:

39. Adverting to the facts of the present case, only evidence as available on file is statement of PW1 Dinesh Kumar, which reveals that at the time of accident, offending tractor was attached with a trolley and that after causing accident, vehicle fled away. There is absolutely no evidence that any goods were carried in the trolley. There is neither any pleading on the part of the Insurance Company nor any positive evidence in order to show that at the time of accident, tractor attached with the trolley was being used for commercial purposes.

40. In view of the aforesaid circumstances i.e. absence of positive evidence on the part of the Insurance Company to the effect that offending vehicle was being used for a commercial purpose, so keeping in view the law laid down by Hon'ble Supreme Court in Fahim Ahmad's case(cited supra), it is held that there is no breach of terms and conditions of

the Insurance Policy, qua user of the insured vehicle.

In para No.41, the Tribunal has noted that in absence of any evidence to the effect that the offending vehicle was being used for the commercial purposes, it is not proved that there is breach of terms of the policy in this regard and so it is to be assumed that tractor was being used for agricultural purposes only. Thereafter, the Tribunal went on to observe that nevertheless, the moment a trolley is attached with a tractor, it becomes a transport vehicle and that since the driving licence Ex.R1 of respondent No.1 does not carry the special endorsement in respect of transport vehicle, therefore respondent No.2 violated the terms and conditions of the Insurance Policy as he was not duly authorized to drive kind of the vehicle i.e. tractor trolley at the time of accident, therefore, the Tribunal gave a right to the insurance company to recover the compensation amount from the insured, after fulfilling its primary liability to pay the compensation.

However, I find that such inference drawn by the Tribunal is not correct. In **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. The facts of the case in hand are somewhat similar to the facts of the authority. The Tribunal has observed that the trolley was loaded with fertilizer. Fertilizer is used for agricultural purposes. The Tribunal has already observed that it could not said that the tractor trolley was being used for commercial purpose. The Tribunal has taken note of authority Fahim Ahmad's case (supra) but has not properly appreciated its ratio. The Tribunal in para No.39 has observed that from the statement of PW1 Dinesh Kumar, it comes out that the offending tractor was attached with the trolley and after causing accident, vehicle fled away and there is absolutely no evidence that any goods were carried in the trolley; that there is neither any pleading on the part of the insurance company nor any positive evidence in order to show that at the time of accident, tractor attached with the trolley was being used for commercial purposes. After making such observations, the Tribunal on the basis of documents, which were not properly proved, came to the conclusion that the goods were being carried in the trolley. 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 Natwar Parikh's case while coming to this conclusion. However, those observations had been made keeping in view the facts of the said case. The Tribunal itself has laid emphasis on those lines that *“Applying the above test, we are of the view that the tractor-trailer in the present 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 answered the question 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 observed 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.”

The controversy involved in authority M/s Natwar Parikh's case (supra) was entirely different. That was with regard to taxation of tractor and tractor trailer separately as transport and goods carriers. The precise question which arose for determination before the Apex Court in the Civil Appeal, by special leave was *“whether the taxation authority under the Karnataka Motor Vehicles Taxation Act, 1957 was right in taxing the “tractor-trailer” as a separate and distinct vehicle, different from a tractor and denying exemption sought by the appellant under section 16 of the said 1957 Act on the ground that the tractor-trailer was a distinct category of “goods carriage” requiring permit under Section 66 of the Motor Vehicles Act, 1988”* and there was no dispute as to whether a person authorized to drive tractor was not competent to drive tractor trolley without special endorsement on his driving licence. The Tribunal in this case has misinterpreted the observations by the Apex

Court.

Under the circumstances, I find that the view taken by the Tribunal is not proper, therefore, no special endorsement was required to be made on the driving licence. As such there was no violation of any terms and conditions of the insurance policy for the reason that driver of the tractor trolley was not holding a proper driving licence. Therefore, insurance company is liable to indemnify the insured with regard to the compensation amount with interest and cost paid/payable to the claimants in this case and it has no right to recover the amount so paid from the insured.

Therefore, finding of the Tribunal on issue No.3 is modified. The issue is decided against respondent No.3 and in favour of respondents No.1 and 2.

With such modification with regard to finding on issue No.3 and consequently in the relief clause, the appeal stands allowed.

2.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No