

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4612 of 2018 (O&M)

Date of decision : 7.8.2019

...

Cholamandlam MS General Insurance Company Limited
.....Appellant

vs.

Smt. Kulwinder Kaur and others
.....Respondents

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

Argued by : Mr. Vandana Malhotra, Advocate for the appellant.

Mr. Gaurav Jain, Advocate for respondents No. 1 and 2

None for respondents No. 3 and 4.

...

H. S. Madaan, J.

On account of death of Lovepreet @ Lovely, in a motor vehicular accident, which took place on 4.7.2016, statedly on account of rash and negligent driving of tractor Sonalika bearing registration No. HR-22G-3509, with trolley , by Surjeet Singh – respondent No.1, parents of deceased, namely, Smt. Kulwinder Kaur aged 40 years and Sukhdev Singh aged 45 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Surjeet Singh – driver, Kuldeep Singh - owner and Cholamandlam MS General Insurance Company Limited – insurer of tractor

Sonalika bearing registration No. HR-22G-3509, (hereinafter to be referred as 'the offending vehicle'), claiming compensation.

Briefly stated, facts of the case are that on 4.7.2016, Lovepreet @ Lovely (since died) was going to Ganga Nagar from Richho on tractor trolley in question. The tractor was being driven by Surjeet Singh respondent No.1 and Lovepreet @ Lovely was sitting on the tractor. Joginder Singh son of Niranjana Singh, resident of Kalia, along with Jagga Singh was also going to Ganga Nagar from Richho on their vehicle Bolero. At about 12.30 P.M. respondent No.1 while driving the tractor trolley at a very high speed and in a rash and negligent manner suddenly applied brakes. Lovepreet @ Lovely fell down on the road from the tractor. He had suffered multiple and serious injuries on the head, chest and other parts of the body, which proved to be fatal and he died on the way to hospital. An FIR No. 257 dated 5.7.2016 for offences under Sections 279, 304 A IPC was registered against respondent No.1 Surjeet Singh for causing this accident by his rash and negligent driving. The FIR was lodged by Sukhdev Singh an eyewitness to the accident. Respondent No.1 had been arrested, challaned and sent up to face trial in the Court of law, which is still going on.

According to the claimants, deceased Lovepreet @ lovely was aged 23 years at the time of his death in the roadside accident. He used to purchase and sell the fodder and also used to do the work of loading and unloading the fodder in the vehicles, as such he was earning Rs.25,000/- per month. As a result of his sudden demise, the

claimants have been left in lurch and deprived of his love and affection.

On being put to notice, all the three respondents appeared and filed written statements, contesting the claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After hearing the arguments, learned Motor Accidents Claim Tribunal, Fatehabad, vide award dated 26.3.2018, accepted the claim petition with costs and the claimants were held entitled to 90% of the amount of Rs.9,37,200/- in equal shares with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. All the three respondents were held to be jointly and severally liable to pay this compensation amount.

The Insurance company felt aggrieved by the said award and has filed an appeal before this Court, notice of which was given to the respondents. However, only respondents No. 1 and 2 have put in appearance, whereas respondents No. 3 and 4 did not appear despite service, as such they were proceeded against ex parte.

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

The Tribunal keeping in view the facts and circumstances of the case and evidence brought on file by the parties, came to the conclusion that the accident in question took place due to rash and negligent driving of the offending tractor trolley by respondent No.1, in which Lovepreet @ Lovely received multiple and serious injuries

and died. Going further, the Tribunal has observed that the deceased was sitting on the tractor, which was meant for only one person. The driver of the offending vehicle cannot be held liable for the death of deceased. The Tribunal has observed that the deceased was sitting on the tractor, when the driver all of sudden applied brakes while driving his tractor at a high speed, resultantly the deceased fell down from the tractor trolley and received injuries. The Tribunal has further observed that tractor is meant for only one person i.e. driver. The Tribunal arrived at a conclusion that it could be safely held that deceased Lovepreet @ Lovely had also contributed in happening of the accident and his death. 90% of negligence was attributed to respondent No.1 driver of the offending tractor trolley and 10% to the deceased.

However, while granting compensation of Rs.9,37,200/- no recovery rights have been granted to the appellant-Insurance company.

Learned counsel for the appellant-Insurance company has contended that the tractor is not meant for sitting of two persons and the deceased was travelling on the tractor from where he had fallen down, suffered injuries and to which he succumbed. In that way the terms and conditions of the Insurance Policy were violated, absolving the Insurance company of its liability to pay the compensation and the Tribunal has wrongly held it to be liable.

The Tribunal has dealt with this aspect in detail in para No. 13 of the award.

Learned counsel for the appellant had referred to judgment *National Insurance Co. Ltd. vs. Chinnamma and others 2004 (4) RCR (Civil) 300*, by the Apex Court, wherein it was observed that Tractor is not a goods carrier even, it is only for use for agricultural purpose and not for commercial transportation of goods.

Learned counsel for the appellant had further referred to Rule No. 28 of the Rules of the Road Regulations, 1989, which provides that 'a driver when driving a tractor shall not carry or allow any person to be carried on the tractor and that a driver of goods carriage shall not carry in the driver's cabin more number of persons than that is mentioned in the registration certificate and shall not carry passengers for hire or reward'.

Developing her arguments further, learned counsel for the appellant had contended that the deceased was a gratuitous passenger and respondent No.3 driver wrongly allowed him to sit on the mudguard of the tractor. As per the Insurance Policy, Exhibit R-3, risk of only paid driver was covered. Therefore, the Tribunal has wrongly held appellant – Insurance Company to be liable, which is totally contrary to the legal and factual position.

Learned counsel for the respondents had contested those contentions put forward by learned counsel for the appellant.

Tractor is a vehicle which is basically meant for agricultural operations and not to be used as a transport vehicle. It has got only one seat to be used by the driver for the purpose of driving the tractor.

As it comes out, the deceased was sitting on the mudguard of the

tractor, which is not permissible as per law and rules. Therefore, the Insurance company could not be held liable to indemnify respondent No.4 insured but this is as far as the contract between the Insurance company and the insured is concerned. However, qua the third parties, the Insurance company could be directed to make the payment to them, recovering the same from driver of the offending vehicle and the insured, because Section 166 of the Motor Vehicles Act, is a piece of welfare legislation, meant to provide prompt compensation to the legal heirs of a person who loses his life in a roadside accident or to the victim suffering hurt in the mishap, as the case may be.

In judgment *Shivaraj vs. Rajendra and another 2018 (5) RCR (Civil) 406*, the Apex Court while dealing with a similar matter, when claimant travelled in tractor as passenger, even though tractor could accommodate only one person namely, driver, it was observed that the insurer was rightly absolved from liability to pay compensation. However, High Court ought to have directed Insurance company to pay compensation with liberty to recover from owner of tractor.

In another judgment by a Co-ordinate Bench of this Court, in FAO No. 2440 of 2004, decided on 7.3.2019, titled as *Ajay Kumar and others vs. Darshana Devi and others*, having almost similar facts when the person sitting on mudguard of tractor had fallen down and was run over by the tractor, resulting in his death and his legal representatives had filed the claim petition, the Tribunal had accepted

the claim petition and awarded compensation directing that Insurance company shall be at liberty to recover the amount of compensation to be paid by it from the owners of the offending tractor. In the appeal having been filed by the owner and driver of the tractor, the award was upheld, the appeal was dismissed with the observations that since the passenger was a gratuitous passenger, the Tribunal rightly held that the Insurance Company would be at liberty to recover the amount of compensation from the owner/driver.

In the judgment *Manuara Khatun and others vs. Rajesh Kr. Singh and others 2017 ACJ 1031*, the Apex Court had observed that when the roadside accident had been caused due to negligence of driver of the vehicle, the vehicle was carrying gratuitous passengers, then the Insurance company was not liable to pay the compensation to the victims of the accident, who were gratuitous passengers, however, the Insurance Company was directed to pay compensation awarded to the victims and recover the same from owner of the vehicle in execution proceedings arising in that very case.

Therefore, finding of the Tribunal on issues No. 2 and 4 are modified, accordingly holding that on account of the fact that the tractor in question was being plied in contravention of terms and conditions of the Insurance Policy, the Insurance Company is not liable to indemnify respondent No.4 – insured with regard to meeting the liability to pay compensation to the claimants under the award. However, the impugned award is modified, accordingly observing that the appellant-Insurance company shall discharge the liability of

payment of compensation under the award to the claimants as directed by the Tribunal, but it shall be entitled to recover that amount from respondents No. 3 and 4 by way of moving an execution application before the Tribunal.

With such direction, the appeal is allowed partly.

7.8.2019
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / Nos