

FAO No. 6644 of 2019 (O&M)

-1-

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

FAO No. 6644 of 2019 (O&M)

Date of Decision: November 06, 2019

Reliance General Insurance Company Ltd.

..... Appellants(s)

Versus

Ompati and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunil Kumar, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the insurance company being aggrieved of award dated 08.08.2019, passed by learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal).

Brief facts necessary for adjudication of the case are that two claim petitions under Section 166 of the Motor Vehicles Act, 1988 were filed, one by the widow, two minor sons and aged parents of Balkar (deceased) seeking compensation on account of death of Balkar, due to the injuries suffered by him in the motor vehicle accident, which took place on 18.02.2017 and another by injured Deepak seeking compensation on account of injuries received by him in the said accident. It is pleaded in the claim petitions that on 18.02.2017 Balkar along with Deepak Kumar was returning to his village on motorcycle bearing registration No.HR-33D-

FAO No. 6644 of 2019 (O&M)

-2-

5299. Balkar was driving the motorcycle at a moderate speed on the left side of the road and Deepak Kumar was the pillion rider. At about 6:45 P.M., when they reached ahead of Jamni Chowk, Pillukhera, a Tractor Trolley bearing registration No. HR-21-L-6864 loaded with sugarcane, was parked in the middle of the road by its driver – Subhash Chander, without there being any indicator or reflector or light etc. to warn the commuters of its presence. Even stones/bricks, branches of trees etc. were not placed near/behind the trolley. Balkar could not notice the tractor-trolley due to the aforesaid reason and reflection of lights of vehicles coming from opposite side and his motorcycle rammed into the offending vehicle from behind. As a result thereof, both occupants of the motorcycle fell down and received multiple grievous injuries. Injured were shifted to Government Hospital, Jind where Balkar was declared dead by the doctors. Compensation was, thus, claimed.

Learned Tribunal on considering the evidence on record concluded that Balkar lost his life and Deepak suffered injuries in the accident in question, which took place on 18.02.2017, due to the rash and negligent act of the driver of the offending tractor-trolley bearing registration No. HR-21L-6864, which was parked on the metalled road. As there is no challenge to the quantum of compensation, the details of the compensation awarded by the learned Tribunal are not being reproduced. Present appeal has been filed in respect to the claim petition filed by the legal representatives of Balkar.

FAO No. 6644 of 2019 (O&M)

-3-

Learned counsel for the appellant-insurance company vehemently argues that the insurance company is not liable to pay the compensation at all in this matter and should be exonerated for the reason that it is only the tractor, which was insured and no premium had been paid for the trolley and the accident was caused due to the motorcycle striking against the trolley attached with the tractor. In the alternate, it is prayed that as the deceased had struck against the trolley of the tractor from behind, there is an element of contributory negligence and there should be a commensurate deduction in the amount of compensation to be paid by the appellant-insurance company. It is thus, prayed that the present appeal be allowed.

I have heard learned counsel for the appellant and have gone through the photocopy of the part of the record, produced by him in Court today including a copy of the insurance policy and the site plan attached with the final report in FIR No.28 dated 19.02.2017.

It is a matter of record that as per the claim petition, Balkar (deceased) along with Deepak Kumar (injured) were returning to their village on the motorcycle bearing registration No. HR-33D-5299, after completion of construction work at Saraswati School, Pillukhera. It is specifically pleaded that the offending tractor-trolley was parked in the middle of the metalled road, without any indicator or reflector to indicate its presence to the commuters on the road. The accident admittedly took place at about 6:45 P.M. in February 2017. Learned counsel for the appellant is

FAO No. 6644 of 2019 (O&M)

-4-

unable to deny that in February, the sun sets early and it is dark at about 6:45 P.M. Learned counsel for the appellant is further unable to deny that the tractor-trolley was parked on the metalled portion of the road, though, he has vehemently sought to argue that even though the tractor was parked on the metalled portion of the road, it was towards the left side of the road. This argument is clearly misplaced as even if the offending vehicle is parked on the left side of the metalled road without any indication, it is a grave hazard to the commuters on the road. In the present case, the deceased was proceeding on his motorcycle on the same side. It has been held by Hon'ble Supreme Court in **Archit Saini and another Vs. Oriental Insurance Company Limited and others 2018(5) RCR (Civil) 80** that merely because a vehicle strikes against a vehicle from behind, does not, *per se*, lead to an inference of contributory negligence on the part of the vehicle coming from behind. Therefore, in the given facts and circumstances of the case, learned Tribunal has rightly concluded that the accident in question took place due to the sole rash and negligent act of the driver of the tractor-trolley in having left his vehicle parked on the metalled road, without any indication of its presence.

Learned counsel for the appellant has vociferously argued that the insurance company is not liable to pay the compensation at all in this case as there is a breach of the terms and conditions of the insurance policy as the accident in question took place with the trolley of the tractor, which was admittedly not insured, therefore, no liability can be foisted upon the insurance company in this situation. He relies upon the judgment in ***The***

FAO No. 6644 of 2019 (O&M)

-5-

New India Assurance Company Limited Vs. Sohan Lal and others 2014 ACJ 1583 and Oriental Insurance Company Vs. Brij Mohan and others 2007(3) RCR (Civil) 271.

In my considered opinion the said decisions are not relevant for the decision of this case. This is so for the reason that the present, is not a case where it can be said that the accident in question would not have occurred in case the trolley was not attached. It is clear cut case of a rash and negligent act on the part of the driver of the tractor in as much as the tractor and the trolley loaded with sugarcane was left parked on the metalled road without any indication of its presence. In the *Sohan Lal's* case (supra), it has been specifically observed in para 6 thereof that “*the instance where the non-insurance of a trailer would not make a difference, would be when the driving of a tractor principally causes damage or injury*”. Thus, in the instant case, it is apparent that the incorrect parking of the tractor (to which the trolley was attached) on the metalled road was the causative factor of the accident.

Further it is not in dispute that a tractor is a vehicle to be used for agricultural purposes. For the said purpose, the trolley was required to be attached. The trolley was loaded with sugarcane, which clearly shows that the tractor was being used for agricultural purposes. Thus, it cannot be said that the insurance company is liable to be exonerated from its liability or that it should be afforded the right of recovery qua the owner of the offending tractor.

FAO No. 6644 of 2019 (O&M)

-6-

Keeping in view the facts and circumstances of the case, I do not find any merit in the arguments raised by learned counsel for the appellant, who is unable to point out any illegality, perversity or infirmity in the impugned award 08.08.2019, passed by the learned Motor Accidents Claims Tribunal, Jind, which calls for any interference by this Court at the instance of the appellant-insurance company.

No other argument has been addressed.

Appeal is accordingly dismissed with no order as to costs.

(LISA GILL)
JUDGE

November 06, 2019.

Sunil

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