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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 01.08.2019

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MAC.APP. 811/2017

INDERPAL & ANR

..... Appellants

Through: Ms. Usha Pandey, Advocate.

Versus

BIMLESH & ORS (BAJAJ ALLIANZ GENERAL INSURANCE
COMPANY LTD)

..... Respondents

Through: Mr. Anshuman Bal, Advocate for
R-1 & 2.

Mr. A.K. Soni, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 811/2017 & CM APPL. 32926/2017

1. This appeal impugns the award of compensation dated 23.05.2017 in which the appellants i.e. the owner and driver of the insured vehicle, have been made liable for payment of the said amount. The appellants rely upon the certificate/policy schedule of the insured vehicle i.e. a tractor bearing registration no. UP-14BH-4389. The appellants argue that it was identified as a commercial vehicle under Class D. In other words, the tractor, by itself, could be of no use unless it is attached with a trailer. Therefore, the trailer would be deemed to have been covered under the insurance policy. For the insurance company to argue otherwise, to avoid its liability for paying compensation, would be to mislead an unsuspecting customer, who wanted

to have his vehicle insured, especially vehicle owners like the appellant no. 2, who is a farmer. The accident resulting in fatality involved a trailer attached to the tractor.

2. The learned counsel for the appellants relies upon (i) ***United India Insurance Co. Ltd. vs Surinder & Ors.*** 2006 ACJ 1285; (ii) ***New India Insurance Co. Ltd. vs Sanjay Tyagi & Ors.*** 2014 SCC Online Del 1339; (iii) ***Rajinder Singh vs Santosh Devi*** 2014 SCC OnLine Del 3888, to contend that a tractor without a trailer is of no use and a trailer is deemed to be a part of it. However, the Court would note that in each of the aforementioned cases, the trailer, which was the cause of the accident, was attached to an agricultural vehicle, whereas in the present case, the learned counsel has already contended that the vehicle was registered as a commercial vehicle. Logically, therefore, the afore-cited judgments, as distinguishable on facts, would not be applicable to the present case.

3. The learned counsel for the insurance company, strongly refutes the aforesaid arguments advanced by the appellants. He submits that none of these issues were raised before the learned MACT. Therefore, the appellants' argument that the trailer would be presumed to have been covered under the insurance policy is without basis.

4. It is settled law that an insurance policy is based upon the principle of *Uberrima Fides* i.e. utmost good faith, in other words, a disclosure by the proposer/insured to insurer of all relevant information. The insurer provides insurance cover to a vehicle, on the assumed good faith that all the details have been disclosed to him. In this case, the appellant no. 2 ought to have disclosed to the insurance company that he would be attaching a trailer to the insured tractor. It was not so done. In fact, the insurance policy/cover

note itself shows that there would be a separate premium chargeable for the vehicle if CNG contraption was attached to it or if it had electronic or non-electronic attachments.

5. The insurance company provides insurance cover for the risks that may accrue to or because of the said additions to the main vehicle, on payment of the requisite premium offer. The insurance is not limited to the tractor which was to be used for propulsion for something attached to it. Therefore, insofar as the trailer was not covered under the insurance policy issued by the insurance company, the appellant no. 2 would not have the benefit of insurance coverage for the trailer.

6. However, the Court would note that the premium charged on the insurance policy is under the India Motor Tariff which is issued under Part II B of the Insurance Act, 1938. It was prepared by the Tariff Advisory Committee and is applicable to all insurance providers in India. It specifically provides as under:-

“The provisions of this tariff are binding on all concerned and any breach of the tariff shall be a breach of the provisions of the Insurance Act, 1938.”

7. It deals with the nature of premium to be charged on various motor vehicles, including: Tariff for Private Car, Tariff For Motorised Two-Wheelers, Tariff For Commercial Vehicles (a) goods-carrying vehicles (b) trailers (c) vehicles used for carrying passengers for hire or reward (d) miscellaneous and special types of vehicles (e) motor trade road transit (f) motor trade-road risks (g) motor trade-internal risks.

8. The premium charged for the type of vehicle in the present case i.e. a commercial vehicle in Class D, is covered under Tariff for Miscellaneous

and Special Types of Vehicles (Class D). Clause 2 of this Tariff reads as under:-

“2. Use for Hire or Reward

(i). In all cases other than Agricultural and Forestry vehicles, Mobile shops and Canteens, Cinema Film Recording and Publicity Vans, Delivery Trucks, Pedestrian Controlled Trolleys and Goods Carrying Tractors and Vehicles used for Driving Tuition and Fire Brigade and Salvage Corps. Vehicles, the Standard Policy allows use of the Vehicles for hire or reward.

If however, the hiring risks, including driving by hirer's driver and indemnity to hirer, is required to be included in respect of any of the classifications specified above, a loading of 25% on the premium otherwise applicable is to be charged.”

9. Quite clearly, the aforesaid clause excludes the type of vehicle involved in this case, i.e. a tractor, without an attached trolley/trailer. The tractor is primarily an agricultural vehicle, it would become a goods carrying vehicle only when a trailer is attached to it. Interestingly, the Registration Certificate of the tractor shows that it was insured as a commercial vehicle but it could not have been so done unless a trailer, was also insured alongwith it. This is because a ‘tractor’ under section 2(44) of the Motor Vehicles Act, 1988, is defined as:-

“tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller”.

10. Therefore, relying upon the dicta of the Punjab & Haryana High Court in ***United Insurance Company vs. Surinder*** (*supra*), it was held *inter alia*

that the tractor by itself would be of no use, unless it is used for agricultural purposes without contraptions attached to it which may be used in agriculture. If it is, however, used for transporting agricultural products then the trailer also would be deemed to have been covered under the insurance policy as mentioned in the judgment hereinabove but if it is a goods carrying tractor then it would not be covered under Clause 2(i) of the aforesaid classification.

11. Therefore, charging of the premium under Class D only for the tractor is a clear error on the part of the insurance company which, held-out and represented to the vehicle owner that the tractor was insured as a commercial vehicle, i.e. a goods-carrying tractor. By implication, it would mean a trailer was covered under the policy. In view of the above, the appellant would be deemed to be covered under the insurance policy.

12. However, at this stage, Mr. Soni, learned counsel for R-3, submits that the vehicle was being used as a commercial vehicle, that is, the trailer attached to the tractor was being used for carrying bricks on a public road without the requisite road permit; that this constitutes a fundamental breach of the policy conditions. The vehicle met with an accident which caused a fatality and the compensation has already been fixed. However, the appellant has not led any evidence to the contrary and it has been so noted in the impugned judgment. Indeed the Authorised Officer of the insurer i.e. Mr. Nilesh Bairwa, who was examined as R3W1, has subsequently deposed in his affidavit by way of evidence as under:-

“4. That insured did not have the permit to ply the vehicle in question because when the tractor is attached with trolley it becomes a transport vehicle which requires permit. Thus, it is a violation of Motor Vehicle, 1988.

5. That the Respondent no. 2 was using the insured vehicle i.e. tractor in violation of the terms and conditions of the insurance policy. Accordingly, the Respondent no. 3, insurance company, has no liability to indemnify the Respondent no. 2 or to pay any amount of compensation to the Petitioners.”

13. In other words, the insurance company had clearly stated that for plying the insured vehicle for commercial purpose, it would require a road permit. It is not that the appellants were not granted any opportunity to produce the requisite road permit. The insurance company had sought production of the valid permit but the insured failed to produce it. In the circumstances, it would be presumed that they had no road permit to ply the insured tractor as a commercial vehicle. What emanates from the aforesaid is that, although the appellant would be deemed to be covered under the insurance policy, the insurance company would be entitled to recovery of the said awarded amount from the appellants. In view of the above, the impugned order is modified to the extent that the compensation amount be paid by the insurer to the claimants and the insurer is granted the right to recover the same from the appellant-insured.

14. The monies have already been paid to the claimants. The appeal is disposed-off in the above terms.

15. Statutory amount be refunded alongwith interest accrued there on.

NAJMI WAZIRI, J

AUGUST 01, 2019

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