IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2780 OF 2013

The New India Assurance Co. Ltd.,
Through it's Divisional Manager,
Aurangabad Divisional Officer, D.O.I.,
Above Maheshh Auto, Ajay Engineering
Compound, near Kranti Chowk, Adalat Road,
Aurangabad. ... Appellant
(Original Opp. No. 3)

VERSUS

1. Machhindra Sopan Dethe (Died)

2. Rupali Macchhindra Dethe,
Age : 17 years, Occ : Education,

3. Abhijit Macchhindra Dethe,
Age : 15 years, Occ : Education,

4. Anil Macchhindra Dethe,
Age : 13 years, Occ : Education
Res. No.1 guardian of Res. No. 2 to 4
Res. No. 1 to 4 R/o. Kuranpur, Tal. Shrirampur,
Dist. Ahmednagar.

5. Gangadhar Bhau Waditake
Age : Major, Occ : Driver.
R/o. Kadit, Tal. Shrirampur, Dist. Ahmednagar

6. Raghunath Bhau Waditake
Age : Major, Occ : Business,
R/o. Kadit, Tal. Shrirampur, Dist. Ahmednagar. ... Respondents
(Res. Nos. 1 to 4 org.
Claimants, Res. No.4 & 5
Orig. Opp. No.1 & 2.

Shri. Atul B. Gatne, Advocate for the appellants
Shri. C. K. Shinde, Advocate for respondent Nos. 2 to 4

CORAM : M. G. SEWLIKAR, J.

DATED : 28-01-2021

PER COURT :-

. By this appeal the appellant/Insurance Company is challenging the award passed by the learned Member, Motor Accident Claims Tribunal, Shrirampur dated 30/07/2013 in Motor Accident Claim Petition No. 331 of 2008, whereby the claim of the claimants-respondents herein is partly allowed.

2. Facts giving rise to this appeal are that the deceased Sindhubai was the wife of deceased respondent No.1 Machhindra Sopan Dethe. She was an agricultural labour. On the date of the accident i.e. on 09/11/2008 Sindhubai was conducting agricultural operations. At that time driver of tractor No. MH-17-V-6845 being driven by respondent No. 6 dashed against the deceased Sindhubai owing to which she died on the spot. According to the respondents she was earning Rs. 1,000/- from labour work, Rs. 3,000/- from agricultural operations and Rs. 5,000/- from milk business. Her annual income was Rs. 1,08,000/-. The respondent Nos. 1 to 4 claimed compensation to the tune of Rs. 11,06,000/-, but they restricted the compensation to the tune of Rs. 5,00,000/-. Respondent No. 1 Machhindra was the husband of the deceased Sindhubai. Respondent No. 2 is the daughter and respondent Nos. 3 and 4 are the sons born out of the wedlock. Respondent No. 5 was the driver of the offending tractor. Respondent No. 6 is the owner of the said tractor.

3. Respondent Nos. 5 and 6 were served with the notice of the claim, but they chose to remain absent. Therefore, petition proceeded ex-parte against them.

4. Respondent No. 3 filed its written statement at Exhibit 16.

Respondent No. 3 admitted the accident, but contended that because of negligence of the deceased herself the accident occurred. It was further alleged that the harvester was attached to the tractor. There was no negligence on the part of the tractor driver. The tractor harvester did not have valid licence to drive harvester. Therefore, the appellant/Insurance Company is not liable to pay compensation to the respondents.

5. It is not in dispute that the tractor was insured with the appellant.

6. The learned Member, Motor Accident Claims Tribunal framed the issues at Exhibit 17. The learned Member allowed the claim partly and awarded compensation to the tune of Rs. 4,09,000/- with interest at the rate of 9% per annum from the date of the institution of the petition till the realisation of entire amount including amount towards no fault liability. This award is impugned in this appeal.

7. Heard Shri. Gatne, learned counsel for the appellant and Shri. C. K. Shinde, learned counsel for respondent Nos. 2 to 4.

8. Shri. Gatne, learned counsel submitted that the tractor was insured with the Insurance Company, the appellant herein. However, harvester was not insured with the Insurance Company. He submitted that licence is required in terms of Section 10(2)(j) of The Motor Vehicles Act, 1988 which states that licence is required for motor vehicle of a specified description. He submitted that harvester is not defined anywhere in the Act. But it falls under Section 10(2)(j) of the said Act. He further submitted that

once harvester is attached it becomes goods vehicle. The driver-respondent No. 5 was authorized to drive only light motor vehicle (L.M.V.) only i.e. tractor. He submitted that licence Exhibit 29 in the record of the Tribunal indicates that respondent No. 6 was authorized to drive tractor only. Therefore, once harvester was attached to the tractor, the necessary inference is that the respondent No. 6 was not authorized to drive the harvester and therefore respondent No. 6 did not have a valid licence to drive the tractor alongwith harvester. He further submitted that once harvester is attached to the tractor the weight exceeds 7500 k.g. and therefore it becomes a goods vehicle and for that reason the driver becomes disentitled to drive goods vehicle. He submitted that the appellant had examined a clerk from the R.T.O. Office who has stated that the respondent No. 6 did not have valid driving licence to drive the harvester. He submitted, all these aspects were not gone into by the learned Member. Therefore, interference by this Court is necessary.

9. Shri. Shinde, learned counsel submitted that harvester is not defined in the Motor Vehicles Act. He submitted that therefore, it cannot be concluded that provisions of Section 10(2)(j) of The Motor Vehicles Act, 1988 can be made applicable to the harvester. He further submitted that the appellant has not pleaded in his written statement that by attaching harvester the weight exceeds 7500 k.g. Therefore submissions in this regard cannot be permitted. He placed reliance on unreported judgment of Punjab-Haryana High Court in the case of **Future Generali India Insurance Vs. Krishan Pal & Ors in FAO No. 6145 of 2013**. He therefore prayed for the dismissal of the appeal.

10. It is not in dispute that the accident occurred because of the dash given by the tractor to the deceased Sindhubai. It is also not in dispute that harvester was attached to the tractor. The point that arises for consideration is whether the harvester requires a driving licence ?

11. For appreciating these submissions some provisions of The Motor Vehicles Act will have to looked into. Light motor vehicle is defined in Section 2(21) of The Motor Vehicles Act, 1988.

> (21) "light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed (7500) kilograms;

. This provision indicates that the gross vehicle weight of which is less than 7500 k.g. will be treated as a light motor vehicle.

12. Section 2(39) of The Motor Vehicles Act, 1988 defines that,

> (39) "semi-trailer" means a vehicle not mechanically propelled (other than a trailer), which is intended to be connected to a motor vehicle and which is so constructed that a portion of it is super-imposed on, and a part of whose weight is borne by, that motor vehicle;

. This provision indicates that a vehicle which is not mechanically propelled and intended to be connected to a motor vehicle and part of whose weight is borne by that motor vehicle is a semi-trailer. Needless to say that harvester is not a mechanically propelled vehicle. It has to be attached to the motor vehicle.

13. Tractor is defined in Section 2(44) of The Motor Vehicles Act,

1988 as,

> (44) "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;

14. Both the learned counsels agree on the point that harvester is used for harvesting the crop and which is not a mechanically propelled vehicle. It can be used only when it is attached to a tractor. Therefore, harvester can be categorized under semi-trailer.

15. Now the next question is whether once harvester is attached to the tractor, the tractor retains the category of light motor vehicle. As indicated above light motor vehicle means the motor vehicle whose unladen weight does not exceed 7500 k.g. In the case at hand, no evidence was produced before the Tribunal to indicate as to how much is the weight of the tractor and how much is the weight of the harvester. In the absence of any evidence in this regard, it is not permissible for the Court to assume that by attaching harvester to the tractor, the weight exceeds 7500 k.g. Therefore, the Tribunal was justified in coming to the conclusion that the tractor retains the category of light motor vehicle evenafter harvester is attached to the tractor.

16. In the case of **Mukund Dewangan vs Oriental Ins. Co. Ltd reported in 2017 14 Supreme Court case 663** (on which both the learned counsels placed reliance), it has been held in paragraph Nos. 60.1 to 60.4 as under :-

> 60.1. "Light motor vehicle" as defined in section 2(21) of the Act would include a transport vehicle as per the weight prescribed in section 2(21) read with

section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54 of 1994.

60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a roadroller, "unladen weight" of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or roadroller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28-3-2001 in the form.

60.3. The effect of the amendment made by virtue of Act 54 of 1994 w.e.f.14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in Section 10(2)(e), "medium passenger motor vehicle" in section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression "transport vehicle" as substituted in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of section 10(2)(d) and section 2(41) of the Act i.e. light motor vehicle.

60.4. The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

17. On going through this authority, it reveals that the issue i.e. point for consideration before this Court was not involved in the case of

Mukund Dewangan vs Oriental Ins. Co. Ltd (supra).

18. In my opinion, even if any other equipment is attached to the tractor which is not mechanically propelled and the weight does not exceed 7500 k.g., it continues to be a light motor vehicle. It cannot become a goods vehicle as is tried to be submitted by learned counsel Shri. Gatne. All these issues have been answered by the judgment of Punjab and Haryana High Court in the case of **Future Generali India Insurance Vs. Krishan Pal & Ors** (cited supra). In this decision the Hon'ble Punjab and Haryana High Court has observed as under:

> "Even otherwise, Combine Harvester does not fall in any separate class of vehicle under Section 10 of the Act. Even under Section 2 of the Act, there is no definition for a Combine Harvester. A tractor stands defined under Section 2, sub-clause 5 of 6(44) of the Act and 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. Concededly, respondent No. 3 held a valid driving licence to drive a tractor. Learned counsel for the appellant-Insurance Company would not dispute that even a Combine Harvester would be a vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion. It can, thus, safely be concluded that the driving method of the vehicle for which respondent No. 3 held a valid driving licence was the same as that of the offending vehicle."

19. The Punjab and Haryana High Court has held that the combine harvester does not fall in any separate class of vehicle under Section 10 of the Act. By the very nature of the harvester, it is axiomatic that it is not used for carrying any load. Therefore, it does not come within the purview the expression goods carriage.

20. Thus, once it is held that no separate licence is required for

driving harvester, the submissions of the learned counsel Shri. Gatne that respondent No. 6 was authorised to drive tractor only and was not permitted to drive tractor with harvester cannot be accepted.

21. Thus, the appeal is devoid of any substance. Appeal is therefore dismissed with no order as to costs.

22. Amount deposited by the Insurance Company be paid to respondent Nos. 2 to 4 after appeal period is over with interest accrued thereon.

[M. G. SEWLIKAR, J.]

ssp