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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-636-2021 (O&M)
Date of Decision: 27.07.2021

Iffco Tokio General Insurance Company Ltd …Appellant

Versus

Gurmeet Singh and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sanjeev Kodan, Advocate,
for the appellant-Insurance Company.

(Presence marked through Video Conference)

ARUN MONGA, J. (ORAL)

Insurance Company aggrieved against an award dated 05.02.2021, is before this Court, impugning the compensation granted to the claimant. The entire compensation liability arising out of the accidental death of a 55-year-old lady Smt. Jaswinder Kaur, has been fastened on the Insurance Company by giving clean chit to the owner of the offending vehicle (a tractor-trolley).

2. Brief factual narrative first, shorn of unnecessary details, as noted by the learned Motor Accidents Claims Tribunal. On 22.05.2018, at about 12.10 p.m. the deceased along with her husband Gurmeet Singh was going on a scooty as a pillion rider. When they reached near cremation ground, while trying to dodge a *rehri* (cart) in front, one tractor trolley hit the scooty. Allegedly, tractor was being driven by respondent no.5 at high speed. Tractor's driver, while overtaking scooty in a negligent manner, without observing traffic rules and without blowing horn, hit the same. Due to the impact of the accident, both the scooty riders i.e. claimant and his wife fell down on the road. Claimant's wife hit her head on metalled road. She received grievous injuries on her head. She succumbed to her injuries later on. The claimant further averred that, after the accident, driver of the offending vehicle fled from the spot. The claimant averred that the deceased lost her life due to accident caused by the rash and negligent driving of

respondent no.1. Deceased was otherwise hale and hearty and led a very active life.

3. Learned counsel for the appellant strenuously argues that it is an admitted case of the claimant/respondents that accident took place with a tractor-trolley, while the deceased was pillion riding the scooty. He submits that as per the Insurance Contract, it was only the tractor, which was insured and not the trolley. He argues it was trolley which hit the scooty leading to the death of the wife of the claimant, hence insurance company is not liable to pay any compensation.

4. A perusal of the issues framed would reveal that, the appellant Insurance Company did not raise objection before MACT, when issues were framed or even later, qua specific issue to be framed whether trolley was insured. Though it claims to have pleaded that trolley was offending vehicle, as is contended by the learned counsel. Even after framing of issues it was open to insurance company at later stage to get additional or amended issue framed, and yet, it did not do so. No steps were taken before the Tribunal either by way of filing an appropriate application to get any issue framed preliminary or otherwise i.e. Whether the trolley is insured under the Insurance Policy? Following issues were framed by the learned Tribunal:-

> i) *Whether on 22.05.2018 respondent No.1 drove the tractor bearing No. PB-23-T-3884 in a rash and negligent manner and caused death of wife of the claimant No.1and mother of respondents No.2 to 4 as alleged? OPP*
>
> ii) *Whether the claimants are entitled to compensation and to what extent and from whom? OPP*
>
> iii) *Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties? OPR*
>
> *iv) Relief."*

5. Learned counsel for the appellant has placed reliance on a judgment rendered by this Court in case titled as ***"The New India Insurance Company Limited Vs.Sohan Lal and others"*** reported as ***2014 ACJ 1553*** in course of the arguments and submits that trolley is an independent vehicle and having not been insured, the liability has been wrongly fastened on the

Insurance Company and the same ought to have been the sole liability of the owner of the trolley.

6. The aforesaid argument also seems to be totally misplaced in the instant case. A perusal of the judgment relied by learned counsel for the appellant would reveal that it was a case where evidence had been adduced to prove that the accident indeed took place with trolley alone. And, therefore, being not covered under the Insurance Contract, insurance Company was not liable.

7. In the present case, shoe is on the other foot, as is borne out from the following specific findings recorded by the learned Tribunal,:-

> *10. "The first aspect of the case is manner of accident and to prove this aspect, the claimant as well as eye witness has examined himself as CW1 and CW1 has testified the occurrence of accident in verbatim, as asserted in petition. The claim-petitioner has also brought upon record FIR Ex C2, PMR ExC1 to support his case.*
> *11. The contesting respondents did not offer any evidence to rebut such evidence of claimant. In other words, the oral and documentary evidence of claimant remained unrebutted and it is duly proved that Jaswinder Kaur died due to accident caused by respondent no.1 while driving the offending vehicle in rash and negligent manner. Thus, the issue no.1 stands decided in favour of claimants and against the respondents.*"

8. The aforesaid findings reveal that no evidence was adduced at the relevant time to establish that it was a trolley, which was the offending vehicle and not the tractor. Keeping in view the evidence on record, offending vehicle being driven at the time of accident was thus a tractor which hit the scooty. Also, given that the offending vehicle was the tractor, it is rather insignificant whether such an issue was framed or not. Findings have been rendered based on the evidence available on record, no fault can be thus be found with the approach adopted by the learned Tribunal below.

9. Admittedly, tractor is covered under the insurance contract. The scooty was hit with the moving vehicle, which though is now claimed by insurance company to be a trolley, but there is no evidence qua the same. In any case, trolley by itself is not capable of transportation or being driven on road, unless attached with a tractor or another motorized vehicle. No doubt, it is an independent and separate piece of vehicle but without any engine and has to be thus necessarily plied as an attachment with another vehicle.

Accordingly, if at all, the offending vehicle in present case had to be construed as the tractor and not trolley.

10. In the premise, Insurance Company cannot now take a specious plea to avoid its liability on the ground that scooty was hit with the trolley and not with the tractor.

11. Having perused the impugned award herein and as an upshot of the discussion above, no grounds to interfere are made out.

12. Dismissed.

(ARUN MONGA)
JUDGE

27.07.2021
Vandana/vs/mahavir

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