IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 477/2021

Date of decision: 19.12.2022

Juned and another

………………Appellants

Vs.

Satyabhama Devi and others

…………………Respondents

CORAM HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Tushar Gautam, Advocate for the appellant.

Mr. Satish Jain, Advocate for respondent no.6-Insu.Co.

Nidhi Gupta, J.

CM 10001-CII/2021

Prayer in this application under Order 41 Rule 27 read with Section 151 CPC is to place on record the documents, i.e. Jamabandi for the year 2015-16 in respect of land in the ownership of appellant No. 2, as Annexure A-1; copy of Insurance Policy of the offending vehicle as Annexure A-2; and Driving Licence of appellant No. 1 as Annexure A-3.

Notice of the said application was issued to respondent No. 6 - Insurance Company. However, no reply to the same has been filed.

In view of the submissions made in the application, the same is allowed and documents Annexures A-1 to A-3 are taken on record.

Main Appeal:

This is an appeal filed by the driver and owner of the offending vehicle against recovery rights afforded to the respondent No. 6 – Insurance Company vide Award dated 23.10.2020 passed by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') in MACP No. 196/2019 in a claim petition filed under Sections 166 & 140 of the Motor Vehicles Act,1988 by the claimants/ respondents No. 1-5 herein, on account of death of Rajesh Kumar Shah in a motor vehicular accident involving Eicher tractor bearing registration NO. HR-27G-8979 (hereinafter referred to as 'the offending vehicle'). Claimants-respondents 1 to 5 herein are widow and minor children of the deceased. Vide impugned Award the learned Tribunal held the appellant-driver and owner liable to pay the compensation of Rs. 13,04,800/- jointly and severally along with interest @ 9% per annum from the date of filing of the claim petition till payment. However, it was further directed that respondent no.6-Insurance Company will initially make the payment of compensation to the claimants, but right to recover the same from the appellants herein was granted.

On appraisal of the pleadings and evidence produced on record, the learned Tribunal concluded that the deceased had died due to the injuries suffered because of rash and negligent driving of respondent no.1 while driving the offending vehicle. Age of the deceased was taken to be 37 years on the basis of Aadhar Card of the deceased PW4/6 wherein date of birth of the deceased was shown as 1.1.1980. Though, it was assertion of the claimants that deceased was working as labourer in

Workshop and also running a Dairy and earning Rs.20,000/- per month, however, the same was not proved on record and accordingly, the Tribunal took the income of the deceased to be Rs.7000/- per month as that of unskilled labourer. 40% was awarded on account of future prospects with a deduction of 1/4th on the basis of number of dependents and multiplier of 14 was applied. Rs.15,000/- each was granted on account of loss of estate and funeral expenses and Rs.40,000/- was granted on account of consortium. Accordingly, total compensation of Rs.13,04,800/- was awarded to the claimants.

It is submitted by the learned counsel for the appellants that the learned Tribunal has granted recovery rights to the Insurance Company on the basis of findings recorded in para 23 of the impugned Award, which reads as follows: -

> *"23. In the present case vehicle in question is a tractor. From the perusal of the registration certificate of the tractor, it reveals that tractor was registered for agricultural purposes. No evidence, whatsoever, has been produced by the respondent no.1 and 2 to prove the fact that owner of the tractor was having any agricultural land. No jamabandi in this regard has been produced by respondent no.1 and 2. The petitioner has specifically deposed that when respondent no.1 was trying to fill trolley with dust, the accident had taken place. Meaning thereby, at the time of accident tractor was being used for commercial purposes. No document has ben produced by respondent no.2 to prove the fact that he was having a valid permit at the time of accident. A legal notice Ex.R6 was also served upon respondent no.1 and 2 by respondent no.3 with a request to produce the permit and fitness of the tractor but these documents were not produced by respondent no.1 and 2. The tractor in question could only be used for agricultural purposes and not for any other purpose. In these circumstances I am of the considered opinion that respondent No.1 and 2 have violated the terms and conditions of the insurance policy by using the tractor for commercial purposes despite the fact that it was registered for agricultural purposes. In these circumstances I am of the considered opinion that respondent No.3 is not liable to indemnify the insured. However, in view of the cases laws titled* ***M/S Natwar Parikh vs. State of Karnataka (SC) 140; Mam Chand vs. Sunita RCR 2012 (5) (civil) 275 (P&H) and United Insurance India Pvt. Ltd. Vs. Kasish Midda, FAO No.499/2010 decided on 02.05.2017 (P&H),*** *referred by learned counsel for respondent No.3 the respondent No.3 is liable to pay the compensation to the petitioners with a right to recover the same from*

respondent No.1 and 2. Hence, these issues are decided in favour of respondent No.3 accordingly".

It is submitted by ld. Counsel for the appellants that above said finding of the Tribunal is patently incorrect as a bare perusal of Annexure A-1, which is Jamabandi for the year 2015-16, shows that the appellant No. 1 owner of the offending vehicle owns agricultural land in his name; and therefore, the offending vehicle was being used for cultivating this land and not for commercial purpose as wrongly concluded by the ld. Tribunal. It is further submitted that the offending vehicle was insured at the time of accident vide Insurance Policy Annexure A-2; and further at the relevant time appellant no.1-Driver of the offending vehicle held a valid driving licence.

In response, learned counsel for the Insurance Company submits that the said jamabandi pertains to the year 2015-16 whereas the date of accident is 15.9.2017 and therefore, the same is not relevant. It is further submitted that as per jamabandi the appellant no.2-owner of the offending vehicle owns only one acre of land and therefore, it is improbable that the offending vehicle was being used for cultivating the said land. It is submitted that in fact, the offending vehicle was being rented out for transporting dust/soil for commercial purposes and therefore, the appellants had violated the terms and conditions of the insurance policy in using the offending vehicle for commercial purposes despite the fact that it was registered for agricultural purposes. It is submitted that no permit and fitness certificate of offending vehicle has been produced. No other argument is made on behalf of the respondent-Insurance Company.

In rebuttal, it is submitted by the learned counsel for the appellants that as the offending vehicle was being used only for agricultural purposes, no permit or fitness certificate was required to be produced.

I have heard learned counsel for the parties.

A perusal of Annexure A-1 which is the jamabandi for the year 2015-16, shows that there can be no doubt the appellant no.2 is owner of agricultural land. Submission of the ld. Counsel for the respondent to the effect that the same is not relevant as it pertains to the year 2015-16 whereas accident is of the year 2017, is misconceived, as the validity of all Jamabandi is for a period of five years. The second contention of the ld. Counsel for the respondent to the effect that as the appellant No. 2 owns only one acre of land and therefore, it is improbable that the offending vehicle was being used for cultivating the said land, is rejected being vague and conjectural.

Further, as seen from para 23 of the impugned Award reproduced hereinabove, the only ground on which the Tribunal concluded that the offending vehicle was being used for commercial purposes was in view of the fact that the appellant had been unable to produce any jamabandi or any other evidence in support of their assertion that they owned agricultural land. The Tribunal had accordingly relied upon the testimony of respondent no.1 to conclude that the offending vehicle was being used for commercial purposes. However, said finding of the Tribunal is directly disproven by way of the additional evidence placed on record by the appellants. It is clear that appellant no.2-Mehfuj owner of the offending vehicle owns land as depicted in Annexure A-1. Therefore, reliance cannot be placed upon the bald statement of claimant/respondent no.1. It has also been categorically stated by the appellants that they are using the offending vehicle for agricultural purposes and therefore, there is no violation of the terms and conditions of the insurance policy. Further it is not in dispute that appellant no.1 was holding a valid driving licence at the time of accident. As such, it is clear that the learned Tribunal has wrongly fastened the liability upon the appellants.

For the reasons stated above, this appeal is allowed and the impugned Award dated 23.10.2020 is set aside to the extent it grants recovery rights to the respondent-Insurance Company against the appellants herein.

Pending applications if any, also stand disposed of.

19.12.2022 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned	**Yes**
Whether reportable	**Yes/No**