2024:PHHC:150388

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

222 **FAO-2117-2007 (O&M)**
Date of Decision: November 07, 2024

National Insurance Co. Ltd. **......Appellant**

Vs.

Gian Singh and others **......Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the appellant

Ms. Nisha Rana, Advocate for the respondents.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the appellant-Insurance company against the Award dated 23.02.2007 passed in the claim petition under Section 163-A of the Motor Accident Claims Tribunal, Patiala (for short, 'the Tribunal'), vide which appellant-Insurance Company was held liable to pay the awarded compensation.

BRIEF FACTS OF THE CASE

2. The brief facts of the case are that on that on 15.11.2004 Gurdhian Singh alongwith Didar Singh and Sultan Singh was returning on tractor trolley No. PB-11-Q-5574 after loading rice straw. When the said tractor trolley reached within the revenue limits of village Manjoli, the hook of trolley all of sudden broken and the tractor trolley turned turtle upside down. The tractor was being driven by respondent No.1 and Gurdhian Singh alias Pilla was

sitting on the left mudguard of the tractor whereas Sultan Singh was sitting on the right side of the mudguard. As a result of this accident, the driver of the tractor trolley received multiple injuries while Gurdhian Singh came underneath the tractor trolley. Oil also started oozing from the engine of the tractor and the tractor caught fire. Gurdhian Singh was removed from underneath the tractor but he died due to fire.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

> *1. Whether the deceased Gurdhian Singh had died due to an accident caused by respondent No.1 while driving tractor bearing registration No. PB-11-Q-5674 on 15.11.2004 as alleged ? OPP*
> *2. Whether respondent No.1 was not holding a valid driving licence at the time of alleged occurrence, if so, its effect? OPR-3*
> *3. Whether the claimants have filed the present claim petition in collusion with respondents No.1 and 2 ? OPR-3.*
> *4. Whether the claimants are entitled to claim compensation, if so to what amount and from whom? OPP*
> *5. Relief.*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the tune of Rs.1,84,000/- and directed Insurance Company to pay the awarded amount to claimants. Hence, the appellant filed the present appeal for setting aside the Award dated 23.02.2007 passed by Ld. Tribunal and to absolve the insurance company of liability for payment of the compensation.

SUBMISSIONS OF THE LD. COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant-Insurance Company asserts that the Tribunal has erred in holding the Insurance Company liable to pay compensation, as the claimant was sitting on the mudguard of the tractor at the time of the incident. He contends that a tractor is not intended for carrying passengers, and if an individual on the mudguard sustains fatal injuries due to a fall, any claim for compensation would not be maintainable against the Insurance Company. Instead, liability, if any, would lie solely on the driver and owner of the offending vehicle. Thus, present appeal be allowed, and the insurance company be absolved of its liability to discharge the awarded sum.

7. Per contra, Ld. Counsel for the respondents/claimants contend that the award has rightly been passed and prayed for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the Award is reproduced as under:-

> *"18. At the time of arguments, learned counsel for the respondent Insurance company has argued that as the deceased was sitting on the mudguard and was a gratuitous passenger, therefore, he is not entitled to compensation from the insurance company and the insurance company is not liable to pay the same. On this point, learned counsel for the insurance company cited 2006 ACJ 671 (Kar.) in which it is held as under:-*
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> *"Motor insurance-Tractor-Passenger risk-Liability of insurance company-Permitted seating capacity of tractor is only that of driver-Regulation 28 of Rules of the Road Regulations prohibit carrying of any person on the mudguard of a tractor-Whether insurance company is liable for the death of a person, who was traveling on the mudguard of a tractor-Held: nc."*
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> *19.Learned counsel for the insurance company further cited 1994 ACJ 822 (P&H) in which it is held as under: -*
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> *"Motor insurance-Death of passenger on a tractor-Liability of insurance company-whether insurance company is liable for death of passenger on tractor when it turned turtle-Held: no; tractor is not a vehicle meant for carrying passengers."*

20. On this point, learned counsel for the insurance company further cited 2006 ACJ 1974 (MP), in which it is held as under:-

"Motor insurance-Good vehicle-Act policy- Agricultural purposes- Liability of insurance company- Tractor trolley dashed against a tree, trolley over turned and a passenger traveling in the trolley was crushed to death- No case of the claimants that deceased was a labourer engaged by owner of vehicle for agricultural purposes- Contention that deceased was carrying two bags of wheat and he was permitted to travel along with the goods-Vehicle was insured for agricultural purpose and not for carrying goods Whether there was breach of policy and insurance company is exempted from liability-Held: yes.."

21. Learned counsel for the insurance company further cited 2005 ACJ 1167 (MP) in which it is held as under:-

"Motor Insurance-Policy-Breach agricultural purposes- Liability insurance company-Death of of of passenger traveling on tractor when he fell from the vehicle- Sitting capacity of tractor is only for driver-Tractor was insured under Act policy and premium for risk of driver vas paid- Tractor was insured for agricultural purposes but it was driven in violation of conditions of policy whether insurance company is liable-Held: no: passenger is not permitted on a tractor."

22. Learned counsel for the insurance company further cited 2004 ACJ 321 (MP) in which it is held as under:-

"Motor insurance-Policy-Breach-Agricultural purpose Liability of insurance company- Person sitting on the edge of tractor- trolley fell down and was run over-vehicle was insured for agricultural purpose but vas being used for non agricultural purpose-Owner of vehicle was sitting near the driver in that vehicle at the time of accident and it can be inferred that breach was committed with his knowledge and consent- Whether insurance company is liable-Held: no."

23. I have gone through all these citations cited by the learned counsel for the insurance company in which it was held that the tractor is for agricultural purposes and gratuitous passenger on the tractor is not covered under the insurance policy.

24. On the other hand, learned counsel for the claimants cited ACJ 2006 (1) Supreme Court 1 in which it is held as under:-

"Goods vehicle-Tractor and trailer-Tractor and trailer are separately defined under the Motor Vehicles Act Whether tractor and Trailer when combined would constitute a "goods carriage" under 3.2(14) and consequently a transport vehicle under S.2 (47) of Motor Vehicles Act, 19880 Held: yes: trailer when attached to a tractor is used for transporting goods from one place to another."

> *25. Ld. Counsel for the claimants also cited (2000-1) PLR 464 (SC) in which it is held as under:- "Passenger traveling on truck-Liability of insurance company not excluded-Under new Act insurance policy covering third party risk not required to exclude gratuitous passenger vehicle of any type or class."*
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> *26. I have gone through these citations. These citations fully apply in the present case.*
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> *27. Hon'ble Keeping in view the law laid down by the Supreme Court regarding gratuitous passenger, the citations cited by the learned counsel for the insurance company will not apply in the present case."*

10. A perusal of the award indicates that the present claim petition was filed under Section 163-A of the Motor Vehicles Act. Under this provision, the claimant is only required to establish the involvement or use of the vehicle in the accident, without the necessity of proving negligence on the part of the driver of the offending vehicle. A perusal of the award further indicates that the Tribunal has rightly adjudicated Issue No. 1-"*Whether the deceased, Gurdhian Singh, succumbed to injuries sustained in an accident caused by respondent No. 1 while driving the tractor bearing registration No. PB-11-Q-5674 claimants in favour of claimants.* Accordingly, the Tribunal's findings regarding the issue no 1 are well-founded and do not warrant any interference by this Court.

11. So far as the petitioner's contention regarding the liability of the insurance company to compensate the awarded amount in cases of death of a gratuitous passenger seated on the mudguard of a tractor is no longer *res integra*. This Court, in the case of ***Ram Diya & Another vs. Sanjay @ Sanjeev Kumar***, has already settled the issue holding that insurance company can be directed to pay the compensation awarded to the claimant in the first instance. subsequently, the insurance company may recover the compensation amount

from the driver and owner of the vehicle. The relevant extract of the judgment passed by this Court in FAO-4556-2006 is reproduced as under:-

> *"17. Hon'ble the Supreme Court in case titled as "**Shivraj Vs. Rajendra and another", 2018(10)SCC432** held that tractor is not meant for passenger and if a person sitting on the mudguard falls and suffers a fatal accident, the claim against the Insurance Company would not be maintainable and claim would only be maintainable against the driver and owner of the offending vehicle. The relevant portion of the judgment is reproduced as under:-*
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>> *"10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in National Insurance Co. Ltd. v. Swarna Singh & Ors., 2004(2) RCR (Civil) 114: (2004) 3 SCC 297, Mangla Ram v. Oriental Insurance Co. Ltd., (2018) 5 SCC 656, Rani & Ors. v. National Insurance Co. Ltd. & Ors., 2018(3) RCR (Civil) 979: 2018 (9) Scale 310 and including Manuara Khatun and Others v. Rajesh Kumar Singh And Others, 2017(2) RCR (Civil) 108: (2017) 4 SCC 796. In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).*
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> *18. Further Hon'ble the Supreme Court in case titled as **"Kalim Khan and others Vs. Fimidabee and other", 2018(7) SCC 687**, held as under"-*
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>> *25. Presently, we shall scrutinse the factual score in the case at hand. As is evincible, the battery was installed in the tractor and the explosives were charged by the battery. The purpose was to dig the well in the field. In such an obtaining factual matrix, it would be an erroneous perception to say that the vehicle was not in use*

as stipulated under Section 165 of the Act. Hence, we have no hesitation in holding that the Division Bench has fallen into error on the said score.

26. Having said that, we have to presently analyse on whom the liability should be mulcted. As is evident, the insurer has advanced the plea that the tractor was insured under "Farmer Package Policy for agriculture purpose by the owner of the vehicle. However, it was used for commercial purpose by mounting a blasting machine thereon. That use was in breach of insurance policy and, therefore, the insurer was not liable to pay the compensation. The insurer also examined its employee, namely, Mr. Chararkar to establish the fact that the owner of the vehicle had committed breach of insurance policy by using it for commercial purpose and for transporting the blasting machine. The tribunal has adverted to the plea of the insured that the vehicle was used for digging of the well in the field of respondent No. 1 (Fimidabee w/o Abdul Gaffar) which obviously was for irrigation and incidental to agricultural activity and not in breach of the insurance policy. The rival contention in this behalf has been considered by the tribunal in the following words:-

"29. The Respondent No.2 has admitted the fact that Insurance Policy of offending tractor was for the agricultural purpose. The insurance of offending tractor was taken at Jaipur, Rajasthan. It was brought for commercial activity namely the blasting work. The blasting machine was found on the tractor. No permission from Competent Authority was taken for the blasting work and therefore, the Respondent No.2 has used tractor for commercial purpose and consequently there was fundamental breach of the Insurance Policy. The Respondent No.2 committed fundamental breach of the Insurance Policy allowing the use of tractor for commercial purpose and therefore, the decision cited supra is inapplicable."

And again in paragraphs 35, 36 and 37, the tribunal has observed:

"35. The Respondent No. 1 has come with the case that digging

work with blasting operation was given with sole responsibility of Respondent Nos. 2 and 3. The Respondent Nos. 2 and 3 have come with the case that blasting work for digging of well was taken at the risk of Respondent No.1 to 3 have not produced documentary evidence showing that digging work of well with blasting operation was being done on the sole responsibility either of Respondent No.1 or of the respondent Nos. 2 and 3. In absence of such evidence, the Respondent Nos. 1 to 3 are jointly and severally liable to pay compensation.

36. It was submitted on behalf of Respondent No.4 that Respondent No.2 committed fundamental breach of Instruction Policy by using the tractor for commercial purpose and therefore, Respondent No.4 cannot be directed to make the payment to petitioners and recover the same from the owner of offending tractor.

37. The Respondent No.2 allowed the use of offending tractor for doing the blasting work and therefore there was fundamental breach of the Insurance Policy. Since there was fundamental breach of the Insurance Policy for using the offending tractor for commercial purpose and consequently, Respondent No. 4 is not liable to pay the compensation and directed to pay the same and recover the same from Respondent No. 2 owner of offending tractor.

The High Court, however, has not analysed this issue at all, for it took the view that as the vehicle was not used for causing explosion, it could not be said that the accident had arisen out of use of motor vehicle as defined under Section 165 of the Act.

27. From the factual position as already analysed earlier, it is noticed that the battery of the tractor was used for digging of well in a field used for agricultural purpose. The insured had contended that the work of digging of well in a field used for agricultural purpose would embrace an activity associated with agriculture for irrigating the field and we have answered the same in the affirmative. We may immediately state that our answer does not help in fastening the liability because there has been no *analysis as regards the terms and conditions of the policy and its fundamental character. The High Court, as we notice, has not dealt with any of these matters, the adjudication whereof has now become inevitable to answer the issue about the liability to be borne by the insurer, the owner of the vehicle (insured) or otherwise. This adjudication requires analysis of relevant material including the insurance policy and evidence of concerned witnesses, for understanding the terms and conditions of the policy regard being had to nature of policy and the extent of the liability of the insurer, if any. As the High Court has not considered this aspect at all, we deem it appropriate to relegate the parties to the High Court for determining the singular issue about fastening of the liability on the insurer or the owner of the vehicle. Under these circumstances, we are of the considered opinion that until that issue is finally decided, the insurance company must pay the compensation amount payable to the claimants as determined by the tribunal in terms of the award dated 5th January, 2008 which payment will be subject to the outcome of the remanded appeals to be decided by the High Court. Needless to state that the claimants need not contest the remanded proceedings before the High Court as it is remitted only for limited purpose to determine the liability amongst the insurer (United India Assurance Co. Ltd.) and owner of the vehicle, Kanhaiyalal.*

28. In view of the aforesaid analysis, we partly allow both the appeals, set aside the judgment of the High Court dated 10th October, 2013 in First Appeal Nos. 494 of 2013 and 437 of 2008 and restore both the First Appeals to the file of the High Court to their original numbers for being decided on the question as to who should be made liable to pay the compensation amount as determined by the tribunal to be paid to the claimants. We request the High Court to decide the First Appeals expeditiously, with reference to the limited issue of liability to pay compensation. In terms of this order, the insurance company is directed to deposit *the compensation amount before the tribunal within eight weeks hence, which will be without prejudice to the rights and contentions of the insurance company in the remanded First Appeals. In the event the insurance company succeeds, it will have the right to recover the same with interest accrued thereon from the owner of the vehicle. The amount deposited by the insurance company shall be disbursed by the tribunal keeping in view the law laid down in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas and others (1994) 2 SCC 176."*

*19. In view of the above referred to judgments of Hon'ble the Supreme Court in "**Shivraj and Kalim Khan** (supra), the question of liability is no longer res integra as it had been held that since the deceased was a gratuitous passenger sitting on the mudguard of tractor (offending vehicle), the Insurance Company would be liable to recover the amount of compensation from the driver and owner of the offending vehicle."*

12. In light of the above, the tribunal's findings on this issue are hereby set aside.

13. In sequel of the foregoing, the insurance company is directed to disburse the awarded compensation in the first instance. However, the insurance company shall have the liberty to recover the said amount from the owner of the offending vehicle.

14. In view of the above, the present appeal is ***partially allowed***.

15. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Paul S. Saini, Advocate and Mr. Vipul Sharma, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 07, 2024
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Whether speaking/non-speaking : Speaking
Whether reportable : Yes /No