IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1109-1998 (O&M)
Date of Decision: May 12, 2025

Rajwanti Devi and others
...Appellants

VERSUS

Pala Ram and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.A.K.Khubber, Advocates
for the appellants.

Mr.Rakesh Nagpal, Advocate
for respondents No.1 and 2.

Mr.Manuj Chadha, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The appellants-claimants have filed the present appeal to assail the judgment dated 24.01.1998 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the appellants-claimants for seeking compensation, on account of death of Subhash Chand, in a motor vehicular accident, was dismissed.

The facts germane, to be noticed, are as follows:-

That, on 07.05.1993, Subhash Chand along with others, was travelling on mudguard of tractor bearing registration No.HYO-6670, which was going from Kurukshetra to Dhand, being driven by respondent No.1-Pala Ram, rashly and negligently. When it reached near village Pabnawa, respondent No.1 suddenly turned the tractor towards left side, as a result of which, the tractor dashed against the tree and was broken in two pieces. Subhash Chand fell down from the tractor and got crushed under the tractor and died on the spot. The tractor was owned by respondent No.2 and was duly insured with respondent No.3.

However, respondent No.1, in his reply, denied about the version of the accident. Rather, it was pleaded that deceased never sat on mudguard of the tractor. He further pleaded that on 07.05.1993, he was going on tractor from Kurukshetra to Dhand, at a normal speed of 20-25 kms. per hour on left side. Near village Dhand, a cyclist came from the opposite side, on his wrong side and just to save him, he turned the tractor towards left side of katcha road. He also pleaded that the brakes of the tractor failed and thus, it struck against the tree and got damaged. However, there was no loss of life or injury to anyone and he has been falsely implicated in the criminal case.

Initially, one Rajinder Kumar was impleaded as respondent No.2 as owner of the tractor. He filed reply thereby, stating that he is not the registered owner of the tractor and upon the same, amended title was filed, thereby, impleading Sewa Ram as respondent No.2, being actual owner of the tractor in question, who also filed reply, wherein, he denied about taking place of the accident, as alleged and that the tractor was duly insured.

Even, respondent No.3-insurance company had filed reply, thereby, raising various objections, vis-a-vis, maintainability of the petition and the same to be time barred as well as respondent No.1, not possessing valid driving licence and that the tractor was being used for commercial purposes and not for agricultural purposes and as such, the insurance company is not liable to pay compensation.

Suffice to consider that on appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place, on account of rash and negligent driving of tractor bearing registration No.HYO-6670, driven by respondent No.1-Pala Ram and the same resulted into death of Subhash Chand. Accordingly, issue No.1 was decided in favour of the claimants.

Even though, on appraisal of the evidence, learned Tribunal had concluded about the deceased to be earning Rs.2500/- per month, but however, had placed reliance upon ***New India Assurance Company vs. Tarawati and others, 1994 (II) A.C.J. Page 822***, wherein, it was concluded that the tractor was not meant for carrying passengers and whosoever, takes the ride on it, is doing so at his own risk. While further making reference to the aforesaid judgment, it was observed by learned Tribunal that if some unfortunate occurrence takes place, neither the driver, nor its owner can be held liable and if the tractor is insured with the insurance company, no liability, on the insurance company, for the death or the injuries sustained, can be fastened.

Considering the aforesaid observations, it was also held by learned Tribunal that the case under consideration is squarely covered by the aforesaid case law and therefore, it was held that none of the respondents is liable to pay the compensation, on account of death of Subhash Chand and ultimately, the claim petition was dismissed.

At this juncture, it is pertinent to mention that decision rendered by this Court in ***Tarawati's case (supra)***, has since been over-ruled by the Hon'ble Division Bench of this Court, while answering the reference, made by learned Single Judge in case titled '***Smt.Chameli Devi and others vs. Mukesh alias Kalu and others'*** bearing ***FAO No.1187-1998***.

In the case under consideration, in the ***Chameli Devi's case (supra)*** also, the person travelling on the tractor had fallen down and was crushed under the wheel of the trolley of the tractor. Therein, the question of maintainability of the petition had arisen and thus, learned Single Judge, had made reference to the Hon'ble Division Bench, for deciding the issue, posed as under:-

> *"Whether in an accident in which death of or an injury to a passenger being carried on a tractor is caused, the claimants can or cannot claim compensation under the provisions of the Act from the driver and owner of the tractor."*

A Division Bench of this Court decided the reference on 03.11.2000, in this case, holding that the answer to the question referred by the learned Single Judge was as under: -

> *"When an accident takes place resulting into death or injury to a passenger being carried on a tractor, claim can be maintained by the injured or the dependents of the deceased (as the case may be) for compensation under the provisions of the Act against driver and owner of the tractor"*

It is pertinent to mention that in ***The New India Assurance Company Limited vs. Smt.Tara Wati, 1994 (2) Pun LR 103***, it was observed by the Court, as herein given:-

> *"On consideration of the arguments of the Counsel for the*

parties, I find no substance in the arguments of respondents' Counsel. Under Section 95 of the Motor Vehicles Act, tractor has been defined as a vehicle not meant for carrying passengers. Otherwise also, it is a matter of common knowledge that tractor is not meant for carrying passengers. Whosoever takes a ride on it, shall be doing so at his own risk. If some unfortunate occurrence takes place, neither the driver nor its owner can be held liable and if the tractor is insured with the Insurance Company no liability on the Insurance Company for the death of or injuries sustained in the accident, can be fastened on this account. In view of the provisions of the Motor Vehicles Act, no liability could be fastened on the Insurance Company for the death of a person who was travelling on the tractor. The law is also further settled that when a person is travelling on a vehicle which is not meant for carrying passengers, the Insurance Company is not liable.

In pursuance of the reference made by learned Single Bench in ***Chameli Devi's case (supra)***, the Hon'ble Division Bench observed that they have gone through the facts of this case and also gone through the judgment in case of ***Tara Wati's case (supra)*** and also the judgment, by which the matter was referred to the Division Bench. Thereupon, the Hon'ble Division bench had made reference to Sections 165, 2(44) and 2(28) of the Motor Vehicles Act and answered the reference. The observations made, are reproduced, in verbatim, as herein given:-

"4. Section 165 of the Motor Vehicles Act (hereinafter referred to as 'the Act') is as under:

165. Claims Tribunals.--(1) A State Government may, by Notification in the Official Gazette, constitute one or more

> *Motor Accident Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunals) for such area as may be specified in the Notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.*
>
> *(Emphasis supplied)*

5. Therefore, if the accident had taken place and that was caused by the use of a motor vehicle, then the Tribunal shall have jurisdiction to entertain the claim. Section 2(44) of the Act defines tractor as a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion). This definition shows that tractor is a motor vehicle.

6. Section 2(28) of the Act defines motor vehicle as a vehicle which is mechanically propelled, adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source. From these two definitions, it is clear that a tractor is a motor vehicle and if the accident has taken place by use of a tractor then certainly Claims Tribunal will have jurisdiction.

7. Learned Single Judge in the case of New India Assurance Co. Ltd. v. Smt.Tara Wati (1994 (2) Pun LR 103)(supra), has observed that the tractor has been defined as a vehicle not meant for carrying passengers and whosoever takes a ride on it, shall be doing so at his own risk. It is also observed by the learned Single Judge in that case that if some unfortunate occurrence takes place, neither the driver nor its owner can be held liable. We do not agree with the view taken by the learned

> *Single Judge in the case of Tarawati (supra), in view of the above discussion regarding Sections 165, 2(44) and 2(28) of the Act. We, therefore, answer the question referred to by the learned Single Judge as under:*
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> > *"When an accident takes place resulting into death or injury to a passenger being carried on a tractor, claim can be maintained by the injured or the dependants of the deceased (as the case may be) for compensation under the provisions of Motor Vehicles Act against the driver and owner of the tractor."*
>
> *8. This appeal shall now be listed before the regular Bench in due course.*
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> *Appeal allowed."*

In the light of the aforesaid, it is pertinent to mention that the judgment relied upon by learned Tribunal, in the case in hand, has since been over-ruled by the Hon'ble Division Bench of this Court. Relying upon the reference answered by the Division Bench, it was also held in ***Chameli Devi's case (supra)*** that the claim was maintainable against the driver and owner of the tractor and not against the insurance company. Although, while taking into consideration the factual position existing in that case, it was concluded by the Court that no negligence was evident, on the part of respondent No.1-driver of the tractor and thereupon, the compensation was denied, but however, so far as, the question of maintainability is concerned, it was again reiterated by the Court in the ***Chameli Devi's case (supra)*** that the claim petition is maintainable against the driver and owner but not against the insurance company, in the particular case.

Also, beneficial reference is made to decision rendered by this Court in ***Ajay Kumar and others vs. Darshana Devi and others, 2019(2) Law Herald 1536***, wherein, it was observed that a tractor is not meant for passengers and if a person sitting on the mudguard falls and suffers a fatal accident, the claim against the insurance company would not be maintainable. The question formulated in the said case was as herein given:-

> *"The sole question that arises for consideration in the present appeal is, whether the insurance company could be made liable to indemnify the deceased, on the face of the record that the offending vehicle was being driven by a person who was not holding an effective and valid licence and whether the deceased was an unauthorised passenger as the tractor trolley is not meant for carrying passengers?"*

However, it was observed therein as under:-

> *"The questions as framed are no longer res-integra, as it has been held in a catena of judgments that a tractor is not meant for passengers and as such insurance company cannot be fastened with any liability arising out of accident if any. Reference in this regard can be made to the judgment in the case of United India Insurance Company Limited (supra), wherein this Court came to hold that a tractor is not meant for carrying passengers, which has only a sitting capacity for a driver, while further holding that there is no insurance cover for a person sitting on the mudguard of a tractor and, therefore, the insurance company cannot be fastened with the liability in case of any untoward incident.*

Therein also, reference was made to Chameli Devi's case (supra), wherein, it was held that the tractor is not meant for passengers and if a person sitting on the mudguard falls and suffers a fatal incident, the claim against the insurance company, would not be maintainable. It was held that he was a gratuitous passenger and that claim would only be maintainable against the driver and the owner of the offending vehicle.

Now, coming to the case in hand, as observed in the earlier portion of the judgment, the deceased was sitting on the mudguard of the tractor, which is not meant for carrying passengers and in the light of the same, no liability, as such can be fastened upon the insurance company and therefore, the insurance company is exonerated. In any case, the claim petition is maintainable against driver and owner of the tractor in question and therefore, the liability can be fastened upon respondents No.1 and 2. In these circumstances, the judgment of dismissal of the claim petition, is set aside.

It is pertinent to mention that it has already been concluded by learned Tribunal, about the accident to have taken place, due to rash and negligent driving of the offending tractor, as a result whereof, Subhash Chand, who was sitting on the mudguard, had fallen down and was crushed beneath the tractor. However, the aforesaid finding, as such, has not been assailed by the persons, upon whom, the blameworthiness was fastened.

In the given circumstances, in view of the maintainability of the claim petition as concluded by this Court, the appellants-claimants are entitled to compensation, on account of death of Subhash Chand.

In the claim petition, it is asserted that deceased was 31½ years old, at the relevant time and it is claimed that deceased was earning Rs.6500/- per month. Rajwanti, widow of Subhash Chand had stepped into witness box as PW-1 and Sunder Singh, father of deceased had stepped into witness as PW-2. They had asserted about the deceased to be running a flour mill and also used to look after the agricultural work and used to earn Rs.5000-6000/- per month, but however, no evidence, with regard to the indulgence of deceased, in running a flour mill, as such, has come on record. The copy of the jamabandi Ex.P3, coming on record, reveals about Sunder Singh, father of deceased, to be owner to the extent of 1/4th share of total land of 49 Kanal 17 Marla and that Sunder Singh was in exclusive possession of the land measuring 10 Kanal 1 Marla. Ex.P2 is the electricity bill, which is also in the name of Sunder Singh.

In the given circumstances, it cannot be concluded that Subhash Chand was indulging in running a flour mill and was also indulging in agricultural pursuit. But anyhow, young person is bound to be rendering assistance to his father in the agricultural work. However, considering the same, the earnings as taken by learned Tribunal to be Rs.2500/- per month, is on higher side. At the prevalent period, the earnings of unskilled worker/daily wager was Rs.1200/- per month. Considering the same and also in any case, considering the assistance rendered by the deceased to his father, in modest estimate, his earnings, ought to be taken as Rs.1500/- per month.

Considering the same and also taking into consideration the age of the deceased to be 31½ years, addition of 40%, ought to be made, on the count of 'future prospects', which comes to be Rs.600/-. After making such addition, the earnings of the deceased, comes to be Rs.2100/- per month.

Considering the number of dependents to be three, the deduction on the count of 'personal expenses' ought to be made to the extent of 1/3rd, which comes to be Rs.700/- and the residue earnings comes to be Rs.1400/- per month, annual whereof is Rs.16,800/-. Considering the age of the deceased as observed aforesaid, the appropriate multiplier to be applied is '**16**'. Thus, by applying the same, the loss of dependency works to be **Rs.16,800x16=Rs.2,68,800/-.**

Besides the aforesaid, on the count of '**loss of consortium**', all the appellants-claimants, are entitled to prevalent amount of Rs.48,400/- each i.e. Rs.48,400x3=**Rs.1,45,200/-** and they are also entitled to compensation, on the counts of '**loss of estate**' as well as '**funeral expenses**', which is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Subhash Chand, is computed, as herein given:-

Loss of dependency	:	**Rs.2,68,800/-**
Loss of consortium	:	**Rs.1,45,200/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.4,50,300/-**

As such, the appellants-claimants are held entitled to the compensation to the extent of **Rs.4,50,300/-**. On the amount of the compensation, the appellants-claimants shall be entitled to the interest, at the rate of 8% per annum, from the date of filing of the claim petition, till realization of the amount of compensation. The amount of compensation, as now worked upon, shall be disbursed to the appellants-claimants, in equal shares.

The liability to pay the aforesaid compensation is upon the respondents No.1 and 2, which is joint and several. However, the insurance company is exonerated from the liability.

With the above observations, the present appeal stands allowed.

May 12, 2025 **(ARCHANA PURI)**
Vgulati **JUDGE**

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