IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **FAO-392-2009 (O&M)**
Date of decision: 22.07.2025

Jai Dayal **...Appellant(s)**

Vs.

Samsudin and others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

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

Mr. Pradeep Kumar, Advocate for
respondent No.3-Insurance Co.

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NIDHI GUPTA, J.

The Integrated Software of High Court (ISHico) shows that the CM-1402-CII-2009 seeking condonation of delay of 83 days, has been dismissed vide order dated 15.12.2010.

FAO-392-2009 (O&M)

Even on merits, I find no ground is made out. The present appeal has been filed by the injured-claimant against the dismissal of his Claim Petition bearing No. 197 dated 28.04.2006/08 filed under Section 166 of the Motor Vehicle Act by the learned Motor Accident Claims Tribunal, Nuh (hereinafter referred to as "the learned Tribunal") vide Award dated 12.06.2008.

2. Memo of appearance filed on behalf of respondent No. 3/ Insurance Company in Court today is taken on record.

3. Brief facts of the case are that the Tribunal on the basis of pleadings and evidence adduced before it concluded that the claimant was unable to prove that that he had sustained injuries in a motor vehicular incident that took place on 04.02.2006 due to the alleged rash and negligent driving of a Tractor bearing registration No. HR-28-5748 (for short "the alleged offending vehicle") being driven by respondent No.2; and insured by respondent No.3. The claimant was unable to prove the negligence of respondent No.2; and accordingly, learned Tribunal held that the claimant was not entitled to compensation.

4. It is *inter alia* submitted by learned counsel for the appellant/injured-claimant that on 04.02.2006, the appellant was going for loading Khad in the alleged offending vehicle, which was being driven by respondent No.2 in a rash and negligent manner. It is submitted that the appellant had told respondent No.2 several times to drive at a slow speed but he paid no heed to the appellant. As such, respondent No.2 had lost control over his tractor because of which the appellant fell down and the tyre of the tractor ran over the right leg of the appellant causing fracture in his right leg's tibia bone. It is submitted that accordingly, appellant is entitled to compensation of Rs.10 lacs. However, the learned Tribunal had dismissed the claim petition of the appellant on spurious grounds without appreciating the correct facts. It is submitted that learned Tribunal has gravely erred in overlooking the fact that respondent No. 2 was responsible for causing the accident and injuries to the appellant. It is contended that learned Tribunal had wrongly relied upon

judicial pronouncement as, although appellant was travelling on the mudguard of the tractor, but the accident had taken place only due to rash and negligent driving of respondent No.2. Thus, merely because the appellant was travelling on the mudguard, would not absolve respondent No.2 of his responsibility in causing the accident. The learned Tribunal has also erred in ignoring that FIR was registered against respondent No.2. Thus, claim petition of the appellant has been wrongly dismissed. It is accordingly prayed that the present appeal be allowed; and the impugned Award be set aside.

5. Ld. counsel for the respondent-Insurance Company opposes submissions made on behalf of the appellant and submits that impugned Award suffers from no infirmity. He prays for dismissal of the appeal.

6. No other argument is raised on behalf of the parties.

7. I have heard ld. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

8. It is not denied by learned counsel for the appellant that at the time of accident, the appellant was travelling as a gratuitous passenger on the tractor. The appellant had appeared before the learned Tribunal as PW2 and had submitted his affidavit in evidence Ex.PW2/A. In his cross-examination, he stated that he was sitting on the right seat of the Tractor. However, the Tractor has seating capacity of only one person which is for the driver only. Therefore, it is clear that the appellant has admitted that he was sitting on the mudguard of the tractor; and, therefore, the appellant himself was negligent in the first place. As such,

liability cannot be fixed upon the respondents. Accordingly, the learned Tribunal had observed in Para 15 of Award as under: -

> "*On the other hand learned counsel for respondent no.3 while placing reliance on **1994 (2) Civil Court Courts 485, New India Assurance Co. Ltd. Vs. Smt. Tarawati and others,** contended that the claimant was travelling on the mudguard of the tractor and as such neither the insurer nor owner in liable to pay compensation.*"

9. In these circumstances, reference may be made to judgment of the Chhattisgarh High Court in ***"Jagdish Prasad Soni Vs. Smt. Nirmala Sahu & Others" Law Finder Doc ID # 2333093,*** wherein it is held that: -

> *"A. Motor Vehicles Act, 1988 Section 147 Liability of insurer - Breach of policy conditions - At the time of accident, the deceased was sitting in the tractor and there is no sitting capacity in the tractor and no risk covered under the insurance policy taken by the owner for the passenger sitting in the tractor and fastened liability upon the owner of the offending vehicle - Offending vehicle in this case was ensured for the agriculture purpose and not for carrying goods or passenger - Therefore, the learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation."*

10. In case titled ***"The Oriental Insurance Co. Ltd. Vs. Ishwanti & Ors." 2013(1) RCR(Civil) 110/111 P&H***, our Court has held as under:-

> *"Deceased was sitting on mudguard of tractor.*

Deceased fell down and died. The tractor was insured for the driver and not for any other person/passenger, as the premium paid was for the driver only. The seating capacity of a tractor is for one person, i.e. driver. The insurance company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers"

11. Further, I draw support from case titled "**National Insurance Co. Ltd. Vs. V. Chinnamma & Ors." 2005(1) LJR 145/146 SC**, wherein, the Hon'ble Apex Court has observed as under:

"The tractor is meant to be used for agricultural purposes and the insurer-liability, owner of goods travelling in the tractor with goods i.e. vegetables, tractor is not a good carrier, it is meant to be used for agricultural purposes, not for commercial use and it was held that the insurance company is not liable to pay the compensation."

12. The supra authorities are applicable on the facts of the present case. In the present case, there is sufficient evidence that the tractor was insured for one person and it was insured for agriculture purpose only. As such, the insurance company is not liable to pay the amount of compensation.

13. Learned counsel for the appellant is unable to dispute or controvert the above said legal position, or even the facts and findings on record.

14. In view of the above, no ground is made out to interfere in the impugned Award dated 12.06.2008. The present appeal is hereby **dismissed.**

15. Pending application(s) if any also stand(s) disposed of.

22.07.2025 **(NIDHI GUPTA)**

Divyanshi **JUDGE**

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