**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-1605-2006 (O&M)
Reserved on 14.05.2025
Pronounced on 29.05.2025

Malik Sahab **......Appellant**

Vs.

Raj Bala and others **.....Respondents**

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashok Kumar Verma, Advocate
for the appellant.

Mr. Deepak Chaudhary, Advocate for
Mr. Ram Avtar, Advocate
for respondent No.8-Insurance Co.

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed by the appellant-owner of the offending vehicle against the Award dated 13.10.2005 passed in the claim petition under Section 163-A of the Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal'), wherein the Ld. Tribunal allowed the claim petition filed by the claimants and held the appellant (owner of the offending vehicle) liable to pay the compensation to the claimants.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the claim petition are that on 17.03.2003 Ram Chander (since deceased) being an agricultural labourer had gone to Mandi Dabwali for loading and unloading fodder on the

offending tractor-trolley driven by Krishan Kumar-respondent No. 1. They loaded the fodder from a street near Chaudhary Petrol Pump, Mandi Dabwali. Ram Chander was made to sit on the trolley by holding the Bidh of the trolley. When respondent No.1-Krishan Kumar started offending tractor, the Bidh of the trolley came into contact with a live electric wire crossing over the street and Ram Chander was electrocuted. As a result of which, he received serious electric burn injuries and died at the spot. He was shifted to Civil Hospital, Dabwali where post mortem examination on his dead body was conducted. A report regarding this accident was also got recorded in the Police Station, City Dabwali.

3. Upon notice of the claim petition, appellant and other respondents appeared and contested the claim petition by filing written replies denying the factum of compensation/accident.

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

1. Whether the accident took place as a result of use of vehicle bearing registration No. HR-24A-3324 driven by respondent No.1 Krishan Kumar as alleged? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so, how much and from whom? OPP

3. Whether the claim petition is not maintainable in the present form? OPR

4. Whether the petition is bad for non-joinder and mis-joinder of necessary parties ? OPR

5. Whether the respondent No.1 was not holding a valid and effective driving licence to drive the tractor in question on the day of the alleged accident, if so, to what effect? OPR-3.

6. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. Further, the Ld. Tribunal has held the owner (present appellant) of the offending vehicle liable to pay the compensation. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the appellant contends that the learned Tribunal erred in holding the use of the tractor as for commercial purpose. He further submits that the deceased-Ram Chander was employed by the appellant-owner for agricultural work, specifically for loading and unloading fodder and on the date of the accident, deceased-Ram Chander was engaged in the course of such employment. It is further contended that the Insurance Company led no evidence to establish that the deceased was a gratuitous passenger. Therefore, he prays that the present appeal be allowed and award dated 13.10.2005 be set aside.

7. Per contra, learned counsel for the respondent-Insurance Company supported the findings of the learned Tribunal and contended that the use of the tractor and trolley was not for agricultural purposes and that the trolley was not separately insured. He further argues on the lines of the award and prays for dismissal of the present appeal.

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

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

*"13. As per the insurance policy Ex. R1 the offending tractor was insured with the United India Insurance Company Limited, Sirsa/respondent No.3 at the time of the alleged accident. Shri A. S. Kalra, Advocate, the learned counsel for the respondent No.3/insurance company has argued that the deceased Ram Chander was a passenger in the offending tractor. He was neither owner nor driver of the offending tractor. The offending tractor was being used for commercial purposes. So, the insurance company/respondent No.3 is not liable to indemnify the insured. In support of his arguments he has relied upon the case law reported as "**National Insurance Company Ltd. Versus V. Chinnamma and others 2004 (III) Accident and Compensation Cases 1 (SC)"** wherein the Hon'ble Apex Court of the land held that when the tractor and trailer were not being used for agricultural purposes and were being used for commercial purposes even otherwise registered for agricultural purposes and not registered otherwise, the insurance company cannot be held liable to indemnify the insured. He also relied upon the case law reported as **V.Javadevappa and another Versus Oriental Fire and General Insurance Company Ltd. 2005(1)** Accident And Compensation Cases 472 (SC) wherein the Hon'ble Supreme Court of India held that the goods vehicle could not have carried passengers. So, the insurance company cannot be held liable to indemnify the insured. Similarly, in a Division Bench judgment of Honible Kerala High Court in the case law reported as "**National Insurance Company Limited Versus Kotten 2003 (II) Accident and Compensation Cases 634 (DB)** has held that the tractor is not a goods vehicle and not permitted to carry goods or passengers and in case of death of a passenger, the insurance company cannot be held liable to indemnify the insured. Similar view has been taken by a Division Bench of the Hon'ble High Court of Madhya Pradesh in the case law reported es "**Chandan Singh Raghuvansh Versus***

Rameshwari Bai and others 2005 (II) Accident And Compensation Cases 217 (DB)*".*

*14. On the other hand, while controverting the arguments advanced by the learned counsel for the respondent No.3/insurance company, Shri A.K.Gupta, Advocate, the learned counsel for the petitioners and Shri V.S.Sra, Advocate, the learned counsel for the respondents No.1 and 2, have argued that admittedly the offending tractor is not meant for agricultural purposes and the same is being used for agricultural purposes for transporting fodder. The deceased Ram Chander was employed as a labourer for loading and unloading the fodder, so, he was not a passenger and the insurance company is liable to indemnify the insured. In support of their arguments they have relied upon the case law reported as "***Bhimavva and others Versus Shankar and others 2005 A.C.J. 301*** wherein the Hon'ble High Court of Karnatka held that in case of death of employees of the owner of, tractor-trailer travelling in the vehicle net with accident due to its rash and negligent driving, then the insurance company is liable to indemnify the insured. In the case law reported as "***Baldev Kaur and others Versus Nazar Singh and others 1997 A.C.J. 1159*** the Hon'ble High Court of Punjab and Haryana has held that when the driver of the Harvester combine struck the combine against an electric wire and electric current passed through the combine to all the 4 tractors and one of the occupants of a tractor was electrocuted and the death arose due to accident of a motor vehicle and the petition under Section 166 of Motor Vehicles Act is maintainable.*

15. After hearing both the sides at length, giving thoughtful consideration to the rival contentions of both the parties and the case law relied upon by both the sides, I am of the confirmed opinion that the arguments advanced by the learned counsel for the respondent No. 3/ insurance company are forceful and the dictum relied upon by him reported as relied upon the case law *reported as "**National Insurance Company Ltd. Versus V. Chinnamma and others 2004 (III) Accident and Cosapensation Cases 1 (SC)", "H.V.Jayadevappa and another Versus Oriental Fire and General Insurance Company Ltd. 2005(1) Accident and Compensation Cases 472 (SC)", "National Insurance Company Limited Versus Kotten 2003(II) Accident and Compensation Cases 634(DB), and "Chandan Singh Raghuvansh Versus Rameshwari Bai and others 2005 (II) Accident and Compensation Cases 217(DB)** (supra) are from the Hon'ble Apex Court of Land and from a Division Bench of Hon'ble Punjab and Haryana High Court whereas the case law relied upon by the learned counsel for the petitioners and the learned counsel for the respondents No. 1 and 2 reported as reported as **"Bhimavve and others Versus Shankar and others 2005 A.C.J. 301** and **"Baldev Kaur and others Versus Nazar Singh and others 1997 A.C.J. 1159** are from Single Bench of the Hon'ble High Courts of the Punjab and Haryana and Karnatka. So, I have no option but to follow the law laid by the Hon'ble Supreme Court of India and a Division Bench of the Hon'ble high Court of Madhya Pradesh. Hence, I have no hesitation in concluding that the deceased Ram Chander on 17.3.2003 was a passenger in the offending tractor at the time of the accident and the offending tractor was being used for commercial purposes for transporting the fodder at the time of the acc1-dent. So, the respondent No.3/insurance company is not liable to indemnify the insured. Since, respondent No.2 Malik Sahib is the owner of the offending tractor, so he is liable to pay the compensation to the petitioners. Hence issue No.2 is accordingly decided in favour of the petitioners and against the respondents No.1 and 2."*

10. A perusal of the award and the material on record reveals that Ld. Tribunal has committed a manifest error in concluding that the appellant/owner

of the offending vehicle was liable to pay compensation to the claimants on the ground that the vehicle was being used for commercial purposes and that the deceased was a gratuitous passenger.

11. It is an undisputed fact emerging from the evidence on record that the deceased was employed by the appellant for specific task of loading and unloading the fodder. On the date of the accident, the deceased was travelling in the trolley attached to the tractor to take care of the fodder and assist in its unloading. This factual position was consistently asserted by both the present appellant and the claimants and remains un-controverted. Significantly, the Insurance Company did not adduce any evidence to disprove the employment status of the deceased or to establish that he was travelling gratuitously.

12. The learned Tribunal, however, failed to appreciate this crucial aspect and erroneously held the deceased as a gratuitous passenger. Such a conclusion is not only contrary to the evidence on record but also overlooks the settled legal principles distinguishing an employee engaged in agricultural activity from a gratuitous passenger. The mere fact that the deceased was not the driver or owner of the vehicle does not *ipso facto* render him a gratuitous occupant, particularly when he was engaged in employment-related duties.

13. Further, it is well-established that tractors are not limited to ploughing fields. In rural agrarian settings across India, it is common and practical for tractors to be used for transporting agricultural produce, fodder, and other farm-related materials from the fields to the residence of farmer or to nearby markets or mandis. The trolley attached to the tractor serves this ancillary purpose. The transportation of fodder in the present case, therefore, is

an integral and subservient part of agricultural activity and cannot be termed as "commercial use" by any stretch of interpretation.

14. The failure of learned Tribunal to take judicial notice of such widespread agricultural practices reflects a disconnect with the practical realities of rural India and has led to a legally untenable conclusion.

15. As regards the contention raised by the Insurance Company concerning non-insurance of the trolley, this argument does not hold merit in view of the law laid down by the Hon'ble Supreme Court in ***Royal Sundaram Alliance Insurance Co. Ltd. v. Smt. Honnamma & Ors***. ***2025 INSC 625.*** The Apex Court has categorically held that the insurer cannot evade liability merely on the ground that the trailer or trolley attached to the tractor was not separately insured, the relevant extract of the same is reproduced as under:-

> *"9. Heard the learned counsel for the appellant and perused the material/evidence on record. We have given serious consideration to the issue as it raises a mixed question of fact and law where both have to be harmoniously balanced.*
>
> *10. In the present case, the admitted fact is that the incident occurred while a tractor which was insured with the Appellant was attached to a trailer and on the trailer a person was present who due to an unfortunate accident, fell off the trailer which was being pulled by/driven by/attached to the tractor, resulting in the death of such person.*
>
> *11. Therefore, the undisputed position is that the trailer was being pulled by/attached to the tractor and then the trailer on*

which the deceased was present, turned turtle/upturned, resulting in his death. From the above, it is clear that the tractor which was insured was the reason for the accident. It is not the case that only because of some fault on the part of the trailer stand-alone, the accident happened. To explain, we may give an example: that had the trailer been stationary at a place and due to some reason, it overturned or a mishap happened, then without the trailer being specifically insured the Appellant would not be liable to pay, but here the main cause of the accident was the tractor which was pulling/driving/moving the trailer and in such sequence of events, the trailer upturned. Thus, the accident was caused by the tractor, as during the course of being driven/pulled by the tractor, the accident occurred.

12. Thus, the liability of the tractor/its insurer extended to the accident caused by the tractor resulting in the death of the deceased, through the trailer. This being the position in the present case, the principles emanating from the decisions where the Courts have held that the trailer has to be separately registered with the insurance company to make it liable, would not be applicable. To that extent, the facts in the present case are clearly distinguishable from the ones cited by learned counsel for the appellant. The legislation i.e., the MV Act, being beneficial and welfare-oriented in nature [Ningamma v United India Insurance Co. Ltd., (2009) 13 SCC 710; K Ramya v National Insurance Co. Ltd., 2022 SCC OnLine SC 1338, and; Shivaleela v Divisional Manager, *United India Insurance Co. Ltd., 2025 SCC OnLine SC 563] and ultimately the root cause of the accident being the tractor, which was insured, this crucial fact cannot be lost sight of. For further clarification, we might illustrate: if an insured vehicle hits another vehicle which in turn hits a third vehicle, then for the entire chain of accidents, the liability would pass on to the vehicle which was the root cause of the accident because it is the result of the action in the same chain of events which cannot be segregated or compartmentalized. Moreover, this Court is duty-bound to be mindful of the ground realities of our nation and cannot let practicality be overshadowed by technicality."*

16. In view of the foregoing discussion and the settled proposition of law, the finding of the learned Tribunal fastening liability upon the appellant-owner to pay compensation to the claimants is legally untenable and is liable to be set aside.

17. Consequently the present appeal is allowed and the impugned award dated 13.10.2005 is modified to the extent that the respondent No.3-Insurance company shall be liable to pay the amount of compensation to the claimants.

18. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Ram Avtar, Advocate within a period of 20 days from the date of receipt of the copy of this order, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

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

(SUDEEPTI SHARMA)
JUDGE

29.05.2025
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Whether speaking/reasoned: Speaking
Whether reportable Yes / No