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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5541-2010 (O&M)
Date of Decision : 12.03.2025

Mam Chand ... Appellant(s)

Versus

Kusum & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Balkar Singh, Advocate for the appellant.

Ms. Manvi Verma, Advocate for
Mr. Rajneesh Malhotra, Advocate for respondent No.4.

<u>ALKA SARIN, J.</u> (Oral)

1. The present appeal has been preferred by the appellant-owner of the offending vehicle (Mahindra Tractor) challenging the impugned award dated 05.06.2010 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as 'Tribunal'), aggrieved by the finding recorded by the Tribunal exonerating the Insurance Company (respondent No.4).

2. Learned counsel for the appellant would contend that it is not in dispute that the offending vehicle (tractor trolly) was insured for agricultural purposes. However, since it had come in evidence that the offending vehicle (tractor trolly) was being used for transporting sand, hence, it was presumed by the Tribunal that the same was for commercial purposes. It is further the contention of the learned counsel that in the absence of any evidence that the sand was being carried for commercial purposes, the Insurance Company (respondent No.4) could not have been exonerated. In support of his

contentions, the learned counsel has relied upon the judgment of the Supreme Court in the case of **Fahim Ahmad & Ors. Vs. United India Insurance Co. Ltd. & Ors. [2014 (2) RCR (Civil) 470]**.

3. *Per contra* the learned counsel for respondent No.4-Insurance Company would contend that the offending vehicle (tractor trolly) was insured for agricultural purposes, however, sand was being carried in the tractor trolly, which has rightly been held to be for commercial purposes.

4. I have heard the learned counsel for the parties.

5. In the present case the Tribunal has recorded a finding that the offending vehicle (tractor trolly) though insured for agricultural purposes was carrying sand and held that had it been carrying fertilizer, manure or pesticide, the presumption would have been that it was being used for agricultural purposes, but use of sand for agricultural purposes is limited and, hence, it was held that the same was being used for commercial purposes.

6. Hon'ble Supreme Court in the case of **Fahim Ahmad** (supra), in a similar situation, has held as under :

> *"5. A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose of construction of underground tank near the farm land for irrigation purpose(s). However, merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for commercial purpose(s) or*

purpose(s) other than agricultural purpose(s), i.e., for hire or reward, as contemplated under Section 149(2)(a)(i)(a) of the said Act.

6. Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor any evidence led to prove the same. In our opinion, it was mandatory for respondent No. 1-Insurance Company not only to plead the said breach, but

also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein.

7. We may also notice that this Court in National Insurance Co. Ltd. v. V. Chinnamma & Ors., 2004(4) RCR (Civil) 300 : JT 2004(7) SC 167, held that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes, but the same itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. Thus, a tractor fitted with a trailer may or may not answer the definition of `goods carriage' contained in Section 2(14) of the said Act.

8. In view of above, we are of the view that, in the facts and circumstances of the case, the High Court was not justified in transferring the burden of paying the amount of compensation from respondent No.1-Insurance Company to the appellants herein."

7. The ratio of the judgment in the case of **Fahim Ahmad** (supra) applies on all fours to the present case inasmuch as in the present case also there is not an iota of evidence which was led by the Insurance Company to show that the offending vehicle was being used for commercial purposes. In the absence of any evidence led by the Insurance Company (respondent No.4 herein), the finding of the Tribunal exonerating the Insurance Company cannot be sustained in law and accordingly is set aside.

8. In view of the above, the present appeal is allowed. The impugned award dated 05.06.2010 stands modified to the extent that the appellant (owner of the offending vehicle) and respondent No.4 (Insurance Company) are held jointly or severally liable to pay the amount of compensation to the claimants. Statutory amount, if deposited and not disbursed, be released to the appellant.

9. Disposed off accordingly. Pending applications, if any, also stand disposed off.

12.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO