(2014) 03 DEL CK 0371

In the Delhi High Court

Case No : Mac. App. 889/2010

New India Assurance Co. Ltd. APPELLANT

Vs

Sanjay Tyagi and Others RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Citation : (2015) ACJ 787

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Shantanu Bhardwaj, Advocates for the Appellant; Sanjeev Kumar Tyagi, Advocates for the Respondent

Judgement

Suresh Kait, J.—The present appeal has been preferred against the impugned award dated 17.08.2010, whereby Ld. Tribunal has awarded compensation for an amount of Rs.1,15,593/- with interest @ 8% per annum from the date of filing of the Claim Petition till realization of the amount.

2. Ld. Counsel appearing on behalf of the appellant submits that the offending Tractor was insured with the appellant Company, whereas at the time of accident, the said Tractor was carrying a Trolley. Thus, there was a breach of the terms and conditions of the insurance policy and therefore, the appellant is not liable to pay any compensation.

3. To strengthen his arguments, Ld. Counsel has relied upon a case of The Oriental Insurance Co. Ltd. Vs. N. Chandrashekaran and Others, of the Karnataka High Court, wherein it is held as under:

"6. The vehicle which has been insured with the appellant is only the tractor. The definition of tractor shows that it is not a vehicle constructed to carry any load. When the tractor draws a trailer then it would become capable of carrying load. Any motor vehicle constructed or adapted for use solely for the carriage of goods or any motor vehicle not so constructed or adapted when used for carriage of goods is a goods vehicle. As such a tractor which has a trailer attached to it becomes a motor vehicle adopted for carriage of goods and it becomes a goods vehicle. A division Bench of this Court in Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, after referring to the definitions of motor vehicle, tractor, trailer and goods vehicle, has held that there can be no doubt that a trailer is constructed for the purpose of carriage of the goods and when it is pulled by a tractor both together constitute a transport vehicle i.e., a goods vehicle. In that judgment the Court has also pointed out that under the Indian Motor Tariff, trailers are covered under the commercial vehicle type and has further pointed out that the fact that tractor-trailers are covered under the commercial vehicle tariffs also supports the conclusion that a tractor-trailer has got to be treated a goods vehicle as defined under Section 2(18) of the Motor Vehicles Act, 1939.

7. In the present case the appellant has only issued a policy in respect of the tractor and the appellant would be liable to indemnify the insured in respect of risk arising out of the use of tractor as such. But if the tractor draws a trailer and the accident is caused by such tractor-trailer then the vehicle causing the accident would not be a tractor but a goods vehicle. It is only if both tractor and trailer are insured the insurer would be liable to indemnify the owner against claims arising out of the use of tractor and trailer. This view would be in conformity with the other statutory provisions which require even a trailer to be insured. As in this case it is undisputed that only the tractor was insured with the appellant and that the trailer was not insured and that the accident was caused by the tractor-trailer it has to be held that the appellant is not liable to pay the compensation awarded to the claimant.

8. For the above reasons this appeal is allowed and the judgment and award of the Tribunal are modified by setting aside that portion by which the appellant is also made liable to pay the compensation. The rest of the judgment and award against the respondents-2 and 3 is not disturbed."

4. Ld. Counsel submits that in view of the judgment noted above, only the Tractor was insured with the appellant and trolley cannot be considered as part of the Tractor. Therefore, appellant is not liable to pay any compensation.

5. Ld. Tribunal has framed one of the issues as under:-

"Whether respondent no. 1 is not liable to pay the compensation since the Trolley is not covered under the policy?"

6. The appellant has taken a ground in their written statement filed before the Ld. Tribunal that appellant is not liable to pay any compensation as Trolley was attached with the Tractor for which no premium was paid and therefore, it was the violation of the terms and conditions of the insurance policy.

7. The case of the respondents / claimants before the Ld. Tribunal was that when witness from the insurance company appeared in the court and was cross-examined, he deposed that the Tractor was insured for the purpose of the

agriculture, however, in his reply with regard to the meaning of agricultural purpose or regarding the fact that as to whether agricultural purpose includes the attachment of Trolley as crops are taken to the Mandi in Trolley and other accessories are also attached with the Tractor so as to fulfil the agricultural purpose, this witness showed total ignorance towards all such facts.

8. IMT48, terms used in the policy prescribed as under:

"AGRICULTURAL AND FORESTRY VEHICLES AND OTHER MISCELLANEOUS VEHICLES WITH TRAILERS ATTACHED-EXTENDED COVER

"It is hereby declared and agreed that in consideration of an additional premium of Rs., the indemnity provided by this policy shall apply in respect of any trailer (including Agricultural Implements such as Ploughs, Harrows and the like) described in the under noted Schedule as trailers as though it were a vehicle described in the Schedule and had set against it in the Schedule the value set against it in the under noted Schedule of trailers.

Provided that the insurer shall be under no liability under Section 1 of the policy in respect of breakage of any part of the agricultural trailer or implements caused by ground obstructions."

IMT-56 prescribed as under:

"TRAILERS (Road Transit Only)

In consideration of the payment of an additional premium it is hereby understood and agreed that insurance by Section I and II of this policy shall extend to the Motor Vehicles (mechanically propelled or otherwise) attached to the Motor Vehicle for the purpose of being towed Provided always that

a) The insurer shall not be liable under this policy in respect of damage to property conveyed by the towed vehicle.

b) The insurer shall not be liable under this policy in respect of accident loss damage and / or liability caused sustained or incurred whilst the vehicle insured is towing a greater number of vehicles than is permitted by law."

9. On perusal of the above terms, it is revealed that the case of the appellant does not fall in any of the provisions mentioned above. Moreover, the insurance policy was a comprehensive policy for agricultural purpose.

10. The Tractor without equipment like Trolley etc. is of no use and it can be useful for the agricultural purpose, if other equipments are attached with it.

11. The word agricultural purpose denotes wide amplitude. It is not only the tractor simpliciter insured, rather it is insured for agricultural purposes. Undisputedly, the insurance policy covers the tractor for agricultural purposes. Therefore, mere attachment of a trolley with a Tractor does not tantamount to violation of terms and conditions of the insurance policy.

12. In view of above discussion, I do not find any merit in the instant appeal. Same is accordingly dismissed.

13. The statutory amount be released in favour of the appellant and the balance compensation amount be released in favour of the respondents / claimants on taking steps by them.