
(2014) 07 DEL CK 0126
In the Delhi High Court
Case No : Mac. App. 544 of 2012

Rajinder Singh

APPELLANT

Vs

Santosh Devi

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 1, 2

Citation : (2014) 3 ACC 775 : (2015) ACJ 1137

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Y.P. Singh and Sandeep, Advocate for the Appellant; Rajat Brar, H.S. Sachdeva and H.N. Jagdishwar, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present appeal, appellants have assailed the award dated 24.2.2012, whereby, learned Tribunal while awarding the compensation of Rs. 8,95,750 with interest @ 7.5% per annum from the date of filing of the claim petition till realization has granted recovery rights against the appellants. Mr. Y.P. Singh, learned Counsel appearing on behalf of the appellants submits that learned Tribunal has wrongly granted the recovery right against the appellants on the averments that the offending vehicle, i.e., the Tractor was having a Trailer, which was of commercial in nature at the time of accident.

2. Mr. Singh, learned Counsel has drawn the attention of this Court to Para 24 of the impugned award, wherein learned Tribunal has relied upon a case of Nagashetty Vs. United India Insurance Co. Ltd. and Others, and observed that mere attachment of Tractor with Trailer does not convert Tractor to transport vehicle. Further, in the later judgment in the case of Natwar Parikh and Co. Ltd. Vs. State of Karnataka and Others, , the Apex Court has observed that Trailer is a separate and distinct vehicle, different from a Tractor and falls under Section 2 as a goods carriage and consequently falls under the definition of transport vehicle under Section 2 of the Motor Vehicles Act, 1988.

3. On the other hand, Mr. Rajat Brar, learned Counsel appearing on behalf of

respondent/Insurance Company submits that owner of the offending vehicle had paid premium only for the insurance of the Tractor and not for the Trolley and the licence of the driver of the offending vehicle was valid for 20 years and was not valid to drive the transport vehicle.

4. I heard learned Counsel for the parties.

5. Admittedly, appellant No. 2, driver of the offending vehicle was having driving licence for LMV and the Tractor. However, the learned Tribunal has opined that the driver was not having valid driving licence for driving the Tractor-Trailer. Accordingly, the recovery rights were granted against the appellants.

6. I note, Sh. Amit Wadhwa, Assistant Manager appeared as R3W1 and deposed that Tractor was attached with Trolley and as per the driving licence verification report, the driver was having driving licence for LMV and for the Tractor and was not authorized to drive the transport vehicle. However, he did not depose that the driver was not authorized to drive Tractor, which is not a commercial vehicle.

7. As per FIR No. 626/2010, while committing the accident the offending vehicle, i.e., the tractor was having Trolley attached, not the Trailer.

8. The issue on Tractor with Trolly attached came before this Court in the case of New India Assurance Co. Ltd. v. Sanjay Tyagi and Ors., MAC. A. 889/2010 delivered on 31.3.2014, wherein this Court held as under:

"6. The appellant has taken a ground in their written statement filed before the learned 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 learned 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 fulfill the agricultural purpose, this witness showed total ignorance towards all such facts.

8. IMT 48, 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 Sections 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. This Court in the case of Sanjay Tyagi (supra) opined that Tractor is not a commercial vehicle. It is for the agricultural purposes only. The LMV/Tractor licence is required to drive the Tractor and when Trolley and other agricultural equipment is attached with it, that also becomes a part of the Tractor, eventually, that equipment cannot be considered separately. Consequently, the Tractor cannot be said as a commercial vehicle.

13. In view of the facts recorded above, I am of the considered opinion that learned Tribunal has wrongly granted recovery rights against the appellants.

14. Accordingly, the appeal is allowed. Consequently, award dated 24.2.2014 is set aside qua the recovery rights against the appellants.