

(2019) 01 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 271 Of 2019 (O&M)

Shri Ram General Insurance Company Ltd.

APPELLANT

Vs

Smt. Mamta And Others

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(44), 166

Citation : (2019) 01 P&H CK 0086

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Rajbir Singh

Final Decision : Dismissed

Judgement

Avneesh Jhingan, J

The insurer of tractor bearing registration No. HR-10J-1874 [hereinafter referred to as 'offending vehicle'] is in appeal against award dated 13.09.2018 passed by the Motor Accident Claims Tribunal, Sonipat [for brevity 'the Tribunal']. The grievance raised in the appeal is three-fold, firstly, that the quantum of compensation under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] is on the higher side; secondly, that contributory negligence was attributable to the deceased for causing accident and lastly, that the driver of the offending vehicle was holding Driving Licence to drive Tractor and there was no endorsement on the Licence to drive a Transport Vehicle.

The brief facts necessary for adjudication of the present appeal are that on 21.05.2015, Mon Singh @ Monu was riding his motorcycle bearing registration No. HR-10V-3060, he was being followed by his father in Bolero Car. Near Jhundpur, the motorcycle was struck by a rashly and negligently driven offending vehicle, which was loaded with tooda (husk). As a result of the accident, Mon Singh sustained grievous injuries and died. FIR No.192 was registered.

The claimants pleaded before the Tribunal that the deceased was 25 years old at

the time of accident. He was a Truck Mechanic and used to supply JCB Machines on rent. It was claimed that he was earning Rs.50,000/- per month. But, the claimants failed to substantiate the earning of the deceased. The Tribunal assessed the monthly income of the deceased as Rs.7,500/-. 40% future prospects were awarded; as the deceased was survived by young widow, two minor children and parents, 1/3rd deduction for self-expenses was made and multiplier of '18' was applied. The Tribunal awarded a sum of Rs.15,82,000/- alongwith interest @ 7% per annum and in case the amount is not paid within two months, then the rate of interest was ordered to be 9% per annum. The amount awarded included Rs.70,000/- under the conventional heads.

Heard learned counsel for the appellant, perused the paper book and relevant documents produced by him.

Learned counsel for the appellant contends that claimants failed to substantiate the monthly income of the deceased and the monthly earning of the deceased assessed by the Tribunal is on the higher side. He further contends that the Tribunal erred in holding that the accident was caused due to rash and negligent driving of the offending vehicle, whereas the accident was result of contributory negligence. He submits that the driver of the offending vehicle was holding a Driving Licence which was valid for driving a Tractor and there was no endorsement for driving a Transport Vehicle.

The contentions raised by learned counsel for the appellant lack merit. It is not disputed that the deceased was 25 years old at the time of accident, there is nothing contrary on the record to rebut that he was working as a Truck Mechanic. It was also pleaded that he used to supply JCB Machines on rent, albeit, the claimants failed to prove his monthly earning. In such circumstances, no interference is called for in the monthly income assessed by the Tribunal i.e. Rs.7,500/- especially considering the fact that he was survived by young widow, two minor children and parents.

The compensation has been awarded by the Tribunal in consonance with the decisions of the Supreme Court in cases of National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157 and Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21.

Learned counsel for the appellant relies upon the contents of the FIR to state that there was head on collision between motorcycle and offending vehicle and hence, there was contributory negligence. Suffice to say that such issue was never raised before the Tribunal and no evidence was adduced to substantiate the said allegation. Moreover, it cannot be said to be a general rule that in every case of head on collision, there is bound to be contributory negligence. No shadow can be cast on the findings recorded by the Tribunal that the accident was caused due to the rash and negligent driving of the offending vehicle, which was loaded with tooda, at the time of accident.

Learned counsel for the appellant was not able to dispute the fact that the driver

of the offending vehicle was having a Driving Licence valid for driving a Tractor. The only grievance raised is that there is no endorsement on the Licence for driving a Transport Vehicle. There is no requirement of separate endorsement for driving goods vehicle, the issue raised is no longer res-integra. The Supreme Court in case of Mukund Dewangan versus Oriental Insurance Co. Ltd., (2017) 14 SCC 663 held as under:-

"54. The vehicle involved was a tractor which was used for carrying goods. The goods were carried in a trailer attached to it. It was held that if a driver was holding an effective licence to drive a tractor, he could validly drive the tractor attached to a trailer. The contention that it was a transport vehicle, as the tractor was attached to a trailer and as such the driver was not holding a valid licence, was rejected. This Court has laid down thus:

"9. Relying on these definitions, Mr. S.C. Sharda submitted that admittedly the trailer was filled with stones. He submitted that once a trailer was attached to the tractor the tractor became a transport vehicle as it was used for carriage of goods. He submitted that Section 10(2) of the Motor Vehicles Act provides for grant of licences to drive specific types of vehicles. He submitted that the driver only had a licence to drive a tractor. He submitted that the driver did not have a licence to drive a transport vehicle. He submitted that therefore it could not be said that the driver had an effective and valid driving licence to drive a goods carriage or a transport vehicle. He submitted that thus the driver did not have a valid driving licence to drive the type of vehicle he was driving. He submitted that as the driver did not have a valid driving licence to drive a transport vehicle, the Insurance Co. could not be made liable. He submitted that the High Court was right in so holding.

10. We are unable to accept the submissions of Mr. S.C. Sharda. It is an admitted fact that the driver had a valid and effective licence to drive a tractor. Undoubtedly Under Section 10, a licence is granted to drive specific categories of motor vehicles. The question is whether merely because a trailer was attached to the tractor and the tractor was used for carrying goods, the licence to drive a tractor becomes ineffective. If the argument of Mr. S.C. Sharda is to be accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle by itself does not make that tractor or motor vehicle a transport vehicle. The tractor or motor vehicle remains a tractor or motor vehicle. If a person has a valid driving licence to drive a tractor or a motor vehicle, he continues to have a valid licence to drive that tractor or motor vehicle even if a trailer is attached to it and some goods are carried in it. In other words, a person having a valid driving licence to drive a particular category of vehicle does not become disabled to drive that vehicle merely because a trailer is added to that vehicle.

(emphasis supplied)

XXX XXX XXX Section 10(2) (a) to (j) lays down the classes of vehicles to be driven not a specific kind of motor vehicles in that class. If a vehicle falls into any of the categories, a licence holder holding licence to drive the class of vehicle can drive all vehicles of that particular class. No separate endorsement is to be obtained nor provided, if the vehicle falls in any of the particular classes of Section 10(2). This Court has rightly observed in Nagashetty (supra) that in case submission to the contrary is accepted, then every time an owner of a private car, who has a licence to drive a light motor vehicle, attaches a roof carrier to his car or a trailer to his car and carries goods thereon, the light motor vehicle would become a transport vehicle and the owner would be deemed to have no licence to drive that vehicle. It would lead to absurd results. Merely because a trailer is added either to a tractor or to a motor vehicle it by itself does not mean that driver ceased to have valid driving licence. In our considered opinion, even if such a vehicle is treated as transport vehicle of the light motor vehicle class, legal position would not change and driver would still have a valid driving licence to drive transport vehicle of light motor vehicle class, whether it is a transport vehicle or a private car/tractor attached with trolley or used for carrying goods in the form of transport vehicle. The ultimate conclusion in Nagashetty (supra) is correct, however, for the reasons as explained by us.

XXX XXX XXX

'Light motor vehicle' as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Section 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act No.54/1994.

(ii) A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form.

(iii) The effect of the amendment made by virtue of Act No.54/1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of section 10(2) which contained "medium goods vehicle" in section 10(2)(e), medium passenger motor vehicle in section 10(2)(f), heavy goods vehicle in section 10(2)(g) and "heavy passenger motor vehicle" in section 10(2)(h) with expression 'transport vehicle' as substituted in section 10(2)(e) related only to the aforesaid substituted classes

only. It does not exclude transport vehicle, from the purview of section 10(2) (d) and section 2(41) of the Act i.e. light motor vehicle.

(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

It was held that no separate endorsement is required to drive transport vehicle of a light motor vehicle classes i.e. LMV, tractor or road roller, the unladen weight of which does not exceed 7500 kg. The driving licence for such vehicles would be a valid licence to drive transport vehicles of the said class.

The Supreme Court in the case of Sant Lal versus Rajesh and others, (2017) 8 SCC 590, following the decision of the Mukund Dewangan's case (Supra), held that driver holding a driving licence effective for driving LMV class or driving a tractor needs no separate endorsement on the driving licence regarding transport vehicles if trolley is attached to tractor. The answer to first aspect of contention is decided against the appellant i.e. tractor attached with trolley can be driven by a licence holder of tractor and LMV.

A Division Bench of this Court in case of United India Insurance Company Ltd. Versus Surinder, 2004(4) R.C.R. (Civil) 211 held as under:-

"The offending vehicle i.e. Tractor was insured comprehensively against a premium of Rs.2,076/- with the appellant-company. Now the question to be seen is whether any agriculture instrument attached to the tractor is deemed to be insured along with the tractor. The word 'tractor' has been defined in the Motor Vehicles Act, 1988 as under:-

"The tractor means a motor vehicle which is not itself constructed to carry any load other than (the equipments used for the purpose) or propulsion but excludes a road roller."

A perusal of the definition of word 'tractor' shows that tractor itself is not able to carry any load without the equipments. Therefore, any equipment attached to the tractor is a part of the tractor and covered under the insurance policy."

It was held that any equipment attached to tractor becomes part of tractor and is covered in definition of tractor under Section 2(44) of the Act.

It is an admitted position that at the time of the accident, the tractor trolley was carrying tooda. There is nothing on record produced by the insurer that it was being used for commercial purposes. Carrying on tooda in a trolley will come within the ambit of agricultural purpose only.

Tractor in itself has no use. It is only the equipments attached to it that makes it

suitable for agriculture purpose or for carrying load. If the contention raised by the appellant is accepted, then for every type of equipment, a different endorsement would be required on the driving licence authorizing to drive tractor. Thus, the contention raised by learned counsel for the appellant is answered against appellant that merely as trolley is attached to tractor it would not become a transport vehicle.

In view of the above decisions, the present appeal is dismissed.