

(2018) 05 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5156 Of 2013 (O&M)

Tata AIG General Insurance Company Limited

APPELLANT

Vs

Santosh And Others

RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 3, 166

Citation : (2018) 05 P&H CK 0110

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Rajneesh Malhotra, Dheeraj Narula, Rajbir Randhawa

Final Decision : Dismissed

Judgement

The present appeal has been filed by the insurer of the tractor trolley bearing registration No.HR-24-P/6349 against the award dated 16.08.2013 passed by Motor Accidents Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal').

The main argument pressed in the instant appeal is that the driver of the tractor was having a driving licence to drive a tractor and was not authorised to drive tractor attached with trolley as there was no endorsement for driving transport vehicle.

A motor vehicular accident took place on 07.02.2012. Krishan Kumar @ Kalu was going along with his nephew, at about 9.30-9.45 p.m. opposite Anaj Mandi, he was struck by a tractor trolley bearing registration No.HR-24-P/6349 (for short, 'the offending vehicle'). As a result of the accident, he was crushed by the trolley. He was taken to General Hospital, Sirsa and on his way he succumbed to the injuries. FIR No.28 dated 08.02.2012 was registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by widow and three minor children of the deceased. The Tribunal held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was taken as 37 years as per post

mortem report; 1/4th deduction was made for self expenses and after applying multiplier of 15, the Tribunal awarded a sum of Rs.7,07,000/-along with interest @ 7.5% per annum. The amount awarded included Rs.25,000/- for loss of love and affection; Rs.2,000/-for funeral expenses and Rs.2500/- each for loss of estate and transportation. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

The insurer is in appeal for grant of recovery rights as licence of the driver was not valid to drive a tractor to which trolley was attached.

The contention raised by learned counsel for the appellant that an effective licence to drive tractor or LMV was not valid for driving a tractor attached with trolley, is not well founded.

The issue raised has two aspects. Firstly, whether tractor trolley would be covered within ambit of driving licence for LMV and tractor. Secondly, merely because trolley is attached to tractor whether this will change the class of vehicle from tractor to transport vehicle.

There is no dispute that on the date of accident the driver of the offending vehicle was having a valid licence. The licence authorized him to drive LMV and the tractor. The Tribunal relied upon the decision of this Court in case Subhash Chand and others versus Satya Rani and others 2013(4) PLR 329 to hold that since there was no special endorsement as per Section 3 of the Act, therefore, the driver was not authorized to drive a tractor attached with trolley.

The said issue is no longer res-integra. Supreme Court in 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)

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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.

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'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 latest decision 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 that 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 fertiliser. There is nothing on record produced by the insurer that it was being used for commercial purposes. Carrying on fertiliser in a trolley will come within the ambit of agricultural purpose only.

Tractor in itself has no use. It is only the attachments 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 second aspect of contention is answered that merely because trolley is attached to tractor it would not become a transport vehicle.

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