Mam Chand and Another Vs. Sunita Devi and Others

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Court : Punjab and Haryana

Decided On : Nov-28-2011

Judge : Vijender Singh Malik

Appeal No. : F.A.O. No. 3966 of 2010

Appellant : Mam Chand and Another

Respondent : Sunita Devi and Others

Advocate for Def. : Mr. G.C.Shahpuri, Mr. Subhash Goyal

Advocate for Pet/Ap. : Mr. Surinder Mohan Sharma

Judgement :

VIJENDER SINGH MALIK, J.

This is an appeal by driver and owner of tractor bearing registration No. HR-02-T-4607 against the award dated 13.5.2010 passed by the Motor Accidents Claims Tribunal, Jagadhri (for short, "the Tribunal") vide which a sum of ` 4,82,500/- has been awarded as compensation to the claimants and the owner and driver of the tractor have been jointly and severally held responsible for satisfaction of the award and the Insurance company has been exonerated from its liability to indemnify the insured. The facts necessary for disposal of this appeal are as under:

On 24.12.2008, Raj Kumar, after parking his mule-cart near the building of State Bank of Patiala, Bilaspur, went to answer the call of nature by the side of the road. In the meanwhile, a tractor trolley bearing registration No. HR-02-T- 4607 loaded with sand came from the side of Kapal Mochan. It was driven by Mam Chand, respondent No.1. The tyre of the tractor went out of its place and had hit Raj Kumar as a result of which, he sustained grievous injuries. He was removed to Sanjeev Hospital, Bilaspur from where he was brought to Goel Hospital, Jagadhri. He was subsequently referred to P.G.I., Chandigarh but he succumbed to his injuries on the way to PGI. Respondents No. 1 and 2 by way of their joint written statement have denied the very accident to have occurred involving tractor No. HR-02-T-4607.

Respondent No. 3, the insurance company has also denied the accident to have occurred involving the said tractor. It is, however, pleaded in the alternative that the claim petition has been brought in collusion with respondents No. 1 and 2. Respondent No.1 is also denied to have a valid and effective driving licence. It was also pleaded that the vehicle was insured for agricultural purposes but at the time of accident, it was being plied as commercial vehicle in violation of the terms and conditions of the insurance policy. The defences available under sections 147, 149, 157, 158(6) and 170 of the Motor Vehicles Act, 1988 (for short, “the Act”) have also been taken.

On the pleadings of the parties, the following issues were framed by the Tribunal.

1. Whether the accident in question resulting into death of Raj Kumar had taken place due to rash and negligent driving of tractor No. HR- 02-T-4607? OPP

2. If issue No.1 is proved, to what amount of compensation the claimants are entitled to OPP

3. Who is liable for payment of compensation? OP Parties

4. Whether the tractor in question was being driven/plied in violation of the terms and conditions of the insurance policy, if so, to what effect? OPR-3.

5. Relief.

Parties led their respective evidence. Hearing learned counsel representing them, learned Tribunal has found under issues No. 3 and 4 that the tractor, to which a trolley is attached, becomes a goods carriage and so it becomes a transport vehicle which is proposed to be used for transporting goods from one place to another. It is further held that such a vehicle can be plied under terms of a valid route permit and as the owner of the vehicle did not have a route permit to ply the vehicle for transporting the goods and the driver did not possess a licence to drive a transport/commercial vehicle, valid defence is available to the insurance company. Consequently, the liability to pay the compensation is held joint and several of the owner and driver i.e., respondents No.1 and 2 and the insurance company is exonerated of the liability.

I have heard Mr. Surinder Mohan Sharma, learned counsel for the appellants, Mr. G.C.Shahpuri, learned counsel for respondents No. 1 to 4 and Mr. Subhash Goyal, learned counsel for respondent No.5. I have gone through the record carefully.

Learned counsel for the appellants has contended that learned Tribunal has relied upon the ratio of decision of Hon'ble Supreme Court of India in Natwar Parikh and Co. Ltd. Vs. State of Karnataka and others 2006 ACJ 1. According to him, this decision is taken with respect to the provisions of Karnataka Motor Vehicles Taxation Act, 1957 and would not apply to the tractor in question, which was carrying sand for agricultural purpose. According to him, the vehicle was carrying sand for agricultural purpose and, therefore, it would not be a goods carriage requiring the driver to be authorized to drive a goods carriage. He has further submitted that no evidence has come on the record to prove that the vehicle was being used for commercial purpose. According to him, no suggestion was put to Mam Chand, the driver that the vehicle was being used for commercial purpose. He has submitted that in these circumstances, the ratio of the decision in Natwar Parikh's case (supra) shall not apply to the facts of this case. Learned counsel for the appellants has further submitted that the tyre of the trolley got detached from the running vehicle. There is no evidence of rash and negligent driving of the vehicle and, therefore, the accident cannot be held to have occurred on account of rash and negligent driving of the vehicle. He has submitted that on both counts, the findings of learned Tribunal are wrong.

Learned counsel for respondent No. 5, on the other hand, has submitted that the tractor is insured with respondent No. 5 for agricultural purposes and the insurance policy issued to him is 'Farmers Package Policy'. According to him, it has come in evidence that the sand was being carried from Bilaspur to Mukhor and the tractor was being plied on the road. According to him, in these circumstances, it was the responsibility of the owner and driver to prove that the vehicle was not being used for commercial purpose but for agricultural purpose.

The ratio of Natwar Parikh's case (supra) cannot be claimed to have no application to the facts of this case. The provisions of the Act have been considered at length and it has been found that when a trailer is attached to a tractor, it becomes a goods carriage and it requires a permit for its use on roads. So, the ratio of Natwar Parikh's case (supra) is not only applicable to fiscal matters.

The vehicle at the time of accident was a tractor to which a trolley had been attached and it was carrying goods and was being used on road and all these instances satisfy the conditions laid down in Natwar Parikh's case (supra) to hold that the vehicle at the time of accident was a goods carriage requiring a valid route permit for plying it on the road.

It was not the duty of the Insurance company to prove that the vehicle was being used for commercial purpose. Rather, it was the duty of owner and driver to prove that the vehicle was being used for agricultural purpose for which it was insured. Carrying of sand can also be defined as agricultural use but for that the owner and driver have to make a statement to that effect and have to prove the agricultural use of sand being carried from Bilaspur to Mukhor. So, it certainly appears that the tractor was being used for commercial purpose and as it was a goods carriage requiring valid route permit to be plied on road. Proper maintenance of a vehicle also comes within the proper driving of the vehicle. The vehicle in this case was not properly maintained, which can be presumed in this case as the wheel went out of the trolley and had hit the deceased. So, it can be said that the vehicle was not properly maintained and driving of an ill-maintained vehicle is itself rash and negligent driving.

In these circumstances, I find no fault with the findings recorded by learned Tribunal on issues No. 1, 3 and 4. Consequently, I find no merit in the appeal and dismiss the same with no order as to costs.