Gopali Vs Bhanwar Singh

Court: RAJASTHAN HIGH COURT (JAIPUR BENCH)

Date of Decision: Oct. 21, 2016

Acts Referred: Motor Vehicles Act, 1988 - Section 2(28)

Citation: (2017) 1 DNJ 88 : (2017) 1 RLW 262

Hon'ble Judges: Mr. K.S. Jhaveri and Mr. Mahendra Maheshwari, JJ.

Bench: Division Bench

Advocate: Mr. D.K. Garg, Advocate, for the Appellant

Final Decision: Allowed

Judgement

The following question has been referred to the Division Bench by the learned Single Judge vide its order dated 23.02.2016.

Whether Thresher attached with the tractor in an agricultural field for sifting the grain from the chaff, can be determined as a "Motor Vehicle or

Vehicle" or integral part of the tractor.

2. Counsel for the appellant has taken us to the definition of "Motor Vehicle or Vehicle" as defined under Section 2(28) of the Motor Vehicles

Act, which reads as under:

2(28). "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is

transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not

include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a

vehicle having less than four wheels fitted with engine capacity of not exceeding thirty-five cubic centimetres;

2.1 "Tractor" has also been defined under Section 2(44) of the Motor Vehicles Act, as under:

tractor means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but

excludes a road-roller;

3. Learned counsel has referred to the decision of this Court in the case of National Insurance Company v. Meera - MACD 2010 (1) Raj. 330,

wherein in para 6 to 10, learned Single Judge has held as under:

6. In my view, a look at the provisions of Section 2(44) which defines tractor would show, that according to this definition, tractor means a motor

vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion but excludes a road-roller.

Obviously this definition includes equipments used for the purpose of propulsion. Thrasher which was being propelled/operated by the tractor in

the present case is very much an equipment used for the purpose propulsion by the tractor, and is contemplated to be carried by the tractor, and it

cannot be said like trailer or semi trailer, so as to fall within the meaning of any vehicle, so as to require any separate registration, or separate

insurance cover.

7. The cases cited at the Bar before the learned Tribunal are on the aspect of the accident occurring by use of trailer with the tractor, or on the

aspect of requirement of the accident taking place by mobile vehicle, as contra-distinguished from stationary vehicle, or on a public road, and no

judgment has been cited on the side of the appellant to show, that in case of such an equipment used for the purpose of propulsion by the tractor

does require independent insurance cover, in order to fasten liability on the insurer. It is required to be comprehended, that thrasher apart, there is

long list of such equipments which are used for the purpose of propulsion by the tractor, for the purpose of carrying agricultural operations which

may include different types of plough, equipment to flatten the land, equipment to prepare the water courses, thrasher, instrument to pump water

from water body, and so on and so forth.

Obviously, in absence of any provision in the Motor Vehicles Act requiring separate insurance cover with respect to any one or more such

equipment in addition to the insurance cover of the tractor, in order to attract liability of the insurer in the event of accident, it cannot be said that

where the tractor is insured, and the victim is a third party, the insurer could not be held liable.

8. I may also refer to the statement of N.A.W. 5 Mool Chand Surana who was posted as Branch Manager, and in cross examination he has

categorically admitted as under:-

;g lgh gS fd Vs~DVj ds ihNs tks e"khusa yxrh gSa muesa ftudk eksVj Oghdy ,DV esa jftLV~s"ku gksuk t:jh gS mudk vyx ls izhfe;e nsuk iM+rk

gSA

9. This leaves no manner of doubt that the requirement of obtaining additional insurance cover, or requirement of paying additional premium with

respect to any equipment used for the purpose of propulsion attached with the tractor, would be a sine qua non, only in cases where such

equipment requires separate registration under the Motor Vehicles Act.

Obviously, it is not shown either before the learned Tribunal, or before me, that the thrasher was an equipment which did require registration under

the Motor Vehicles Act, therefore, also on the evidence of N.A.W. 5 it cannot be said that in the present case the appellant is not liable.

10. In the net result I do not find any error in the conclusions arrived at by the learned Tribunal. The appeal thus has no force and is dismissed.

Parties shall bear their own costs.

4. However, the learned Single Judge was not in agreement with the view taken by the earlier Single Judge and the matter was referred to the

larger bench and pursuant to the order of the Single Judge, the matter was placed before us for consideration.

5. Learned counsel for the appellant has taken us to the law developed by different High Courts, for a period of time right from 2010, judgment of

the Rajasthan High Court and then to the judgment of Himachal Pradesh in the case of United India Insurance Company Ltd. v. Sardari Lal and

others - AIR 2005 Himachal Pradesh 9, wherein it has been held as under:

5. The expression used in sub-section (1) of Section 165 is ""use"" of motor vehicles. The term ""use"" necessarily does not connote, for the purposes

of it coming within the scope and ambit of Section 165(1) of the Act, that a vehicle must be plied on the road. The uses of a vehicle can be a

various types and for varying situations. One such situation with respect to the use of a motor vehicle is that it is being connected to a Thrasher and

the Thrasher is dependent (even though to the limited extent of supplying the power) upon the tractor for its operation and unless the tractor is

used"", the Thrasher cannot be operated. Therefore, merely because the tractor, undoubtedly a vehicle within the purview of the Motor Vehicles

Act, 1988 is not being plied on the roads does not necessarily mean that an accident had not occurred, arising out of the "use" of this motor

vehicle.

6. The same view has again been reiterated by the learned Single Judge of Madhya Pradesh High Court while considering a case in United India

Insurance Co. Ltd. v. Rajendra and others - 2011 ACJ 782 wherein in para 12 and 13 it has been held as under:

12. In my view, the Tribunal on facts was right in fastening the liability on the appellant (insurance company) arising out of the accident in question.

It is not in dispute that tractor and thresher were fitted with each other and were put to use for cutting soyabean. It is also not in dispute that

Rajendra lost his right hand while working on the thresher. It is also not in dispute that tractor was insured with the appellant.

13. In my view, the aforesaid undisputed facts make the insurance company liable to suffer the liability arising out of accident. The view that I have

taken is supported by decisions reported in United India Insurance Co. Ltd. v. Surinder, 2006 ACJ 1285 (P&H); Gunti Devaiah v. Vaka Peddi

Reddy, 2004 ACJ 1881 (AP). In all these cases, facts were more or less similar and the respective High Courts held the insurance company liable

to suffer the liability arising out of accident occurred with thresher. I do not find any good ground to differ with the view taken in these decisions

because no decision taking contrary view was relied on by the learned counsel for the appellant except to contend that the insurance company is

not liable.

7. Again in 2013, this Court in the case of Babi (Smt.) & Ors. v. Laxman & Ors.- MACD 2013 (2) (Raj.) 812, has held as under:

The conduct of the driver Laxman and his first unadulterated version to the police recorded in 1995 was that he was operating the tractor when

the accident occurred and he stopped the same as soon as the accident happened clearly goes to show that Laxman in fact was operating the

thresher through the tractor at the time of accident and any other plea taken by him while giving statement as NAW-1 in the year 2000 is on its

face incorrect and false and has been given only with a view to escape from the liability. Besides the averments made contrary to his original report

and statement with the police, the further averments made in examination-in-chief supporting the version of the insurance company regarding the

contractor being not in use etc. also goes to show that the witness was tutored and, therefore, it is not safe to rely on his statements.

Coming to the issue as to whether the accident occurred on account of negligence of Laxman - respondent No.1 or not, the sole witness is AW-3

Lila Ram, who has categorically stated that he was handing-over the grain to Ganeshaji, who was feeding the same in the thresher when Laxman

accelerated the speed of the tractor connected with thresher, which resulted in the hand of Ganesha ji getting sucked in. The presence of Laxman

on the tractor is proved as held hereinbefore from his first unadulterated version vide Ex.-2 and Ex.-10 and fact that the unannounced acceleration

took place by Laxman is proved by the statement of AW-3 Lila Ram. The presence of Lila Ram is sought to be dismissed by the respondent s on

account of the fact that his name does not occur in the statements recorded by the police post submission of report by Laxman and it is alleged that

said Lila Ram is a partner in the agriculture field and was related to deceased Ganesh Ram. However, the said witness Lila Ram has explained his

absence at the time of police enquiry/investigation by saying that he fell ill and, therefore, was not able to appear before the police.

17. Besides merely raising doubts on the credibility of said Lila Ram, the respondents have failed to elicit anything in the cross-examination from

Lila Ram, who was specifically asked about his absence at the time of accident, which was categorically denied by him.

20. The reliance place by learned counsel for the respondent - Insurance Company on judgment of Hon''ble Supreme Court in Samir Chandra v.

Managing Director, Assam State Tpt. Corpn. : 1998 DNJ (SC) 346 is wholly misplaced and in fact, supports the case of the appellants.

21. Consequently, the findings recorded by the Tribunal on Issue Nos.1, 3 and 5 are reversed and it is held that the accident occurred on account

of rashness and negligence of respondent No.1 Laxman and that the insurance company is also liable on account of accident occurring on account

of use of thresher attached with the tractor.

23. In absence of determination of income by the Tribunal, the matter in ordinary course was required to be remitted back for consideration but

the fact that the deceased was 35 years of age and the accident is of April, 1995, remanding the matter at this stage is not going to serve any

purpose particularly when evidence recorded is already on record.

24. It would be relevant to notice that AW-1 Smt. Babi was not cross-examined on the aspect of the income of the deceased.

29. Consequently, the appeal is allowed. The Judgment and award passed by the Tribunal is set side and in view of the findings arrived at by this

Court hereinbefore the application for compensation filed by the claimants is allowed and the claimants are entitled to compensation of Rs.

3,60,000 + 25,000 + 15,000 i.e. Rs. 4,00,000/- which amount shall carry interest @ 6% p.a. from the date of claim petition i.e. 28.7.1995 till

actual payment from all the three respondents jointly and severally.

The appellant No.1 wife of the deceased would be entitled to 60% of the amount of compensation and rest four appellants-children of the

deceased would be entitled to 10% each of the amount of compensation awarded. The insurance company would deposit the amount of

compensation with the Claims Tribunal within a period of two months from the date of this judgment. No costs.

8. Learned counsel has taken us to the judgment of this Court in the case of United India Insurance Co. Ltd. v. Shankar Lal and another - 2013

ACJ 1878 where under the Workmen''s Compensation Act, the view taken by another Single Judge confirming the view taken by the other Bench

of this Court has held as under:

8. My findings with the reasons on each of the questions raised aforesaid are as below:

(1) Although from the evidence available on record, it appears that the claimant was engaged by the respondent Vijay Kumar on the date of

accident on daily basis to work on the thresher, but only by that reason it cannot be held that the claimant was a casual worker and, therefore, is

not covered under the provisions of the Act. According to the definition the word ''workman'' as given in section 2(1)(n) of the Act (as was

applicable at the relevant time) ''workman'' also means any person who is employed in any such capacity as is specified in Schedule II. According

to this provision if the employment is of a casual nature but it is covered under any of the items specified in Schedule II, even then such person shall

be a ''workman'' within the meaning of the Act and provisions of the Act would be applicable.

Schedule II of the Act provides list of those persons who are included in the definition of ''workman''.

According to item No.(xlv) of Schedule II, a person employed in mechanised harvesting and threshing operations is a workman. In the present

case also as the claimant was working on the thresher of the respondent Vijay Kumar at the time of accident, therefore, even if the claimant was

engaged for that day only, even then he shall be considered to be a workman within the meaning of word ''workman'' as provided in section 2(1)

(n) of the Act. Therefore, the appellant insurance company cannot escape from its liability to pay compensation on the ground that the claimant was

a casual worker.

(2) Although a thresher independently cannot be a motor vehicle within the meaning of Motor Vehicles Act,1988 and at the time of accident it was

neither registered nor insured separately, but only by that reason it cannot be said that the appellant insurance company is not liable to pay the

compensation as it is an admitted fact that tractor concerned was insured for agriculture purpose with the appellant insurance company and there is

no provision for registration or insurance or a thresher. The learned singly Bench of this court in the case of National Insurance Co. Ltd. v. Meera,

2010 ACJ 2272 (Rajasthan), in similar circumstances has held that ''''the tractor includes equipments used for the purpose of propulsion.

Thresher which was being propelled/operated by the tractor is very much an equipment used for the purpose of propulsion by the tractor and is

contemplated to be carried by tractor and it cannot be said like trailer or semi-trailer, so as to require any separate registration, or separate

insurance cover''''. In that case also, the claimant got injured while working on a thresher attached with a tractor.

Negativing the submissions made on behalf of the insurance company, the learned single Bench came to a conclusion that thresher attached with a

tractor does not require separate and independent registration and insurance and if the tractor to which the thresher was attached is insured, then

insurance company is liable to pay compensation.

In the present case also as the aforesaid tractor was comprehensively insured with appellant insurance company, therefore, it is liable to pay

compensation.

(3) The contention of the appellant is that the tractor was insured only for one person, i.e., for the driver only and not for any other person either

working on the tractor or on the thresher attached to it and, therefore, the insurance company is not liable to pay compensation for the injuries

received by the claimant who was admittedly working on the thresher. It was also submitted that although the tractor was comprehensively insured,

but it does not mean that it would cover the risk of such employee who has not been specified in the insurance policy. In support of his

submissions, the learned counsel for the appellant relied upon the case of Oriental Insurance Co. Ltd. v. Birbal, MACD 2007 (2) Raj 773. I am of

the view that looking to the facts of the contention made on behalf of appellant insurance company is not tenable. The insurance policy, Exh. NA 1,

available on record shows that Rs. 25 was received as premium by the appellant for one employee under the provisions of the Act. In the policy it

is not mentioned that this amount has been received only for a driver of the tractor and not for any other employee, therefore, it cannot be said that

only driver of the tractor was covered by the policy. In similar circumstances, the Hon''ble single Bench of this court in the case of United India

Insurance Co. Ltd. v. Roshan, 2010 RAR 474 (Raj), has held that as the cover note had not specified or limited its liability only for driver, the

insurance company is liable to pay the compensation. In the present case, as the insurance policy does not specifically cover only the driver of the

tractor, therefore, it should be held that any employee working on the tractor or on the thresher attached to the tractor is covered under the policy

and the appellant insurance company is liable to pay compensation.

The decision relied upon by the learned counsel for the appellant is of no help as in that case the insurance policy specifically provided that only

driver is covered under the provisions of the Act.

9. Lastly, the learned counsel has relied upon the decision of Punjab & Haryana High Court in the case of Subhash v. Sarjit and another - II

(2015) ACC 942 (Del.).

10. Insurance company was not a party to the proceedings. Though the service has been effected on the respondents but nobody has put in

appearance on their behalf.

11. In that view of the matter and taking into consideration the over all view taken by all other Courts, we are of the opinion that the if the Thrasher

is attached with the tractor, then it will include as a vehicle. In that view of the matter, we answer the question accordingly. However, we make it

clear that if the Thrasher is attached with the tractor, only then it is a motor vehicle and not otherwise, subject to fulfilling other requisite conditions

of the Motor Vehicles Act.

12. The matter be placed before the learned Single Judge for deciding the appeal on merits.