

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****FAO-4855-2024 (O&M)****Date of decision: 09.01.2025****Vicky****...Appellant(s)****Vs.****Indra Devi & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Krishan Singh, Advocate  
for the appellant.

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**NIDHI GUPTA, J.**

Present appeal has been filed by the driver-cum-owner of the Eicher Tractor (Blue Colour) bearing registration No.HR-60F-1721 (hereinafter referred to as 'the offending vehicle') against the Award dated 02.08.2024 passed by the Motor Accidents, Claims Tribunal, Panipat (hereinafter referred to as "the Tribunal"), in MACT Case No.122 of 2023 filed under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), whereby the appellant has been made liable for payment of compensation of Rs.17,55,000/- to the claimants.

2. Learned counsel for the appellant assails the impugned Award and submits that the appellant has been wrongly held liable to pay the compensation amount as, neither in the FIR (Ex.P3) nor in the claim petition filed by the claimants/respondents No.1 to 4 has it been asserted that the deceased was sitting on the mudguard of the offending



vehicle which was being driven by the appellant. It is submitted that even as per the statement made by the alleged eyewitness of the occurrence namely one Parkash/author of the FIR (Ex.P3), it has been nowhere stated that the deceased was sitting on the mudguard of the tractor. On the contrary, he has stated in the FIR that his brother-in-law/deceased Om Parkash had started to climb down from the tractor when he met with the accident. Therefore, the learned Tribunal has wrongly imposed the liability upon the appellant. As such, the Insurance Company/respondent No.4 has been wrongly held not liable to pay the compensation. It is further submitted that the claim petition is bad for misjoinder and non-joinder of necessary parties; and is barred by limitation. There is delay of one day in registration of the FIR.

3. It is further submitted that the alleged accident took place on 23.04.2023 and the tractor in question was insured with the Insurance Company/ respondent No.5 herein. The insurance policy was valid w.e.f. 25.07.2022 to midnight on 24.07.2023. Therefore, on the day of alleged accident, the tractor was fully insured with the Insurance Company i.e. respondent No.5. Even if for the sake of argument, it is presumed that the appellant has violated the terms and condition of the policy, even then the insurance company is liable to pay the compensation amount at first instance and then the insurance company can recover the same from the appellant. In support of this contention, learned counsel relies upon judgments of Hon'ble Supreme Court in



**“Manuara Khatun & Others Vs. Rajesh Kr. Singh & Others” Law Finder Doc ID # 831243; “Shivaraj Vs. Rajendra & Another” Law Finder Doc ID # 1181090; and “Bajaj Allianz General Insurance Co. Ltd. Vs. Kailash Devi & Others” Law Finder Doc ID # 980758.**

4. No other argument is raised on behalf of the appellant.
5. I have heard learned counsel for the appellant and perused the case file in great detail.
6. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Om Parkash had died due to the injuries suffered by him in a motor vehicular accident that took place on 23.04.2023 due to the rash and negligent driving of the Eicher Tractor (Blue Colour) bearing registration No.HR-60F-1721/ the offending vehicle being owned and driven by the appellant. The accident took place on 23.04.2023 and the deceased expired on 24.04.2023; whereafter, on the basis of the statement of the eyewitness Prakash, FIR no. 529 dated 24.4.2023 was registered under Sections 279, 304-A of IPC at Police Station City Panipat against the appellant. A certified copy of the said FIR was produced before the learned Tribunal as Ex. P2. In the said FIR, it was asserted that the deceased Om Prakash was sitting on the mudguard of the tractor and when he had started to climb down from the offending vehicle, the appellant suddenly moved the tractor in haste in a negligent manner due to which the deceased got hit by the tractor and fell down on the road.



Subsequently the present claim petition was filed by the four claimants being: widow, one son and two daughters of the deceased Om Prakash. In para 24 of the claim petition, it has been asserted that when the deceased was climbing down from the tractor then the driver/appellant suddenly moved the tractor in haste and in negligent manner due to which deceased got hit by the tractor and fell down on the road.

7. Upon notice, the appellant appeared before the learned Tribunal. The pleaded case of the appellant before the learned Tribunal as noted in para 12 of the impugned Award was that: *"...In the present case, the most vehemence of the learned counsel for the respondent no.2 that neither the accident has been caused by the respondent no.1 nor the name of driver or number of the vehicle has been mentioned in the complaint and FIR. The present case is hit and run case and false case has been got registered against the respondent no. in collusion with the claimants- petitioners and the police. The vehicle has been falsely implicated in the present case and thus, prayed that issue no.1 may kindly be decided in favour of the respondents and claim petition may kindly be dismissed."*

8. On the basis of the pleadings of the parties, the following issues were framed by the learned Tribunal: -

*"1. Whether the accident in question resulting into the death of Om Parkash Rajbhar son of Shri Somai took place due to rash and negligent driving of offending Tractor bearing*



*registration no.HR-60F-1721 by respondent no.1, as alleged?*

*OPP.*

*2. If issue no.1 is proved in affirmative, what amount of compensation, the petitioners Indra Devi & Ors. are entitled to and from whom? OPP.*

*3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy, if so, to what effect? OPR2*

*4. Relief.”*

9. On the basis of the evidence led by the parties, the claim petition of the claimants was partly allowed. Issue no. 1 was decided in favour of the claimants; and Issues no.2 and 3 were disposed of in favour of the claimants and against the appellant, respectively. Resultantly, compensation in the following manner was awarded to the claimants. The income of the deceased was assessed to be Rs.13,375/- per month. The deceased was 44 years of age, as such, multiplier of 14 was correctly applied; and future prospects of 25% were awarded. 1/4<sup>th</sup> deduction was made as there were 4 claimants. The learned Tribunal further granted spousal consortium of Rs.40,000/-; loss of estate of Rs.15,000/-. Accordingly total compensation of Rs.17,55,000/- was awarded along with interest of 7.5% per annum from the date of filing the petition till realisation.

10. It has been argued on behalf of the appellant that liability of payment of the above compensation has been wrongly affixed



upon the appellant as the deceased was not sitting on the mudguard of the offending vehicle when the accident took place. However, the said argument of the appellant is liable to be rejected in view of the fact that the same is contrary to the evidence on record. It is the consistent case of the claimants as well as the eyewitness/complainant/PW1 that the deceased was alighting from the offending vehicle when the appellant drove the same in a hasty and negligent manner due to which the deceased fell down and was hit by the tractor due to which he had suffered multiple grievous injuries to which he succumbed on 24.04.2023. The case as put forth by the eyewitness was further strengthened by his testimony as PW1 and his affidavit as Ex.PW1/A.

11. While passing the impugned Award and affixing the liability upon the appellant, the learned Tribunal has also taken into account the FIR (Ex.P2) which was registered on the statement made by Parkash/PW1, in which he has specifically mentioned the number of the tractor/offending vehicle and the manner in which the accident was caused. Even the report under Section 173 Cr.P.C. (Ex.P1) indicates that the appellant was joined in the investigation on 11.05.2023 upon which he was found to be involved in the present case. Even as per the post-mortem report (Ex.P3) and death report (Ex.P4) cause of the death was recorded to be roadside accident. The Id. Tribunal also considered the photocopy of the Registration Certificate of the offending vehicle Ex. R1, as per which seating capacity of the tractor was of one person viz the



driver, and the tractor was meant to be used only for agriculture purpose.

12. Moreover, it is imperative to note that the appellant had failed to appear in the witness box to rebut the claim of the case of the claimants. Even no documentary evidence was filed by the appellant to show that any complaint or application had been moved by the appellant before the Investigating Agencies or any police authority for his false implication in the matter. As such, the learned Tribunal while placing reliance upon judgment in **“The Oriental Insurance Company Limited Vs. Smt. Chubhi Hansda & Others”** FAO No.4890-2017 decided on 13.07.2022 Law Finder Doc ID # 2026691, held that *“...there is no evidence on the file to prove that the respondent No.1 has been falsely implicated in this case.”* Relevant part of the impugned Award is as under: -

*“24. It was argued by learned counsel for respondent no.2 that respondent no.2-Insurance Company is not liable to pay the compensation amount to the claimants as the deceased Om Parkash Rajbhar was sitting on the mudguard of the tractor which is revealed from the testimony of PW1- Parkash (eyewitness/author of FIR) and the tractor was insured for the driver. and not for other person/passenger and the seating capacity of the tractor is only for one person, i.e. driver and as such the Insurance Company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers. In this regard, he has drawn his support from case titled **The Oriental Insurance Co. Ltd. Vs. Ishwanti &***



*Ors. 2013(1) RCR (Civil) 110/111 P&H. It was further argued by learned counsel for respondent no.2 that the tractor has been meant for agriculture purpose which is revealed from Registration Certificate **Ex.R1**, as in the RC, it is mentioned that it is meant for one person/one seat and the Insurance Policy **Ex.R3/R4** are on the file which go to show this fact that the tractor has been insured for the agriculture purpose. So, when the tractor is meant to be used for agriculture purpose and not for commercial use then the Insurance Company is not liable to pay the amount of compensation as in the present case, the deceased was the gratuitous passenger on the tractor and when he was alighting from the tractor then he came under the tyre of the tractor and due to this, he succumbed to the injuries and so the insurance company is not liable to pay the amount of compensation. In this regard, he has drawn support from case titled **National Insurance Co. Ltd. Vs. V. Chinnamma & Ors. 2005(1) LJR 145/146 SC** and prayed that the liability can be fastened upon respondent no.1 being the driver and owner of the vehicle in question and the insurance company be exonerated.”.*

13. The argument of the learned counsel for the appellant that the deceased was not sitting on the tractor at the time of the accident as he was alighting from the tractor is gravely misplaced as question of alighting from the tractor would arise only when the deceased would be sitting on the tractor. As already noted above, the seating capacity of the offending tractor is for only one person that is the driver. No doubt on the date of accident 23.4.2023, the offending vehicle



was insured with respondent no.5 which was valid for the period 25.07.2022 till midnight of 24.07.2023. It is no longer res integra that liability of respondent No.5/Insurance Company would be restricted only to the driver subject to the policy terms and conditions and not to any other person other than the driver, travelling on the offending vehicle. As already demonstrated above the deceased was sitting as a gratuitous passenger on the offending vehicle and was alighting at the time of alleged incident. As such, it has been correctly held by the learned Tribunal that the respondent No.5 was not liable to pay the compensation to the claimants. Relevant findings returned by the learned Tribunal are as under:-

*“27. In the present case, it is admitted fact that the deceased Om Parkash Rajbhar was sitting on the mudguard of the tractor and when he was alighting from the tractor on the fateful day, i.e. 23.4.2021 at around 10.30 P.M. near Sanjay Chowk, Panipat then he fell down from the tractor and came under the tyre of the tractor bearing registration no.HR-60F-1721 and the tractor was driven by respondent no.1 at that time and Om Parkash Rajbhar sustained multiple and grievous injuries and he also succumbed to the injuries. When the complainant/eyewitness Parkash appeared in the witness box as PW1 then in the cross-examination, he has specifically mentioned that his brother-in-law (Jija) was sitting on the mudguard of the tractor who was coming towards Karnal side i.e. coming from Delhi side. When his brother-in-law (Jija) was to get down from the tractor, in the meantime, the tractor driver suddenly moved his tractor and his brother-in-*



*law (Jija) fell down on the road. Meaning thereby, the own statement of the eyewitness/complainant PW1-Parkash prove this fact that the deceased was sitting on the mudguard of the tractor and when he alighted from the tractor then he fell down and came under the tyre of the tractor.*

*28. It is settled proposition of law that the tractor was insured for the driver and not for any other person, i.e. passenger and the seating capacity of the tractor is only one person, i.e. driver. Om Parkash Rajbhar (since deceased) sitting on the mudguard fell down on the ground and sustained grievous injuries on his person and succumbed to the injuries. The seating capacity of the tractor was one. As this fact is revealed from Registration Certificate **Ex.R1**, where it is mentioned that the RC is for tractor i.e. for agriculture purpose and the seating capacity is only of one person. Meaning thereby, there were two persons on the tractor, one driver of the tractor, i.e. Vicky (respondent no.1) and other is deceased Om Parkash Rajbhar at the time of the accident. So, when the tractor was meant for one person then there is breach of terms and conditions of the policy. The deceased was sitting on the tractor on his own risk and the tractor was insured for the driver and not for any other person, i.e. passenger. As the premium for the insurance policy has been paid was for the driver only. The perusal of photocopy of Registration Certificate **Ex.R1** shows that the seating capacity of the tractor of one person i.e. the driver. It is, therefore, plain logic that when the seating capacity of a tractor is for one person, i.e. driver, the other person sitting on it, is not covered under the insurance policy. There is breach of terms*



*and conditions of the policy and the insurance company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers. Since there is breach in the terms and conditions of the policy, the insurance company should be absolved of its liability. Reliance has been drawn in this regard in case titled **The Oriental Insurance Co. Ltd. Vs. Ishwanti & Ors. 2013(1) RCR (Civil) 110/111 P&H**, wherein our Hon'ble High Court of Punjab & Haryana has held as under:-*

***'Deceased was sitting on mudguard of tractor. Deceased fell down and died. The tractor was insured for the driver and not for any other person/passenger, as the premium paid was for the driver only. The seating capacity of a tractor is for one person, i.e. driver. The insurance company should not be made liable for an occurrence, which takes place on a vehicle not meant for passengers'***

*Further, I draw my support from case titled **National Insurance Co. Ltd. Vs. V. Chinnamma & Ors. 2005(1) LJR 145/146 SC**, wherein, the Hon'ble Apex Court has observed as under:*

***'The tractor is meant to be used for agricultural purposes and the insurer-liability, owner of goods travelling in the tractor with goods i.e. vegetables, tractor is not a good carrier, it is meant to be used for agricultural purposes, not for commercial use and it was held that the insurance company is not liable to pay the compensation.'***

*The supra authorities are applicable on the facts of the present case. In the present case, there is sufficient evidence*



*in the file in the shape of RC Ex.R1, insurance policy Ex.R3/R4 that the tractor was insured for one person and it was insured for agriculture purpose only. As such, the insurance company is not liable to pay the amount of compensation.*

*Issue stand disposed of accordingly.”*

14. Reference may be made to a judgment of the Chhattisgarh High Court in **“Jagdish Prasad Soni Vs. Smt. Nirmala Sahu & Others” Law Finder Doc ID # 2333093**, wherein it has been held that: -

*“A. Motor Vehicles Act, 1988 Section 147 Liability of insurer - Breach of policy conditions - At the time of accident, the deceased was sitting in the tractor and there is no sitting capacity in the tractor and no risk covered under the insurance policy taken by the owner for the passenger sitting in the tractor and fastened liability upon the owner of the offending vehicle - Offending vehicle in this case was ensured for the agriculture purpose and not for carrying goods or passenger - Therefore, the learned Tribunal has rightly exonerated the Insurance Company from its liability to pay compensation.”*

15. It has also been argued on behalf of the appellant that in the first instance, the respondent No.5/Insurance Company ought to have been made liable or directed to make payment of the compensation; and subsequently a suit for recovery of compensation, amount could have been filed against the appellant. However, the same is at the discretion of the learned Tribunal.



16. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed.**

17. Pending application(s) if any also stand(s) disposed of.

**09.01.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**