

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6220 OF 2008

FAHIM AHMAD & ORS.

...

APPELLANTS

VERSUS

UNITED INDIA INSURANCE CO. LTD. & ORS. ...RESPONDENTS

J U D G M E N T

N.V. RAMANA, J.

1.The short question, which arises for consideration in this appeal, is who is liable to pay the amount of compensation awarded by the Motor Accident Claims Tribunal, Udham Singh Nagar (for short, 'the Tribunal') in M.A.C.P. No. 98/2003 vide Award dated 06.08.2004.

2. Brief facts of the case are thus : On 06.03.2003, the deceased Atma Singh, the husband of appellant -

3. No. 1 and the father of appellants No. 2 and 3 herein, was going from Kashipur crossing towards Tada Ujjain. When he reached the Station Road in front of godown, suddenly one tractor having registration No. UP-21-H-4596 coming at a high speed in a rash and negligent manner hit the deceased from behind, as a result of which, he became seriously injured and died on the spot. Thus, the appellants-claimants claimed compensation of Rs.5,00,000/- and averred that the deceased was 49 years' old having monthly income of Rs.4,600/- (Rs.3,600/- from mason work and Rs.1,000/- from selling of milk of 2-3 buffaloes). The Tribunal assessed the annual income of the deceased at Rs.24,000/- and applying the multiplier of 13, awarded the compensation of Rs.3,12,000/-

with interest. However, the Tribunal held the Insurance Company, i.e., respondent No. 1 herein, liable to pay the said compensation because the tractor was insured with it as per rule at the time of the accident.

4. Against the award of the Tribunal, the appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the said Act') registered as A.O. No. 425 of 2004 in the High Court of Uttranchal at Nainital was partly allowed on 18.05.2006 to the extent that the amount of compensation so awarded by the Tribunal shall be paid by the insurance company, but it shall have a right to recover the same from the owner of the offending tractor as there was breach of condition of the insurance policy. This was so held because at the time of the accident, the tractor was carrying sand. It is this

decision, which has been assailed in the present appeal.

5. We have heard arguments advanced by learned counsel for the parties and perused the records.

6. A perusal of the records shows that, at the time of the accident, a trolley was attached with the tractor, which was carrying sand for the purpose -

7. of construction of underground tank near the farm land for irrigation purpose(s). However, merely because it was carrying sand would not mean that the tractor was being used for commercial purpose and consequently, there was a breach of the condition of policy on the part of the insured. There is nothing on record to show that the tractor was being used for commercial purpose(s) or purpose(s) other than agricultural purpose(s), i.e., for

hire or reward, as contemplated under Section 149(2) (a) (i) (a) of the said Act.

8. Although the plea of breach of the conditions of policy was raised before the Tribunal, yet neither any issue was framed nor any evidence led to prove the same. In our opinion, it was mandatory for respondent No. 1-Insurance Company not only to plead the said breach, but also substantiate the same by adducing positive evidence in respect of the same. In the absence of any such evidence, it cannot be presumed that -

9. there was breach of the conditions of policy. Thus, there was no reason to fasten the said liability of payment of the amount of compensation awarded by the Tribunal on the appellants herein.

10. We may also notice that this Court in National Insurance Co. Ltd. Vs. V. Chinnamma & Ors., JT 2004 (7) SC 167, held that

carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes, but the same itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. Thus, a tractor fitted with a trailer may or may not answer the definition of 'goods carriage' contained in Section 2(14) of the said Act.

11. In view of above, we are of the view that, in the facts and circumstances of the case, the High Court was not justified in transferring the -

12. burden of paying the amount of compensation from respondent No. 1-Insurance Company to the appellants herein.

13. We, thus, allow the appeal. Accordingly, the impugned judgment dated

18.05.2006 is set aside, in so far as the right to recover the amount awarded from the owner of the tractor. No orders as to costs.

.....C.J.I.
(P. Sathasivam)

.....J.
(Ranjan Gogoi)

.....J.
(N.V. Ramana)

New Delhi;
March 25, 2014.



JUDGMENT