





**FACTS NOT IN DISPUTE**

2. Brief facts of the case are that on 26.12.2012, deceased Gordhan had gone with respondent No. 1 on tractor bearing registration No. HR-08-P/1577 (herein after to be referred as offending vehicle) to Adampur and at about 3.00 p.m. when they reached in Shiv Colony, Adampur, respondent No. 1 who was driving the tractor asked deceased Gordhan to alight from the tractor, as the street of Shiv Colony was in upper level than the road. Gordhan alighted from the tractor and was standing on one side of the street. In the meantime, respondent No.1, suddenly, carelessly, rashly and negligently drove the tractor and it turned turtle over Gordhan, due to which Gordhan suffered multiple injuries. He was immediately shifted to GH Hisar, where he was declared dead. The accident was witnessed by Om Parkash son of Chandu Ram, resident of Kalirawan. Respondent No.1 fled away from the spot leaving behind the tractor.

3. Upon notice of the claim petition, respondents appeared and filed their separate written replies denying the factum of the accident/compensation.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

*“1. Whether the accident in question occurred due to rash and negligent driving of the offending vehicle tractor bearing No.HR-08P/1577 by respondent No.1?OPP*

*2. Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent?OPP*

*3. Whether the present petition of the petitioners is not maintainable in law?OPR*

*4: Relief.”*



5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal while awarding compensation to the claimant/respondent No. 1 to 3, fastened the liability upon the appellant to pay the compensation. Hence the present appeal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT**

6. Learned counsel for the appellant—owner of the offending vehicle *inter alia* contends that FIR was lodged on the basis of hearsay evidence and liability has been wrongly fixed upon the appellant to pay the compensation to the claimants/respondent Nos. 1 to 3. He further contends that the cover note was issued by the Insurance Company for commercial purpose whereas the Insurance Policy was issued for agricultural purposes without notice to the appellant and further that policy starts from the date of issuance of cover note.

7. Further contends that it is wrongly mentioned in the FIR that the deceased was sitting on mudguard of the offending tractor at the time of accident. He, therefore, prays that the present appeal be allowed and impugned order be modified to the extent of fastening the liability upon the appellant-owner of the offending vehicle.

8. Per contra, learned counsel for the Insurance Company/respondent No. 5 contends that the liability has rightly been fixed upon the appellant to pay compensation to the claimants/respondent Nos. 1 to 3. He, therefore prays that the present appeal be dismissed.

9. I have heard learned counsel for the parties and perused the whole records of this case with their able assistance.

10. Before proceeding further, it is relevant to reproduce the relevant portion of the impugned award, which reads as under:-



“ISSUES Nos.1 to 3:

10. With regard to issue of negligence on the part of respondent No.1, it was vehemently argued by counsel for insurance company that from contents of FIR Ex R1, it is duly established that deceased was sitting on the mudguard of the offending tractor bearing registration No.HR-08P/1577 at the time of accident. Since there was great/ heavy load in the trolley attached with the tractor, so due to negligence of driver the tractor jumped over its two rear tyres and resultantly deceased fell down in between tractor and trolley and sustained injuries which proved fatal. He submitted that in the eye of law contents of FIR cannot be read in juxtaposition of oral evidence which is otherwise wherein it is shown that deceased was standing in the street by the side of tractor. He in support of his contention referred case law titled **Divisional Manager, I.C.I.C.I. Lombard General Insurance Company Limited Vs. Mudiappa and another, 2014 ACJ 268 (Karnataka)**, wherein ratio was laid down to the effect, "Evidence- Appreciation of Claimant in his claim application pleaded that he was sitting on the tractor at the time of accident but during cross-examination he stated that he was sitting on tractor-trailer- Held: when documents like FIR, statement, wound certificate and charge-sheet state that claimant fell from tractor then there is no necessity to further elicit in his cross-examination that he was sitting on tractor; once documents has been produced by a party in order to rely upon a fact the same document cannot be resiled from in order to content otherwise and claimant at this stage cannot contend that he was not sitting on the tractor. (2007 ACJ 1928 (SC) relied)."

11 It was further argued by counsel for insurance company that in such circumstances when clause of insurance policy does not include the risk involved in the accident, insurance company cannot be made liable. He in support of his contention referred case law titled **Divisional Manager, I.C.I.C.I Lombard General Insurance Company Limited Vs. Mudiappa and another (supra)**, wherein ratio was laid down to the effect, "Workmen's Compensation Act,



1923, section 22 and Motor Vehicles Act, 1988, section 147 read with Rules of the Road Regulations, 1989, regulation 28-Motor insurance-Policy-Breach of Tractor trailer- Liability of insurance company-Coolie sitting on mudguard of tractor fell down and sustained injuries when the driver of tractor-trailer suddenly applied brakes- Commissioner fastened liability on the insurance company- As per regulation 28 of the Rules of the Road Regulations, a driver when driving a tractor shall not carry or allow any person to be carried on the tractor- Statement of claimant, FIR, charge sheet and wound certificate show that claimant fell down from the right side of the tractor- Risk of persons sitting on tractor is not covered under the terms and conditions of the policy- Whether there was breach of policy and Commissioner erred in fastening liability on the insurance company- Held;yes." He further referred in support of his contention case law titled **Bajaj Allianz General Insurance Company Limited Vs. Smt.Lachho and others, decided by our Hon'ble High Court on 6.5.14 in FAO No.2355 of 2010(O&M)** wherein it was laid down clearly that liability of insurance company cannot be extended beyond the clause of cover note and policy. He submitted that as per insurance policy Ex. R2, it is very much evident that vehicle was insured for agricultural purpose but not for commercial purposes. At the time of accident bricks were transported by the tractor which was beyond the clause of insurance policy, so respondent No.3 is not liable for any liability.

12. On the other side counsel for petitioner submitted that from oral evidence of petitioners, it is duly established that vehicle in question was used for agricultural purpose and accident happened when front tyre of tractor fell upon deceased who was standing in the street by the side of the tractor. He submitted that contents of FIR are not binding upon the petitioner. He submitted that in such circumstances the insurance company is very much liable for the claim damage. He referred in support of his contention case law titled **United India Insurance Co. Ltd. Vs. Smt.Suman and others (2014) Acci.C.R.596 (All.) and Oriental Insurance Co. Ltd. and others Vs. Smt.Savithri**



*Hudge and another (2014) Acci. C.R. 732 (Kant).* He further submitted that petitioners could not be deprived of their right to receive the damages due to death of their family member only due to the reason that driver of offending vehicle was acquitted by Criminal Court. He referred in support of his contention case law titled ***Bikram Singh and another Vs. Sarwan Singh, 2010 (2) RCR (Civil) 364 (P&H).*** He further submitted that negligence on the part of respondent No.1 is duly proved from the oral evidence adduced by petitioners. It is no more in dispute that charge sheet was filed against respondent No. 1 which is one of the factor for reaching at conclusion that there was negligence on part of respondent No.1. In support of his contention, he referred case law titled ***United India Insurance Co. Ltd. Vs. Deepak Goel and others, (2014) Acci. C.R. 711(Delhi).*** He further submitted that petitioners are wife and children of deceased, so they are very much entitled for the compensation. He in support of his contention referred case law titled ***Yerramma and others Vs. G. Krishnamurthy and another, 2014 (4) RCR (Civil) 266(SC) and Sudha and others Vs. Dalip Singh and others. (2014) Acci, C.R. 104(P&H).***

13. I agree with the contention of counsel for insurance company that of FIR relied upon by petitioners cannot be discarded in view of law laid down in case titled ***Divisional Manager, LC.LC.I. Lombard General Insurance Company Limited Vs. Mudiappa and another(supra).*** Certainly filing of charge sheet under section 173 Cr. P. C. is one of the factor for reaching at conclusion that driver of offending vehicle was liable for the accident but it is not the sole criteria for ascertaining and adjudicating the negligence on the part of driver of the offending vehicle. The testimony of PW2 Om Parkash is certainly at variation from the contents of FIR Ex.P1 which was lodged immediately after the occurrence which took the life of deceased Gonthan. From perusal of contents of FIR Ex P1 it reveals that deceased infact was sitting on the mudguard of the tractor and trolley was carrying bricks at the time when the accident took place. Since, there was heavy load in the trolley carried by tractor and due



*to overload when driver of tractor released the clutch it suddenly raised like a lion. In other words, it stood on two rear tyres and resultantly deceased who was sitting on the mudguard fell down between rear tyres of tractor and tyres of uolley which was attached with tractor and he sustained severe injuries and after some be succumbed to those injuries. Thus, certainly, there was negligence on the part of driver of the tractor because be was carrying a passenger by sitting him on the mudgard of tractor for which was not permitted by law, From Ex R2 it is evident that vehicle was insured for agricultural purposes but not for commercial purposes. So, accident in question was not covered by the terms of insurance policy because tractor at the time of accident was transporting the bricks that is nothing but a commercial transaction. It is not the evidence of petitioners that tractor owner was carrying the bricks for his own counsel for respondents No.1 and 2 submitted that tractor in question has been falsely implicated in the present case. However, no evidence was adduced on their behalf. The oral argument of counsel for respondents No.1 and 2 is not based on any evidence and so keeps no weightage While from the contents of FIR Ex:P1 it stands established that due to negligence of driver of affending vehicle le respondent No.1 accident took place. Had respondent No.1 2 carried heavy load in the trolley attached with the tractor, tractor might not have stood on the rear tyres which resulted in death of Gordhan. Thus, it is proved that respondent No.1 was negligent in driving the offending tractor HR-08P/1577 and due to that negligence, deceased fell down in between rear tyres of tractor and tyres of trolley and sustained grievous injuries which proved fatal immediately.*

*14. Now question arises whether in the eye of law insurance company is liable for the loss damage suffered by petitioners. In my view, answer is, no, because terms of insurance policy did not cover firstly the business which was done by respondent No.1 by driving offending tractor for commercial purposes whose owner is respondent No.2. Secondly, the clear negligence was there in the act and conduct of respondent No.1 due to which accident occutred, and*



it was not covered under policy terms. Hence, insurance company is not at all liable for the loss and damages suffered by petitioners due to death of Gordhan. Law in this regard was very clearly laid down by our Hon'ble High Court in case titled **Bajaj Allianz General Insurance Company Limited Vs. Smt. Lachho and others (supra)** and by Hon'ble Karnataka High Court in case titled **Divisional Manager, L.C.L.C.I. Lombard General Insurance Company Limited Vs. Mudiappa and another (supra)**. So, insurance company is not liable for the claim damage for which petitioners are entitled to. It is further reiterated at the cost of repetition that due to negligence of respondent No.1, accident in question occurred, due to which Gordhan died. Hence, respondents No. 1 and 2 are liable for making payment for the damage to which petitioners are entitled to.

15 Now the question arises as to what amount of compensation, the petitioners are entitled to. Though, petitioners have claimed the income of deceased to be Rs.15,000/- per month and to prove the job and income, petitioners have examined PW3 Shamsheer who in his affidavit Ex.PW3/A stated that he runs a Vita Booth at Agroha Mor. Gordhan was running a Tea Stall opposite to his booth and he used to purchase 20 kg. milk in a day from him for preparing tea. However, his bald statement without any proof is not sufficient to assess the income of the deceased. In these circumstances, in absence of any evidence, this Tribunal has no option except to ascertain the income of the deceased Gordhan on the basis of Deputy Commissioner order issued as per instructions contained in the Punjab Govt. FD letter No.7004-E-41/60571 (Fin. Gen) dated on 21 November, 1941 for the year 2012-13. So, I consider deceased as labourer and his income was in the tune of Rs.6600/- per month. Thus, annual income of the deceased would be Rs. 72,000/-i.e. 6600x12=72000/-.

Since deceased has left behind three dependents, 1/3rd of the income has to be deducted and after deduction of same, the annual income comes out 48000/-



16. Age of the deceased was around 30 years, as is evident from copy of both report Ex P2. In view the authority **Sarla Verma & Ors. Vs. Delhi Transport Corporation & anr. 2009 ACJ 1298(SC)**, multiplier of 16 is alled By applying the same, total per annum loss of dependency, thus arrives  $R48000 \times 16 = 7.68.000/-$ , In view of the law in case titled **Vimal Kanwar and others vs. Kishore Dan and others 2013(2) RCR (Civil) 945**, the motioners, are also awarded Rs.1.00 lac each for loss of love and affection. The petitioners are further awarded Rs.11,000/-for funeral and transportation expenses. Thus, the petitioners are equally entitled to total amount of compensation in the tune of Rs. 10,79,000/-.

17. In view of my findings discussed in detail above, respondents No.1 and 2 shall be liable to make the payment of aforesaid compensation to petitioners jointly as well as severally. Hence, issues No.1 and 2 are decided in favour of petitioners and against respondents No.1 and 2 while issue No.3 is decided against respondents.”

### **ANALYSIS OF THE RECORD**

11. A perusal of the impugned award shows that as per claim petition, the deceased was standing on one side of the street and respondent No. 4-driver of the offending vehicle, suddenly, carelessly, rashly and negligently drove the tractor and it turned turtle over the deceased, due to which he suffered multiple injuries. Thereafter, he was taken to Government Hospital, Hisar, where he was declared dead.

12. A bare perusal of the record further shows that respondent No. 4 asked the deceased to alight and he was standing on one side. PW2/A is the statement of Om Parkash (eye witness of the accident), which is verbatim to FIR. Ex R3 is the cover note issued by the Insurance Company-respondent No. 4 wherein it is specifically stated that “Commercial vehicle only”. The date of the



accident is 26.12.2012 and the cover note is dated 28.06.2012 and the validity of cover note is 60 days from the date of issue.

13. Ex R2 is the policy wherein the date of issuance is 28.06.2012 and the type of vehicle is written as “Agricultural Tractor”.

14. The learned Tribunal has totally ignored the testimony of PW3-Om Parkash. A perusal of the FIR shows that it was alleged by brother of the deceased-Krishan Kumar but he was not the eye witness whereas PW2-Om Parkash was the eye witness of the accident. The learned Tribunal has totally ignored the evidence of the eye witness and relied upon the FIR while fixing the liability upon the appellant. This approach of the learned Tribunal was contrary to the settled proposition of law.

15. It is trite law that if any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. Reference at this stage can be made to a judgment of Hon’ble the Supreme Court of India in a case of *National Insurance Co. Ltd vs. Chamundeswari and others, 2021 INSC 592*.

16. Before proceedings further, it would be relevant to reproduce the relevant provisions of the Motor Vehicle Act:-

**145. Definitions.—In this Chapter,—**

(a) xxx

xxx

xxx

(b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in



*connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;*

**147. Requirements of policies and limits of liability.—**

*(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—*

*(a) is issued by a person who is an authorised insurer; and*

*(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—*

*(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorized representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*

*(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:*

*Provided that a policy shall not be required— (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—*

*(a) engaged in driving the vehicle, or*



*(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or*

*(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.*

*Explanation.—For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.*

*(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—*

*(a) save as provided in clause (b), the amount of liability incurred;*

*(b) in respect of damage to any property of a third party, a limit of rupees six thousand:*

*Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.*

*(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form*



*and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.*

*(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.*

*(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.”*

17. A bare reading of the aforesaid statutory provision makes it abundantly clear that a cover note forms part of the certificate of insurance and is issued in pursuance of the policy of insurance. The same cannot be treated as an extraneous document divorced from the insurance contract.

18. A bare perusal of Ex. R3 (Cover Note) reveals that the vehicle insured therein is specifically described as a commercial vehicle, and the date of issuance of the cover note is 28.06.2012. However, Ex. R2 (Insurance Policy) subsequently describes the very same vehicle as an Agricultural Tractor. Such unilateral alteration of the nature and classification of the vehicle, without any material on



record to justify the change, is contrary to law and in violation of the statutory scheme governing certificates of insurance.

19. Under Section 147 of the Motor Vehicles Act, the certificate of insurance is issued in pursuance of the statutory mandate, and by virtue of Section 145(b), a cover note falls within the ambit of the definition of a “certificate of insurance.” Consequently, once a cover note is issued, it carries statutory sanctity and forms part of the insurance contract. A cover note constitutes binding contract between the insured and the insurer and remains operative and enforceable unless duly cancelled in accordance with law. The insurer cannot, at its own volition and without notice or proof of cancellation, alter the fundamental terms of the contract to the prejudice of the insured or third parties.

20. It is well settled that the burden of proving breach or violation of the terms and conditions of the insurance policy lies squarely upon the Insurance Company. Such burden must be discharged by leading cogent and admissible evidence. A finding of breach cannot be founded upon bald assertions or presumptions.

21. In the present case, the Insurance Company has failed to adduce any evidence whatsoever to establish that the cover note was not issued in respect of a commercial vehicle, or that the same was cancelled prior to the issuance of the policy. In the absence of such proof, the statutory and contractual effect of the cover note continues to subsist.

22. If a cover note had been issued, which in terms of clause (b) of subsection (1) of Section 145 of the Act falls within the definition of a certificate of insurance, it would necessarily partake the character of an insurance policy within the meaning of the Act. The legal position is unequivocal that a cover note remains



valid and binding until it is lawfully cancelled. There is no material on record to suggest such cancellation.

23. Reliance at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of *National Insurance Co. Ltd vs. Abhaysing Pratapsingh Waghela, 2008 (9) SCC 133*. The relevant portion of the same is reproduced as under:-

*“16. Indisputably, the first respondent is a third party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have noticed hereinbefore that a document was produced before the Tribunal. Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No. 279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of clause (b) of sub-Section 1 of Section 145 of the Act would come within the purview of definition of certificate of insurance; it also would come within the purview of the definition of a insurance policy. **If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the cover note was not cancelled.**”*

24. Learned Tribunal has failed to appreciate the aforesaid legal position and has completely ignored the documentary evidence on record while fastening liability upon the appellant. The findings, therefore, suffer from non-consideration of material evidence and misapplication of settled principles of law.

25. In view of the foregoing discussion, the present appeal deserves to be allowed. Accordingly, the award dated 10.02.2015 is modified to the extent that

**FAO-696-2016****16**

the Insurance Company shall be solely liable to satisfy the compensation awarded in favour of the claimants/respondent Nos. 1 to 3.

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

**(SUDEEPTI SHARMA)**  
**JUDGE**

**12.02.2026**

Gaurav Arora

Whether speaking/non-speaking : Yes/No  
Whether reportable : Yes