



2026:AHC-LKO:67464

Reserved on : 28.07.2026

Delivered on : 23.09.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL FROM ORDER No. - 363 of 2016

Oriental Insurance Co.Ltd. Thru. Manager/Asstt.Manager

.....Appellant(s)

Versus

Smt. Vijay Kumari and 7 others

.....Respondent(s)

Counsel for Appellant(s)	: Mrs. Pooja Arora,
Counsel for Respondent(s)	: Mukesh Singh, Anil Kumar Tiwari

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. Heard Mrs. Pooja Arora, learned counsel for the appellant/Insurance Company and Ms. Shraddha Srivastava, holding brief of Shri Mukesh Singh, learned counsel for the respondents/claimants. None is present for the respondent nos.7 and 8, who are driver and owner of the offending vehicle.

2. The instant appeal has been preferred against the judgment and award dated 25.01.2016 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.9, Faizabad (hereinafter referred to as the 'Tribunal') in M.A.C.P. No.137 of 2015 (Vijay Kumari & others vs. Om Prakash Maurya and others), whereby compensation of Rs.4,84,000/- along with simple interest at the rate of 7% per annum has been awarded in favour of the claimants-respondents.

3. The brief facts of the case are that on 10.05.2015, at about 12:00 noon, one Sadhuran Paswan aged about 35 years was travelling as a rider on a

tractor bearing registration No. UP42R2937, which was being driven by its driver, namely, Om Prakash Maurya, in a rash and negligent manner at a high speed. Due to the sudden application of brakes, the deceased fell from the tractor and came under its wheel, as a result of which he sustained serious injuries and subsequently succumbed to the same on the spot. Thereafter, a First Information Report (FIR) was lodged, and the postmortem examination of the body of the deceased was conducted.

4. Thereafter family members of the deceased filed a claim petition before the Tribunal claiming compensation of Rs.55,50,000/- as at the time of alleged accident, the deceased was 35 years old and also engaged in the business of selling and purchasing wheat straw. A written statement was filed by the owner and driver of the tractor denying the accident. The appellant/Insurance Company had also filed their written statement, wherein the alleged accident was denied. It was further stated that the tractor was not insured nor any document has been filed and also stated that apart from the driver, no other person was insured under the insurance policy except third party.

5. The Tribunal after perusing the pleadings framed following issues:

“1. क्या कथित दुर्घटना दिनांक 10.05.15 समय 12 बजे दिन में सदलपुर नहर की पटरी थाना छावनी जिला बस्ती की है, जब मृतक साधूराम पासवान विपक्षी के ट्रैक्टर नं. यू.पी. 42 आर. 2937 पर बैठ कर ओम प्रकाश मौर्य के साथ अपने घर से भूसा लादने के लिए जिला बस्ती जा रहा था, दुर्घटना स्थल पर पहुंचा कि उक्त ट्रैक्टर का चालक उक्त वाहन को काफी तेज गति लापरवाही एवं उपेक्षा पूर्ण तरीके व असावधानी पूर्वक चलाता हुआ जा रहा था कि अचानक उक्त ट्रैक्टर में ब्रेक लगाया जिससे उक्त ट्रैक्टर पर बैठे साधूराम ट्रैक्टर के नीचे आ गये और दुर्घटना स्थल पर ही मृत्यु हो गयी?

2. क्या कथित दुर्घटना के समय प्रश्नगत वाहन ट्रैक्टर नं. यू.पी. 42 आर. 2937 के चालक के पास वैध एवं प्रभावी अनुज्ञप्ति थी?

3. क्या कथित दुर्घटना के समय प्रश्नगत वाहन ट्रैक्टर नं. यू.पी. 42 आर. 2937 बीमा कम्पनी से वैध व प्रभावी रूप से बीमित था तथा क्या उक्त वाहन को बीमा की शर्तों के अनुरूप चलाया जा रहा था?

4. क्या कथित दुर्घटना के समय मृतक स्वयं अपनी लापरवाही के कारण सड़क पर गिर गया और अज्ञात वाहन से दुर्घटनाग्रस्त हो गया इस कारण मृतक की दुर्घटना में योगदायी उपेक्षा है? जैसा कि बीमा कम्पनी (विपक्षी सं.3) का कथन है?

5. क्या याचीगण प्रतिकर प्राप्त करने के अधिकारी है, यदि हां तो किस पक्षकार से कितनी धनराशि?"

6. The Tribunal after perusing documents, evidence adduced by the parties, and the arguments raised by the respective counsels came to the conclusion that on 10.05.2015 Sadhram Paswan aged about 35 years was travelling as a rider on a tractor bearing registration No.UP42R2937, which was being driven in a rash and negligent manner at a high speed. Due to the sudden application of brakes, the deceased fell from the tractor and came under its wheel, as a result of which he sustained serious injuries and subsequently succumbed to the same on the spot. The Tribunal further found that the driver of the tractor had a valid driving licence and the offending vehicle was duly insured with the appellant. Accordingly the Tribunal awarded a compensation of Rs.4,84,000/- along with simple interest at the rate of 7% per annum in favour of the claimants by means of the impugned judgement and award, which is under challenge in this appeal preferred by the Insurance Company.

7. Learned counsel for the appellant/Insurance Company submitted that the findings recorded by the Tribunal in respect of Issue Nos.1 and 3 are under challenge only on the ground that as per the registration certificate of the tractor, its seating capacity was one person including the driver. To buttress her argument, she placed reliance upon a judgement passed by this Court in the matter of *National Insurance Company Ltd. vs. Smt. Leela @ Vimla; 2015(2) T.A.C. 120 (All.) (F.A.F.O. (D) No.799 of 2009)*.

8. She further submitted that the statutory liability was limited to the tractor itself and its driver. In the instant case, the Registration Certificate clearly shows that the seating capacity of the tractor, including the driver, was only one person. However, at the time of the

accident, two persons were travelling on the tractor. She further submitted that the premium charged under the insurance policy covered third-party liability as well as own damage to the tractor and liability in respect of the driver alone.

9. She further submitted that since the case involves a breach of the terms and conditions of the insurance policy, at the best, the appellant may be directed to pay the award in the first instance with liberty to recover the amount from the owner of the offending tractor.

10. However, in the present case, apart from the driver, another person i.e. the deceased was travelling on the tractor as an unauthorized rider, which is not permitted and hence there is a breach of insurance policy and therefore, no liability can be fixed on the Insurance Company.

11. She very fairly submitted that the seating capacity in the insurance policy was mentioned as “1+1”. She further submitted that the said mention was merely a typographical error. Since the Registration Certificate clearly specifies the seating capacity of the tractor as one person, it cannot be said that any passenger was authorized to travel on the tractor. She further submitted that as no premium was charged for coverage of any unauthorized person, the aforesaid typographical error could not be taken against the appellant-Insurance Company.

12. She further submitted that as per the proposal form issued by the appellant-Insurance Company, the maximum number of persons insured was the driver. Further the tractor, which was insured for agricultural purposes, was being used for non agricultural purposes.

13. Per contra, Ms. Shraddha Srivastava, holding brief for Shri Mukesh Singh, learned counsel for the respondents/claimants submitted that there was no breach of the terms and conditions of the insurance policy. She submitted that the insurance policy clearly mentioned the seating capacity as “1+1”, i.e., the driver and one other person. In the present

case, the deceased was the another person travelling on the tractor and, therefore, was duly covered under the insurance policy.

14. She further submitted that the Tribunal has rightly concluded that, since the insurance policy was for 1+1 and the deceased was travelling as a person other than the driver, the Insurance Company cannot wriggle out from the liability.

15. She further submitted that the ratio laid down by the Court in the matter of *Smt. Leela @ Vimla* (supra) is not applicable as there is no breach of terms and conditions of the insurance policy as under the insurance policy itself, the insurance was for 1+1 i.e. driver and a passenger.

16. She further submitted that the instant appeal is squarely covered under the provisions of Section 147 of the Motor Vehicle Act, which clearly shows that the Insurance Company would be responsible for liability in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the motor vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place.

17. Heard learned counsel for the parties and perused the record. None is present for the respondent nos.7 and 8, who are driver and owner of the offending vehicle, despite sufficient service.

18. As far as the factum of accident is concerned, the same is not disputed by any of the parties.

19. It is evident that on 10.05.2015 Sadhuran Paswan aged about 35 years was travelling as a rider on a tractor bearing registration No.UP42R2937, which was being driven in a rash and negligent manner at a high speed. Due to the sudden application of brakes, the deceased fell from the tractor and came under its wheel, as a result of which he sustained serious injuries and subsequently succumbed to the same on the spot.

20. The only issue raised by learned counsel for the appellant is whether there was any breach of the terms and conditions of the insurance policy.

21. Undoubtedly, there was no such breach, as the deceased was travelling on the tractor for the purpose of buying and selling wheat straw, which clearly falls within the ambit of agricultural activity. Therefore, it cannot be said that the tractor was being used for any commercial purpose.

22. It is correct that the Registration Certificate of the tractor mentions its seating capacity as one person, which means that only the driver was authorized to travel on the tractor and no passenger could be carried. However, while issuing the insurance policy, the seating capacity was mentioned as "1+1", which clearly indicates coverage for the driver and one other person. The Insurance Company cannot now turn around and contend that the insurance policy issued by it was incorrect and the coverage ought to have been restricted to the driver alone. Having received the premium and issued the insurance policy specifically mentioning the seating capacity as "1+1", the Insurance Company cannot take a contrary stand to deny the coverage on that ground.

23. The finding recorded by the Tribunal in respect of Issue No. 3, insofar as it relates to the alleged typographical error in the issuance of the insurance policy, cannot be accepted at this stage.

24. So far as the argument advanced by learned counsel for the appellant with regard to the proposal form, wherein the driver alone was mentioned and it is contended that the insurance policy was wrongly issued, there is nothing on record to establish that the proposal form was filled in by the owner of the vehicle. The proposal form apparently appears to be an internal document prepared by the Insurance Company in the course of its office proceedings. Hence the same cannot be relied upon.

25. The insurance policy was issued on 29.12.2014 and was valid from 29.12.2014 to 28.12.2015. The Registration Certificate of the tractor mentions its make and model, gross weight, year of manufacture, and seating capacity i.e. the driver. However, the insurance policy insured the vehicle as 1+1 i.e. driver and a passenger. The said endorsement cannot be said to be contrary to the terms of the insurance policy issued by the Insurance Company. Having issued the policy and received the requisite premium, the Insurance Company cannot, after the accident, avoid its liability, on the ground that the tractor had a seating capacity of only one person (as per the Registration Certificate). Hence the insurance company now cannot say that they are not liable for payment of compensation for the death of the passenger. Therefore, the appellant having insured the vehicle as (1+1) cannot wriggle out of its liability.

25. In view of the above, this Court does not find any illegality or irregularity in the impugned judgement and award dated 25.01.2016 passed by the Tribunal in M.A.C.P. No.137 of 2015 (Vijay Kumari & others vs. Om Prakash Maurya and others).

26. The instant appeal *sans* merit and is accordingly **dismissed**.

27. Office is directed to send the lower court record to the court concerned, forthwith.

28. The statutory amount of Rs.25,000/- deposited by the appellant before this Court shall be transmitted forthwith to the concerned Tribunal towards adjustment against the amount of compensation payable by the claimants, if the same has already not been transmitted.

(Prashant Kumar,J.)

September 23, 2026
Anupam S/-