(2021) 05 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : MA No. 32 Of 2018

Bajaj Allianz General Insurance Co. — APPELLANT

Vs

Bashir Ahmad Mir And Others — RESPONDENT

Date of Decision : 20-05-2021

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 3

Citation : (2021) 05 J&K CK 0024

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Imtiyaz Ahmad, M. Altaf Khan, Bilal A. Malla

Final Decision : Disposed Of

Judgement

1. Impugned in this Appeal is Award dated 03.02.2018, passed by Motor Accident Claims Tribunal, Srinagar (for short â??Tribunalâ?) on a Claim

Petition, being File no. 98 of 2012, titled as Bashir Ahmad Mir and another v. Ghulam Hassan Dar and others, directing appellant Insurance Company

to pay compensation in the amount of Rs.39,94,411/- along with 6% interest per annum from the date of institution of claim till realization, on the

grounds made mention of therein.

2. A claim petition, as is discernible from perusal of the file, was filed by respondents 1&2 before the Tribunal on. 27.04.2012, averring therein that

deceased Sajad Bashir Mir aged 26 years, died in an accident, which took place on 18.01.2012 at Bemina Byepass Crossing, due to rash and negligent

driving of driver of offending vehicle, bearing Registration no.JK03B/3642, which was insured with appellant Insurance Company.

Claimants/Respondents sought compensation to the tune of Rs. 54,00,000/-.

3. Appellant Insurance Company resisted the claim before the Tribunal.

4. The Tribunal, in view of pleadings of parties, framed Issues for determination, which are:

a) Whether on 18.01.2012 a vehicle (Truck) bearing regd. No. JK03B/3642 being driven by respondent No. 2 rashly and negligently and on reaching

near Bemina Bye Pass Crossing, the driver of the offending vehicle lost control over his vehicle and struck against an Alto Car which was coming

from Tatoo Ground towards Parimpora, with the result the deceased namely Sajad Bashir Mir, who was travelling in the said Alto Car sustained

multiple fatal injuries on various parts of his body and later-on succumbed to the injuries.? (OPP)

b) Whether the owner of the offending vehicle, insured has permitted the driver to ply the said vehicle without valid, effective D/L and other vehicular

documents and any special endorsement for carrying passengers which is violation of policy conditions, if yes, the insured has committed the breach of

insurance contract absolved respondent No. 3-Insruance Company from its liability on account of petitioners claim ? (OPR-3)

c) In case the issue No. 1 is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what proportion.?

OPP

d) Relief?

5. Claimants produced and examined four witnesses before the Tribunal; besides claimants/respondent no.3. Appellant Insurance Company also

produced one witness in support of its stand.

6. By impugned Award, the Tribunal found claimants/respondents entitled to receive compensation of Rs.39,94,411/- along with 6.5% interest per

annum to be paid by appellant Insurance Company.

7. Heard and considered. The Tribunal record has been gone through.

8. Learned counsel for appellant Insurance Company, to buttress the case set up in Appeal on hand, has averred that the Tribunal has erred in passing

impugned Award since offending vehicle was driven by respondent-driver, having learnerâ??s licence at the time of accident, which was in

contravention to Rule 3 of Central Motor Vehicle Rules and Motor Vehicles Act inasmuch as the same expressly makes it necessary for owners of vehicles to allow the vehicle to be driven by a driver possessing a valid and effective driving licence and non-existence of valid and effective driving

licence has the effect of vitiating the terms and conditions of policy contract which goes to the root of insurance contract and, therefore, liability on

account of such breach has to be borne by the owner. It is also contended that the Tribunal while passing impugned award has not appreciated the

law correctly. Possession of invalid driving licence by driver of offending vehicle at the time of accident is a breach of policy conditions and against

provisions of the Motor Vehicle Act.

Above submission of learned counsel for appellant has been vehemently controverted by learned counsels for respondents as according to them

contention qua Learnerâ??s Licence had neither been taken by appellant Insurance Company before the Tribunal nor any evidence led by it to

suggest that there was no â??Lâ?? sign on offending vehicle or nobody accompanied driver of offending vehicle. It is strenuous averment of learned

counsel for respondent that driver of offending vehicle was holding an effective and valid driving licence.

Though there is substance in the contention of learned counsels for respondents, yet the Tribunal was required to deliberate upon, discuss and decide

Issue no.2 vis-Ã -vis valid and effective driving licence of driver of offending vehicle, in detail, which, however, is missing in the present case. So, the

Tribunal is required to discuss comprehensively Issue no.2 and come up with lucid finding thereabout. To this extent impugned Award is liable to be

set-aside.

9. Another contention of learned counsel for appellant is that quantum of compensation awarded by the Tribunal is exorbitant, arbitrary and unjust.

The multiplier is stated to have not been applied properly. It is also his submission that in case of death of bachelor, the multiplier of parent is to be

applied. The award of compensation is not within the four corners of law and the schedule contained in the Motor Vehicle Act.

Above submission of learned counsel for appellant Insurance Company is misconceived. The reason being that the Tribunal, while deciding Issue no.3

qua computation of compensation, has comprehensively discussed all facets of the matter. The Tribunal relied upon the judgment rendered by the

Supreme Court in Sarla Verma v. Delhi Transport Corporation, ACJ 2009 1298, and National Insurance Company v. Pranay Sethi, AIR 2017 SC 5157

and only thereafter granted compensation in the amount of Rs.39,94,411/-. In that view of matter, impugned Award to the extent of compensation

does not warrant any interference.

12. For the foregoing reasons, the Appeal on hand is partly allowed and the Award dated 03.02.2018, passed by Motor Accident Claims Tribunal,

Srinagar on a Claim Petition, being File no. 98 of 2012, titled as Bashir Ahmad Mir and another v. Ghulam Hassan Dar and others, is set-aside to the

extent of Issue No.2 (viz. whether owner of the offending vehicle, insured has permitted driver to ply the said vehicle without valid, effective D/L and

other vehicular documents and any special endorsement for carrying passengers which is violation of policy conditions, if yes, the insured has

committed the breach of insurance contract absolved respondent no.3 â?" insurance company from its liability on account of petitioners claim). The

matter is remanded back to the Tribunal to decide afresh the claim petition with reference to validity of driving licence of driver of offending vehicle

(i.e., Issue no.2) after considering all aspects of the matter and after taking all steps that may be warranted therefor, including summoning of

witnesses. Obviously, outcome thereof shall also decide payment of compensation either to be made by Insurance Company or owner of offending

vehicle and to this extent the Issue, framed by Tribunal, is also to be decided by the Tribunal.

13. Disposed of in terms of above.

14. Record of the Tribunal be sent down along with copy of this judgement.

15. Parties shall appear before the Tribunal on 21st June 2021.

