(2014) 06 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : CIMA No. 04/2014

Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Ghulam Nabi Tak and Others RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 4 JKJ 79

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : Nissar Ahmad Dandru, Advocates for the Appellant

Judgement

Mohammad Yaqoob Mir, J.—This appeal is directed against the award passed by Motor Accident Claims Tribunal, Anantnag, dated

24.10.2013, where-under respondent No. 1 (claimant) has been held entitled to compensation amounting to Rs. 14.00 lacs, appellant-insurance

company has been held liable to indemnify along with 6% interest per annum from the date of institution of the petition i.e., 24.10.2011 till its

realization. The respondent No. 1. (claimant) on 02.08.2011, due to hit by the offending vehicle bearing registration No. JK03B-3321 (Truck) at

Arwani Bijbehara got injured and finally has suffered disability as his left limb below knee has been amputated. Such amputation is now required to

have an artificial limb. In short has become a liability for the family. The same position has been noticed, then the position of purchase of artificial

limb, medical expenses, transportation charges, loss of income, pain and suffering and loss of amenities of life has been taken note of by the

Tribunal and finally claimant has been held entitled to an amount of Rs. 14.00 lacs, which is just compensation.

2. Learned counsel for the appellant while making various submissions, finally, confined his arguments vis-a-vis finding recorded on issue No. 3, as

according to him the driver of the offending vehicle at the time of accident did not possess valid license which amounts to breach of the policy

conditions entitling the insurer to exoneration from liability.

3. The driver of the offending vehicle possessed the license for driving LMV. The license was PSV endorsed for heavy goods vehicle and heavy

passenger vehicle with effect from 03.05.2008 to 02.05.2011, so was valid up to 2nd May, 2011. The accident occurred on 2nd August, 2011.

At that time the license was not valid. The learned Tribunal while referring to the statement of Mohammad Amin Koka-Motorcycle Inspector, has

recorded that said witness has stated that the license was issued on 25.11.2006 and was valid up to 24.11.2011, further has stated that the license

was endorsed on 03.05.2008 for HGV and HPMV vide No. 709/MVD/Ang and was valid till 02.05.2011. Then has referred to the judgment

rendered by the Hon'ble Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, and has concluded that the respondent No. 3

therein has not adduced convincing evidence in support of issue No. 3, no doubt evidence establishes that the license was not valid on the date of

accident but wilful breach is not established to have been committed by the insured.

4. The point for consideration is as to whether liability can be fastened on the insurer when it is established that the driving license was not valid on

the date of accident. Such position is already settled by the Hon'ble Apex Court in the judgment rendered in National Insurance Co. Ltd. Vs.

Vidhyadhar Mahariwala and Others, . In the reported judgment it has been noticed that the date of accident was 11.06.2004. Driver's license was

initially valid for the period from 15.12.1997 to 14.12.2000 and thereafter from 29.12.2000 to 14.12.2003. Thereafter again it was renewed from

16.05.2005 to 15.05.2008. So on 11.06.2004, the license was not renewed. In the reported judgment while referring to various judgments

including judgment in Swaran Singh's case, insurer has been exonerated from liability. Para 11 of the judgment is relevant to be quoted:

11. In Ishwar Chandra's case (supra) the three decisions referred to by the High Court were considered and it was held that the insurance

company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct.

The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No. 2.

5. In the judgment National Insurance Co. Ltd. Vs. Bashir Ahmad Malla and Others, , insurance company has been exonerated from its liability to

indemnify. The insurer has been given right to recover the amount from the owner.

6. In another judgment National Insurance Co. Ltd. Vs. Fayaz Ahmed Shah and Others, , in similar circumstances, the driving license of the driver

had expired on the date of accident and was renewed subsequently, insurer was held not liable to indemnify the insured. While referring to various

judgment of the Hon'ble Apex Court, it has been concluded that the awarded amount deposited shall be released in favour of the claimants,

however, the insurance company has been given liberty to recover the amount from the owner and driver of the offending vehicle.

7. Applying the same law to the present case, in view of positive finding recorded by the learned Tribunal that the driver did not possess valid

licence on the date of accident, the insurer (insurance company) is exonerated from liability. The awarded amount has been deposited, therefore,

same shall be released in favour of the claimants strictly in accordance with the terms of the award. Appellant-insurance company shall be at liberty

to initiate proceedings for recovery of the amount from the owner and driver of the offending vehicle. Appeal succeeds, so shall stand disposed of

as above.