
(2008) 04 J&K CK 0029
In the Jammu And Kashmir High Court

National Insurance Co.	Vs	APPELLANT
Satya Devi and Others		RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 170

Citation : (2008) 2 JKJ 605

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.

1. Challenge in this appeal was to the award dated December 31, 2003 passed by the Accident Claims Tribunal, Kathua in a claim petition titled

Smt. Satya Devi and Ors. v. Rakesh Singh and Ors. Whereby claim petition came to be allowed and compensation to the tune of Rs, 2,75,000

with 9% per annum interest came to be granted in favour of claimants respondent Nos. 1 to 4, for short hereinafter, 'impugned award'

BRIEF FACT OF THE CASE

2. Respondent No. 1, Rakesh Singh, driver has driven the offending vehicle-Matador No. JK02H-5767 rashly and negligently at National

Highway (NHW-1 A) at No nath and hit one Ram Chand, who sustained injuries and succumbed to injuries. Claimants-respondent Nos. 1 to filed

claim petition claiming compensation on the grounds given in the claim petition. Respondents filed reply and resisted the petition. The following four

issues came to be framed.

1. Whether on 26.5.1998, the respondent No. 1 under the employment of

Respondent No. 2 was driving Matador No. JK02H-5767 rashly and negligently at National Highway No. 1-A at Nonath, hit Ram Chand S/o Ram Dhan Rattan Paul as a result of which he sustained injuries and died?

OPP

2. In case issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so to what extent? OPP

3. Whether the driver of the offending vehicle was not holding valid driving licence at the time of accident, if so what is its effect on the petition?

OPR-3

4. Relief.

Petitioners examined petitioner No. 1 and also Karanjit and Suresh Kumar as witnesses. Respondent Nos. 1 & 2 have not examined any witness.

Respondent No. 3 examined only one witness namely, Kulbhushan Singh, an employee of Regional Transport Office, Lakhanpur.

Petitioners have also produced certified copies of FIR and Charge sheet Challan.

3. There is ample oral evidence on the file that respondent No. 5-Rakesh Singh-driver has driven the offending vehicle -Matador rashly and

negligently at National Highway near Nonath and hit Ram Chand who sustained injuries and succumbed to injuries. Certified copies of documents-

FIR and Challan also support the version of the witnesses. The respondents have not lodged any witness in order to dislodge the evidence of the

claimants-respondent Nos. 1 to 4.

The Tribunal has rightly decided issue No. 1 in favour of the claimants and against the respondents.

4. Before dealing issue No. 2, I deem it proper to discuss issue No. 3. The onus of issue No. 3 was on Insurer-Appellant, who has examined only

one witness namely, Kulbhushan Singh. He has categorically deposed that the driver Rakesh Singh was having valid and effective driving licence

for driving Motor Cycle, Light Motor Vehicle. The licence was renewed from December 30, 1995 to December 29, 2000. However, he has

stated that he could not drive Matador which is a commercial vehicle. He has admitted in cross-examination that the vehicles with unladen weight

up to 6500 kgs. fall under the category of light motor vehicle and while going through the photocopy of R.C of the offending vehicle, its weight is

given 5300 kgs. The Appellant-Insurer has categorically opined being expert that Matador, offending vehicle, was of weight of 5300 kgs and is

falling within the definition of light motor vehicle. The Apex Court has also held that Swaraj Mazda is falling within the definition of light motor

vehicle. A Division Bench of this Court in a case titled National Insurance Co. Ltd. Vs. Muhammad Sidiq Kuchey and Others, , also held that if a

driver having driving licence with respect to light motor vehicle, he can drive a passenger vehicle also.

5. The Tribunal has rightly held that the appellant-Insurer failed to prove issue No. 3. Had the Insurer-Appellant proved the said issue, even then

that would not absolve the Insurer from liability. The Insurer had to plead and prove that owner has committed a willful breach in terms of the

mandate of Section 147 read with Section 149 of the Motor Vehicles Act. However, it has to prove that the owner was conscious about the fact

that the driver was not having valid and effective driving licence. Mere saying is not enough. Apex Court in a case titled National Insurance Co.

Ltd. Vs. Swaran Singh and Others, , laid down the test when and how insure can avoid liability it is profitable to reproduce para 105 (iii), (iv) &

(vi) herein.

6. The Apex Court in a recent judgment in a case Premkumari v. Pralad Dev 2008 AIR SCW 682 has laid down the same principle. The Apex

Court also in a case National Insurance Company Ltd. v. Annappa Irappa Nesaria 2008 AIR SCW 906 held that a driving having licence of light

motor vehicle can drive ""light passenger carriage vehicle"" and ""light goods carriage vehicle"" and driver cannot be said to be not possessing effective

driving licence to drive a Matador.

Having glance of the above discussion, the findings returned by the Tribunal on issue No. 3 needs no interference.

ISSUE No. 1.

7. It is beaten law of the land that the Insurer cannot challenge the quantum of compensation without seeking permission in terms of Section 170 of

the Motor Vehicles Act. Thus, only on this count, the finding returned by the Tribunal on this issue needs to be up-held.

However, keeping in view the findings recorded the Tribunal on issue No. 1, I am of the considered view that the award is just and appropriate

and needs to interference.

8. Accordingly, this appeal is dismissed and the impugned award is upheld.