(2011) 11 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : CIMA No's. 115 of 2010, 116 of 2010 and 117 of 2010

National Insurance Co. Ltd. APPELLANT

Vs

Akhter Jan and Others RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Citation : (2013) ACJ 1344 : (2011) 4 JKJ 261

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Judge

1. Since common question of law and controversy is involved in all these appeals, so I deem it proper to decide all these three appeals by a

common judgment.

2. These three appeals are the outcome of a motor vehicular accident which was allegedly caused by one Dilawar Ahmad Bhat, driver of Tata

Sumo, bearing Chassis No. 418017-G UGZ918976 Engine No. 483DF47-DWZ712499. He while driving the said vehicle rashly and negligently

from Jammu to Srinagar met with an accident at Kayla Mode, Ramban, as a result of which the driver of the said vehicle along with three persons

traveling in it, namely, Riyaz Ahmad Sofi, Special Police Officer in J&K Police, Shamim Ahmad Najar and Abdul Ahad Sheikh, Special Grade

Constables in J&K Police sustained injuries and succumbed to the same. Claimants/legal heirs of said three deceased persons filed three claim

petitions before the Motor Accidents Claims Tribunal, Pulwama, were allowed vide awards dated 03.06.2010, impugned herein and the insurer-appellant herein was saddled with the liability. Feeling aggrieved the insurer-appellant has questioned all the three awards by the medium of these

three appeals on the ground that the offending vehicle was not insured at the relevant point of time, i.e., 28.01.2004 when the accident occurred.

3. Brief Facts

Driver Dilawar Ahmad Bhat while driving the offending vehicle rashly and negligently from Jammu to Srinagar lost control over the vehicle near

Kayla Mode, Ramban and it fell into the river, resulting into the death of all the passengers/occupants of the vehicle on spot including its driver.

Claimants/legal heirs of Riyaz Ahmad Sofi Shamim Ahmad Najar and Abdul Ahad Sheikh filed three claim petitions, titled as, Akhter Jan & others

v. Fayaz Ahmad Dar & another, File No. 04/CP of 2004; Masarat Hameed & others v. Fayaz Ahmad Dar & another, File No. 03/CP of 2004

and Mst. Hafiza & others v. Fayaz Ahmad Dar & another, File No. 05/CP of 2004 on the ground that they being the legal heirs of deceased are

entitled to get compensation as per the break-ups given in the claims petitions.

4. Issues came to be framed in all the three claim petitions. The learned Tribunal while allowing the claims petitions saddled the insurance company

with the liability to pay compensation to the claimants in all the three claim petitions vide the impugned awards.

5. By the medium of these appeals the insurer-appellant herein has questioned the awards to the extent of saddling of liability.

6. Mr. Kawoosa, learned counsel for appellant argued that on 28.01.2004, when the offending vehicle met with an accident, there was no contract

between the insured-owner of offending vehicle and insurer-appellant. The insurance policy was executed on 29.01.2004 and from that date the

insurer-appellant was liable and not from any date earlier to it.

7. The Tribunal after scanning the evidence held that admittedly the insurer-appellant had received the premium on 6.12.2003 by cash to the tune

of Rs. 10449/- but policy was issued on 29.01.2004 after receiving the particulars, vis-a-vis registration number and chasis number of the

offending vehicle. The Tribunal has held that virtually the insured-owner had paid premium before 28.01.2004 and thus insurer-appellant herein is

liable to pay compensation to the claimants.

8. In para (b) of the appeal, the appellant has admitted that it had received

premium by cash on 06.12.2003 without the particulars of vehicle from

the owner-respondent No. 2, namely, Fayaz Ahmad. Dar and after receiving the particulars the insurance policy was issued on 29.01.2004. Thus

it is admission on the part of insurer-appellant that it had received the premium by cash from the owner of the offending vehicle much before the

date of accident.

9. In the given circumstances, the only question for consideration is whether the findings returned by the Tribunal visa-a-vis saddling the appellant

with liability is legally correct. The answer is affirmative for the following reasons.

10. The insured-owner of the offending vehicle had taken all steps to get the vehicle insured. Admittedly he paid the premium to the tune of Rs.

10449/- by cash on 06.12.2003. Virtually the contract came into force from that date.

11. The Apex Court in a similar set of circumstances in case Oriental Insurance Co. Ltd. v. Dharam Chand, 2010 ACJ 2659, has held that

insurance must be deemed to have been commenced from the date cheque amount was received and insurance company is liable from that date.

12. In the instant case, the payment was not paid by cheque but was paid in cash. It is apt to reproduce paras 4 and 5 of the said judgment herein:

4. The insurance company sought to disown its liability on the plea that the accident took place before the commencement of the insurance as

indicated in the cover note. But, both the Tribunal and the High Court, turned down the plea and held the insurance company liable to pay the

compensation amount.

5. When this appeal was taken up, the counsel for the insurance company very fairly sated that since the cheque for the premium amount was

received by the company at 4 p.m. on 7.5.1998, the insurance must be deemed to have commenced from that time and four hours later when the

vehicle met with the accident, the owner must be deemed to have been covered by the insurance policy. We appreciate the fairness shown by the

counsel for the insurance company.

13. In the given circumstances, the only ground raised by the appellant in all the three appeals is devoid of any force.

14. Learned counsel for appellant has not pressed into service any other ground.

15. In the given circumstances, all the three appeals merit to be dismissed along with CMPs and the impugned awards merit to be upheld. Ordered

accordingly.

16. Record of all the three appeals along with a copy of this order be sent back forthwith.