

(2006) 01 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : CIMA No's. 199 and 200 of 2004 and CrMP No. 86 of 2005

National Insurance Co. Ltd.

APPELLANT

Vs

Baldev Singh and Others

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 168

Citation : (2006) 2 JKJ 271

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Advocate : Ajay Kumar Gandotra, for the Appellant; Balbir Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—Against Award dated 22.2.2003 of Motor Accidents Claims Tribunal, Jammu, in File No. 26 (claims) and File No. 28

(claims), National Insurance Company Limited, appellant, has filed CIMA No. 199/2004 and CIMA No. 200/2004.

2. The facts leading of the filing of these two appeals may be summarized thus.

3. Respondents, in these two appeals, were traveling in truck bearing registration No. JK-02-B-5392 on 7.2.1995, when it met with an accident

at Dhakan Wali, Nagrota. The accident has been attributed to the rash and negligent driving of vehicle No. JK-02-B-5392 by its driver.

Compensation has been claimed for injuries sustained by the respondents in the motor vehicle accident.

4. The respondents filed Claim Petition Nos. 26 and 28 before Motor Accidents Claims Tribunal, Jammu, which, vide its Award dated 22.2.2003,

awarded an amount of Rupees one lakh thirty three thousand in Claim Petition

No. 26 and an amount of Rupees Thirty thousand in Claim Petition

No. 28.

5. The issues which came to be framed by the Tribunal for deciding the rival contentions between the parties reads thus:

1. Whether accident took place on 7.2.1995 at Dhakan Wali Nagrota due to the rash and negligent driving of the offending vehicle No. JK02B-

5392 by its driver respondent No. 2 for which the petitioner sustained injuries? OPP

2. If issue No. 1 is proved inaffirmatively whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP

3. Whether terms and conditions of the insurance policy have been violated? OPR-3

4. Whether the petitioners were traveling un-authorisedly in the offending vehicle, if so, what is its effect? OPR-3

5. Relief.

6. Issue No. 1 was decided in favour of the claimants and against the respondents.

7. While deciding issues Nos. 3 and 4, the Tribunal held the claimants to be the gratuitous passengers. The owner of the vehicle was, accordingly,

held not to be indemnified by the insurer of the motor vehicle. It was, further, held on the basis of judgment reported as New India Assurance Co.,

Shimla Vs. Kamla and Others etc. etc., , that the compensation would be paid by the Insurance Company which would be recoverable by it from

the owner by executing the award of the Tribunal.

8. Issue No. 2 was, accordingly, decided in favour of claimants. 9.1 have heard learned Counsel for the parties.

Sh. Ajay Kumar Gandotra, learned Counsel appearing for the Insurance Company, submits that the direction of the Tribunal to the Insurance

Company to satisfy the Award and thereafter recover it from the owner is contrary to the Law laid down by Hon'ble Supreme Court of India and

Section 147 of the Motor Vehicles Act, 1988.

10. Sh. Ajay Kumar Gandotra submits that the claimants were not entitled to be compensated by the Insurance Company because the Insurance

Company, does not have any statutory liability to compensate the gratuitous passenger carried by the owner in a motor vehicle against the terms of

the policy of insurance.

11. Sh. S. Balbir Singh, learned Counsel appearing for the claimants has, in reply, supported the Award of the Tribunal on the basis of judgment

delivered by Hon'ble Supreme Court of India in case reported as National Insurance Company Limited v. Baljit Kaur and Ors..

12. I have considered the submissions of learned Counsel appearing for the parties and gone through the judgments relied upon by the learned Counsel.

13. Judgment reported as National Insurance Company Limited v. Baljit Kaur and Ors., is on all fours. It supports the view taken by Motor

Accidents Claims Tribunal in directing the insurer to satisfy the award and recover the amount later by executing the award against the owner of the vehicle.

14. Sh. Gandotra, when confronted with the latest judgment of Hon'ble Supreme Court of India, was unable to deal with paragraph 21 of the

judgment on the basis whereof a contrary view would be contemplated.

15. Hon'ble Supreme Court of India while delivering judgment in National Insurance Company v. Baljit Kaur and Ors., has opined that the law

regarding liability of the insurer to pay for the gratuitous passenger was not clear and thus, according, to the Apex Court, it would not be fair and

equitable to operate the declaration made in Baljit Kaur's case as to have retrospective effect. It would be profitable to refer to para 21 of the

judgment of Hon'ble Supreme Court of India (supra):

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the

decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair

and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court

had proceeded in terms of the decisions of this Court in Satpal Singh, 2000 ACJ 1. The said decision has been overruled only in Asha Rani 2003

ACJ I We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount

in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not

be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicle Act, 1988 in terms

whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of

the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the

accident inasmuch as can be resolved by the Tribunal in such a proceeding.

16. In view of the law laid down by Hon'ble Supreme Court of India, the appellant cannot be said to be aggrieved of the award.

17. The Motor Accidents Claims Tribunal has protected the interests of the insurer. The Award of the Tribunal is, thus, in line with the view

propounded by Hon'ble Supreme Court of India in Baljit Kaur's case (Supra).

18. There is no merit in these appeals, which are, accordingly, dismissed without any order as to costs.

19. Some amount has been released in favour of the claimants during the pendency of the litigation. Registrar Judicial shall release the remaining

amount to the claimants in terms of the Award out of the amount deposited in this Court along with interest accrued thereon.