

(2012) 05 J&K CK 0011

In the Jammu And Kashmir High Court

Case No : C. Rev. No. 90 Of 2009 and IA No. 350 Of 2009

National Insurance Co. Ltd

APPELLANT

Vs

Fayaz Ahmad Khan

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 05 J&K CK 0011

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : J.A. Kawoosa, for the Appellant;

Final Decision : Allowed

Judgement

Hasnain Massodi, Judge

1. Learned Motor Accident Claims Tribunal while allowing the claim of the petition u/s 166 of the Motor Vehicles Act, titled Ghulam Mohd Malik

& Others vs Nissar Ahmad & Others awarded an amount of Rs. 5,24,300/- as compensation to the claimants. One of the grounds set up by the

Insurance Company, with which the offending vehicle was insured-petitioner before the Court, was that the Driver of the offending vehicle was not

holding an effective and valid driving license at the time of accident that claimed life of Sh. Zahoor Ahmad Malik, S/o Gh. Mohd Malik, claimant

no.1. The Tribunal on the basis of evidence brought on record, found merit in the stand taken by the petitioner and held that at the time of accident,

the driver of the offending vehicle was driving the vehicle without holding an effective and valid driving license. The Tribunal decided issue no.4

framed in the claim petition reflecting stand taken by the petitioner observing that 'This allegation has been proved by the Insurance Company

sufficiently.' However, the Tribunal still asked the Insurance Company to pay the compensation observing that in such cases, Insurance Company

has a right, to recover the compensation paid, from the owner of the Vehicle.

2. The Insurance Company in compliance of the award, deposited the awarded amount with the Tribunal and thereafter filed an application for

recovery of the compensation from the owner of the offending vehicle. The Tribunal well aware of the fact that the controversy had been resolved

by the Tribunal while making the award re-opened the matter and asked the parties to lead evidence in support of their respective stands. The fact

that the Tribunal was conscious that controversy had been settled by the Tribunal is evident from the finding returned by the Tribunal in the order

impugned in this petition, which reads as under:-

While deciding the issue of Driving License of the driver this tribunal has held that the insurance company has sufficiently proved that the driver was

not holding a valid D/L and directed the insurance company to pay the awarded amount at first instance to the petitioners and recover the same

awarded amount back from the respondent/owner.

Once, the controversy as regards the validity of the driving license held by the driver of the offending vehicle at the time of accident, was examined and settled by the Tribunal while passing the award, it was no more open to

the Tribunal to re-visit the matter and ask the parties to adduce the evidence and thereafter return a finding contrary to the finding already returned

on the issue while making the award in the claim petition, on 29.11.2005.

3. The Tribunal as laid down in Ishwar Chandra and others Vs Oriental Insurance Company Limited and others 2007 AIR SCW 1889 gave

liberty to the Insurance Company to recover the amount of compensation paid by it from the owner of the offending vehicle that was otherwise to

be paid by the owner of the offending vehicle, in view of the finding returned by the Tribunal on issue no. The Tribunal ought to have appreciated

that in view of the finding returned by the Tribunal, while dealing with the claim petition, on issue no.4, the Insurance Company was not liable to

pay compensation to the claimants. It is only to facilitate the payment of compensation and not to expose the claimants

4. because of the vehicular accident are left high and dry without any source of fall back upon, that too all of a sudden, to direct the Insurance

company to pay the compensation awarded to the claimants and later recover the same from the owner of the offending vehicle of their own. So

viewed, Tribunal lacked jurisdiction and competence to embark upon an exercise to find out whether the driver of the offending vehicle was

holding a valid and effective driving license and to return a finding contrary to the finding returned on issue no 4 while dealing with the claim petition.

Resultantly, the petition succeeds and the order impugned is set aside. The Tribunal, shall proceed on the application filed by the petitioner for

recovery of claim amount in accordance with law. Record, if any, be sent down. Disposed of.