

(2010) 03 J&K CK 0008
In the Jammu And Kashmir High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Ghulam Mustafa Beg and Others		RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 173

Citation : (2011) ACJ 1439 : AIR 2010 J&K 110

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—National Insurance Company Limited has filed this Appeal questioning the quantum of compensation of Rs. 7,00,800/-

awarded by the Motor Accident Claims Tribunal, Bhaderwah vide its Award of July 25, 2003, to the parents of Shokat Ali Beg, who died in a

motor vehicular accident on March 17, 1999 near Jaswal Bridge Ramban when Taxi Cab Tata Sumo No. JK01C/2360 which he had boarded

while traveling from Jammu to Srinagar met with accident because of its rash and negligent driving by Mohd. Arif, its driver.

2. Claimants' learned Counsel raises a preliminary objection to urge that the Insurance Company's Appeal was not maintainable as having failed to

seek permission of the Tribunal to contest the respondents' claim of compensation on grounds other than those available to an insurer u/s 149(2) of

the Motor Vehicles Act, 1988, the Insurance Company was not entitled to question the award of the Tribunal and the quantum of compensation

awarded by it.

3. Responding to the objection, the appellant's learned Counsel submitted that

the amount awarded to the claimants being excessive, omission of the insurer to seek permission of the Tribunal u/s 170 of the Motor Vehicles Act would not disentitle it to maintain its Appeal.

4. I have considered the submissions of learned Counsel for the parties and am of the view that appellant's omission to seek permission of the

Tribunal to contest the respondents' claim to compensation for the death of their son, debars it to question the quantum of compensation awarded

by the Tribunal in view of the otherwise limited right which the Motor Vehicles Act, 1988 allows to the insurer to contest claims to compensation

arising out of motor vehicular accident(s).

5. The appellant having opted not to raise any one or the other defences available to it u/s 149(2) of the Act before the Tribunal, and the Motor

Vehicles Act not permitting it to contest the claim of compensation arising out of the Motor Vehicular Accidents on any other ground including the

challenge to the quantum of compensation, unless however permitted by the Tribunal to contest the claim on grounds other than those appearing in

Section 149(2) of the Act, may not have any right to question the Award of the Motor Accidents Claims Tribunal, in that, findings of the Tribunal

on only those issues may be questioned by the appellant in Appeal which it may be permissible for it to agitate before the forum of original

jurisdiction.

6. There is, thus, merit in the preliminary objection raised by the claimants' counsel that the appellant having opted not to seek permission to

contest the respondents' claim to compensation on grounds other than those available to it u/s 149(2) of the Motor Vehicles Act would have no

right to Appeal u/s 173 of the Motor Vehicles Act, to question the findings and award of the Tribunal on quantum of compensation, which,

therefore, succeeds.

This Appeal, therefore, fails and is, accordingly, dismissed.