
(2010) 03 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : CIMA No. 47 of 2009 and CMP No. 112 of 2009

National Insurance Co. Ltd.

APPELLANT

Vs

Mst. Saja Begum and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 10, 113, 149, 166, 168

Citation : (2010) 2 JKJ 91

Hon'ble Judges : Gh. Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gh. Hasnain Massodi, J.—This appeal is directed against the award passed by the learned Motor Accident Claims Tribunal (MACT),

Srinagar in Claim Petition titled Mst Saja Begum and Ors. v. Abdul Majeed Bhat and Ors. (File No. 52/2003), whereby the learned Tribunal has

made an award of Rs. 5,17,000/- in favour of the claimants with 6% interest from the date of institution of the claim petition till realization of the

award amount and interest at enhanced rate of 9%, in case the Appellant fails to deposit the award amount within two months. The backdrop facts

of the case are as under:

2. Respondents 1 to 5 filed Claim Petition u/s 166 Motor Vehicles Act before the learned MACT, Srinagar, pleading therein that Gh: Mohd.

Lone, husband of Respondent-1 and father of Respondents 2 to 5, while traveling in a passenger vehicle (Tata 407) bearing registration No.

JK01B -9332 from Ganderbal to Srinagar fell down from the vehicle at Sabzi Mandi, Soura due to negligence of the driver of the vehicle,

sustained injuries because of the accident and breathed his last. It was pleaded that case FIR No. 7/2003 under Sections 279; 304-A RPC and

113/177 M.V. Act was registered at Police Station, Soura after the accident was reported to the Police Station and charge sheet was presented

alleging commission of the aforesaid offence before the competent court. Respondents 1 to 5 pleaded that the deceased who was the sole bread

earner of the family was an expert Craftsman and had earnings of Rs. 7000/- per month. It was averred that as the offending vehicle was insured

with the Appellant Insurance Company, the claimants as also the dependents of the deceased were entitled to get compensation from the Insurance

Company.

3. The owner and the driver of the offending vehicle (Respondents 6 and 7 in the present appeal) contested the claim petition on the ground that

the deceased while bringing down the wicker baskets (merchandise) from the roof of the offending vehicle had lost the balance and fell down from

the vehicle and thus, the death was not attributable to any vehicular accident. The Respondents 6 and 7 while disputing their liability to pay any

compensation to the dependents of the deceased insisted that monthly earning of the deceased was not more than Rs. 2500/- per month. It was

also pleaded that as the offending vehicle was covered under comprehensive Insurance Policy No. 421001/31/02/63003806, the claimants even in

the event of success in the petition, were entitled to get compensation from the Appellant -Insurance Company.

4. The Appellant while admitting that the offending vehicle was having insurance cover sought to escape liability to pay compensation on the ground

that as the driver of the offending vehicle on the date of accident was not holding an effective and valid driving license, there had been violation of

the terms and conditions of the Insurance Policy on the part of the owner and thus, the Appellant stood exonerated from paying any compensation

to the claimants. Learned tribunal on perusal of the pleadings, settled the following issues:

1. Whether on 31-10-2003, Ab. Majeed Bhat Respondent No. 1 was plying TATA Matador No. JK 01B/9332 rashly and negligently as a result

of which at Sabzi Mandi, General Road, Soura, deceased Gh. Mohammad Lone who was traveling in the same, fell down from the vehicle and

sustained fatal injuries and later on succumbed to the same in SKIMS Soura on the same day? (OPP)

2. Whether petition is not maintainable against Respondents 1 & 2, as the Petitioners have no cause of action against them? (OPR-1&2)

3. Whether the deceased has lost his life due to his own negligence for which Respondents 1 and 2 are not in any way responsible?(OPR 1&2)

4. Whether the driver (Respondent No. 1) of the offending vehicle was not holding valid and effective driving license on the date of accident, as

such, Respondent No. 3 cannot be saddled with the liability?(OPR3)

5. In case the issue No. 5 is proved in affirmative, to what amount of compensation the Petitioners are entitled to, from whom and in what proportion?(OPP)

5. Respondents 1 to 5 examined three witnesses to substantiate their case. The Appellant on the other hand, to prove that the driver of the

offending vehicle had no effective and valid driving license at the time of accident/examined an official of Regional Transport Office (RTO),

Baramulla and its Branch Manager. Learned tribunal also summoned and perused criminal case file emanating from case FIR Mo. 7/2003 Police

Station, Soura.

6. Learned tribunal after going through and making discussion of evidence adduced by the parties and hearing the counsel for the parties, decided

all the issues in favour of Respondents 1 to 5 and against the Appellant and other Respondents in the petition and made the award impugned in the appeal.

7. The Appellant throws challenge to the award mainly on following two grounds:

1. That though it was convincingly proved by the Appellant before the tribunal that the driver of the offending vehicle at the time of accident was

not holding driving license to drive passenger vehicle, thus, absolving the Appellant from obligation to pay any compensation to the dependents of

the deceased because of breach committed by the owner, yet the learned tribunal proceeded to make the award.

2. That the compensation assessed by the tribunal was exorbitant, excessive and unjust worked out unmindful of settled norms.

8. Heard.

Respondent 6 in the present appeal, undisputably was driving the passenger vehicle (TATA 407) without having driving license to drive such type

of vehicle. The Appellant claims that the Appellant successfully discharged the burden of proving that the driver of the offending vehicle had no

valid and effective driving license to drive the vehicle at the time of accident, substantiated by following observations of the learned tribunal:

From the statements of the witnesses recorded by the insurance company it is established that the Respondent driver, plying the offending vehicle

under the insurance cover of the Respondent company, was holding a valid license for plying medium goods vehicle and heavy goods vehicle but

not a passenger vehicle. It is also established by the Respondent company that the Respondent driver was not having any PSV endorsement on his

driving license, thus the Respondent driver could not drive a passenger vehicle in question.

9. It, however, remains to be seen whether the above conclusion drawn by the learned tribunal must enable the Appellant to wriggle out of its

responsibility to pay compensation to the dependents of the deceased and shifting the burden to the owner of the vehicle. Learned tribunal after

recording agreement with the contention of the Appellant that the driver of the offending vehicle had no valid and effective driving license,

proceeded to observe that this by itself did not absolve the Appellant of its obligation to pay compensation in as much as the Appellant was

required to further prove that breach committed by Respondent-7(owner) was willful and cause of accident. Learned tribunal while opining thus,

reliance placed on National Insurance Co. Ltd. Vs. Swaran Singh and Others, : AIR 2004 SC 1531 and 2004(2) SLJ 692. In National Insurance

Co. Ltd. Vs. Swaran Singh and Others, relied upon in other three reported cases, the Supreme Court observed as under:

... Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defences

available to the insurer against either the insured or the third party. To avoid its liability towards insured, the insurer has to prove that the insured

was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly

licensed driver or one who was not disqualified to drive at the relevant time.

10. The Court further observed that:

....In each case on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing license for one type of

vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused

solely because of some other unforeseen or intervening causes like mechanical failure and similar other causes having no nexus with driver not

possessing requisite type of license, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving

license.

11. Section 3 of the Motor Vehicles Act lays down that no person shall drive motor vehicle unless he/she holds an effective and valid driving

licence issued to him authorizing him/her to drive vehicle and that no person shall drive a motor vehicle unless his driving licence specifically entitles

him to do so. Sub-section (10) of Section 2 of the Act defines that driving licence means ""licence issued by the competent authority under

Chapter-II authorizing a person specified therein to drive, otherwise than as a learner, a motor vehicle or a motor vehicle of any specified class or

description."" Section 5 of the Act casts duty on the owner of motor vehicle or person Incharge of a motor vehicle not to permit any person who

does not hold an effective and valid licence to drive the vehicle. Owner of a motor vehicle found to have permitted any person not holding an

effective and valid driving licence to drive the vehicle is u/s 180 of the Act liable to be sentenced to three months imprisonment or fine and

ignorance or negligence is not a defence available to such owner. To drive a motor vehicle without licence is an offence punishable u/s 181 of the

Act, The insurer thus, in terms of Sections 149(2) of the Act may, relying upon the Insurance Contract and violation of the law by the assured,

taken exception to pay the compensation to the insured or the third party. The insurer in such case has to prove an intentional and willful violation

of the law by the insurer. The exception taken by the insurer to pay the compensation applies to act done intentionally or ""so recklessly as to

denote that the assured did not care what the consequences of his act might be"". It follows that where the evidence brought on the file leads to the

conclusion that the insured has intentionally committed breach of the insurance

contract or has acted "so recklessly as to denote that the assured did not care what the consequences of his act might be" the insurance company cannot be saddled with the responsibility to pay compensation to the claimants. Where it is proved before the tribunal that the owner or a person in charge of a motor vehicle permitted a person not having an effective and valid driving licence to drive the vehicle, and the offending vehicle while being driven by such person met with an accident resulting in death or injury to the third party, the owner or the person in charge of the motor vehicle is to be taken to have intentionally committed breach of the insurance contract or acted so recklessly as to denote that the owner or the person in charge of the motor vehicle did not care what the consequences of his act might be. Once it is proved that the insured has committed breach of the insurance contract by permitting the person not having an effective and valid driving licence to drive the vehicle, the only person who can convince the tribunal that neither there was any intentional lapse on part of the insured nor had the insured acted "so recklessly as to denote" that he did not care what the consequences of his act might be, is the insured and none else. It is for the owner of the vehicle to verify and ensure while employing a driver that the driver possesses an effective and valid driving licence and in case the owner permits a person to drive his vehicle, it is at his peril and the owner cannot be heard later saying that he had no time to make necessary verification.

12. The controversy regarding liability of insurer to indemnify the insured in the event of violation of Section 5 of the Act and breach of Insurance

Contract, has not died down with the authoritative pronouncement in Swarn Singh's case but surfaced and resurfaced in a number of cases before

the Supreme Court and High Courts, in which the law laid down in Swarn Singh's case has been re-visited and interpreted. It would be

advantageous to scan the case law, that as stated, reflects different dimensions/aspects of the controversy.

13. In National Insurance Co. Ltd. Vs. Kusum Rai and Others, , Commercial vehicle driven by a person not possessing appropriate licence

therefor, met with an accident resulting death of minor girl. It was held that the insurance company could rightly set up the defence of breach of

condition of the insurance contract. The award of the tribunal and the judgment

in appeal of the High Court was set aside. The court held, in such a case, the owner of the vehicle could not contend that he had no liability to verify the fact as to whether the driver of the vehicle possesses a valid driving licence or not. The Appellant (insurance company) was held not liable to pay the claimed amount as the driver was not possessing a valid driving licence.

14. In *Ishwar Chandra and Ors. v. Oriental Insurance Company Limited and Ors.* AIR 2007 SCW 1889, the driver of the offending vehicle

(Eicher Tractor) that hit the deceased, was found to have been driving the tractor at the time of accident without having driving license. The

Tribunal, rejecting the insurer's case that it was absolved to pay any compensation to the dependents of the deceased because of breach

committed by the owner in employing the driver without license, made the award against the insurer. The insurance company preferred an appeal

and the Insurance company was given an option to Initiate proceedings before the Executing Court without filing any separate suit and before the

release of the award amount in favour of the claimants, the owner of the vehicle/insured was directed to be summoned and required to furnish

security for the entire amount which the insurer was asked to pay to the claimants. In an appeal by the owner of the offending vehicle, the Supreme

Court after reviewing the law on the subject held the appeal to be without any merit.

15. In *National Insurance Co. Ltd. v. Kaushalya Devi and Ors.* AIR 2008 SCW 4025, driver of the offending vehicle was licensed to drive the

light transport vehicle. The driver however, was driving a heavy goods vehicle which caused the accident. In other words, the driver was not

holding license of the description/kind as was required to drive the offending vehicle. The insurance company nonetheless was asked by the tribunal

to pay the compensation. The Supreme Court held that owner alone was liable to pay compensation to the claimants and the award"" amount if

deposited but not withdrawn by the claimants, be refunded to the insurance company and the proceedings for realization of the amount may be

initiated against the owner of the vehicle. In the event the amount was withdrawn, the insurance company was held to be entitled to recover the

same from the owner of the vehicle.

16. In *New Indian Assurance Co. Ltd. Vs. Roshanben Rahemansha Fakir and Another*, , the driver of the offending vehicle was holder of the licence of three wheelers i.e. Auto Rikshaw, the driver was driving transport vehicle for which he had no licence, The driver was held not to have been holding an effective driving licence. The tribunal nevertheless burdened the insurance company with an obligation to pay compensation. The appeal of the insurance company before the High Court also failed. The Supreme Court set aside the judgment of the High Court and held that the insurance company is not liable. However, the insurance company was asked to satisfy the award and recover the amount from the owner.

17. In *Oriental Insurance Co. Ltd. Vs. Zaharulnisha and Others*, , the driver of the scooter that caused accident resulting in death to a cycle rider, was not holding licence to drive the scooter but had a licence to drive the heavy motor vehicle only. The driver of the offending scooter was thus a driver of a totally different class of vehicle in violation of Sections 10(2) of the M.V. Act. It was held that in light of the settled proposition of law, the insurance company cannot be held liable to pay the compensation to the claimants for the cause of death of a cycle rider in road accident which had occurred due to rash and negligent driving of the scooter by a person, who admittedly had no valid and effective driving licence on the day of accident. It was held that the scooterist was possessing driving licence for driving HMV and it was totally a different class of vehicle, which act is in violation of Section 10(2) of the Act.

18. In *United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora and Others*, , the driver of the offending vehicle at the time of accident was minor and without driving licence. The tribunal absolved the insurance company of its liability under the policy. The appeal allowed by the learned Single Judge and the Letters Patent Appeal dismissed. The Supreme Court held 16. the learned Single Judge as also the Division Bench of the High Court did not put into themselves a correct question of law . They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance. 17. The High Court did not advert to itself the provisions of Sections 4 and 5 of M.V. Act and thus misdirected itself in law." The judgment of the High Court was set aside and that of learned Tribunal restored. The Appellant

insurance company was held entitled to recover the amount in question from the owner, as the amount had been deposited and withdrawn.

19. In *National Insurance Co. Ltd. v. Ram Parsad Kushwaha and Ors.* AIR 2009 Patna 48, the driver of the offending vehicle was not holding a

valid licence to drive the vehicle in question - the owner of the vehicle (Tractor) was held liable to pay the compensation. The court noticed

Sections 3, 5 and 10 of the M.V. Act and held Appellant - insurance company entitled to recover from the owner.

20. In *Bhuwan Singh Vs. Oriental Insurance Company Ltd. and Another*, , the Learner's licence had expired on 22-12-2000. The accident took

place on 5-1-2001. The driver applied for regular licence on 22-1-2001, whereafter the licence was granted to him. It was held that the insurance

company was not under an obligation to pay the award amount.

21. In *National Insurance Co. Ltd. Vs. Vidhyadhar Mahariwala and Others*, , the driver's license was initially valid for a period from 15.12.1997

to 14.12.2000 and thereafter from 29.12.2000 to 14.12.2003 and again from 16.5.2005 to 15.5.2008. The driving license was thus not renewed

from 14.12.2003 to 16.5.2005. The accident took place on 11.6.2004. The insurance company took a plea before the MACT that it had no

liability to pay the compensation, as license of the driver of the offending vehicle was not in force on the date of accident. The insurer's plea for

exoneration was rejected by the Tribunal. The Insurance Company preferred an appeal before the High Court and the High court referring to the

judgments of the Supreme Court in *Swaran Singh, Nanjappan and Kusum Rai's* case came to hold that Insurance Company was liable to

indemnify the award. It was held that merely gap in the renewal of the driving license is not a ground for exoneration. The Supreme Court referring

to *Ishwar Chandra's* case recorded agreement with the view expressed in the said case, allowed the appeal and set aside the judgment of the High

court. The Supreme Court permitted the claimants to recover the award amount from the owner of the offending vehicle.

22. The deciding factor, having regard to the law laid down in aforementioned cases, is whether the driver had valid and effective driving licence

within the meaning of Section 3 of the Act at the time of accident, and not whether in the opinion of the Tribunal driver was otherwise, independent

of his not having driving licence, competent to drive.

23. In view of the above legal position, the learned tribunal erred in holding that even though the driver was found not to have an effective driving

licence of the type that would entitle him to drive the offending vehicle, yet the owner was not liable to pay compensation as it was not proved that

the insured/owner had willfully and knowingly engaged a driver not holding an effective driving licence. The conclusion arrived at by the learned

tribunal in this regard deserves to be overset. Needless to mention there was no evidence before the tribunal that accident had taken place because

of any mechanical failure or similar other cause.

24. This takes us to the reservation voiced by the Appellant as regards quantum of compensation.

25. The tribunal u/s 168 of the act is required to make an award determining the amount of compensation which appears to it to be 'just'. The

tribunal in other words is to determine the fair amount of compensation, having due regard that compensation is proportionate to the loss suffered

by the victim or dependents of the deceased. Though the tribunal has been held not bound to confine amount of compensation to the 2nd schedule

to the Act, yet the schedule is to provide guidance to the tribunal while determining the compensation. The evidence on the file reveals that the

deceased at the time of fatal accident was 39-45 years of age. The tribunal has while determining the compensation taken the deceased to have

been of 45 years of age at the time of accident and rightly applied the multiplier of 15 as given in 2nd schedule. Again the evidence on the file put

monthly income of the deceased between Rs. 4000-7000 per month. The tribunal again took a conservative view and accepted the income of the

deceased as Rs. 4000/- per month. The tribunal awarded Rs. 7000/- per month on account of funeral and transport charges of the dead body/Rs.

10,000/- on account of loss of consortium, 10,000/- on account of loss of love and affection and Rs. 10,000/- on account of pain and shock

suffered by the Petitioner. The amount so determined cannot be said to be exorbitant. The learned tribunal took care to award interest @ 6% per

annum on the compensation amount for two months after the award was made so as to prompt the insurance company to make immediate

payment of compensation amount to the dependents of the deceased who had

lost their only bread earner. It is only thereafter that interest @ 9% per annum was to be paid, which cannot be said to be punitive or exorbitant. The interest on the awarded amount represents damages for the delayed payment and it is for the person required to make the payment to discharge his obligation with prompt dispatch.

26. For the reasons discussed, the Appellant is held to be absolved of its obligation under the insurance contract to indemnify the insured. The award amount is to be recovered from the owner of the offending vehicle because of the breach committed by the insured of the terms and conditions of the insurance contract/policy. However, having a regard to the facts of the case and that the insurance company has already made a deposit of part of the award amount and that the claimants who belong to deprived and downtrodden section of the society would be exposed to immense hardship, if asked to initiate proceeding for recovery of the award amount from owner/insurer as also law laid down on the subject and referred to above. The Appellant shall pay the award amount to the Respondents No. 1 to 5 and recover the said amount from the owner/insurer.

27. Having regard to the conclusions drawn, it is necessary that all information regarding driving licences is made available by the authorities saddled under Motor Vehicle Act, with the duty to grant driving licence under the Act, to the general public, so that owner of a motor vehicle has ready access to such information while employing a driver. There is no reason as to why the concerned authorities should not integrate Information Technology with the day today affairs of their office(s) and with the help of Information Technology tools make the requisite information accessible to the general public.

28. So viewed, the Transport Commissioner, J&K State and all other authorities associated with grant of driving licence(s) under the Motor Vehicles Act, are directed to place material particulars including names, parentage, residential address, age, date of issuance of driving licence, type of the driving licence, the type of vehicle authorized to drive and period of validity etc, in respect of each and every driving licence issued by the authority(ies) on the Government website or any website set up by the Transport Department within 60 days from the date of this judgment and in the event such website is not already set up to set up a website and place

such information on such website within the said period, so that flow of hassle-free information is facilitated and general public including owners of vehicle's have online access to the information.

29. Copy of this judgment be forwarded to Transport Commissioner J&K Jammu.

The appeal is, disposed of, accordingly.