(2008) 06 J&K CK 0004

In the Jammu And Kashmir High Court

National Insurance Co. Ltd. APPELLANT

Vs

Nissar Ahmad Sheikh and Others RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(2)
Ranbir Penal Code, 1989 — Section 289, 304(A)

Citation : (2008) 3 JKJ 47

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—The appeal in hand is directed against the judgment/ award dated 24th of March, 2007 passed by Motor

Accident Claims Tribunal, Srinagar, whereby and whereunder a batch of claim petitions-Claim petition Nos. 75, 76,11 and 12 came to be

decided, hereinafter short impugned award.

2. Insurer-appellant feeling aggrieved preferred this appeal on the grounds taken in the memo of appeal.

3. The brief facts of the case, the womb of which has given rise to this appeal is that Ishpal Singh-driver has driven the petrol tanker No.

7701/JKE-offending vehicle rashly and negligently at Rambagh near Khaliq Crossing and hit a Taxi bearing registration No. 4757/JKT and in the

process taxi turned turtle and was badly damaged. FIR No. 50/1999 came to be registered in P/S Shergri u/s 289, 304(A), 427 of RPC. The

owner of the taxi, Nissar Ahmad Sheikh, filed a claim petition for grant of compensation on the grounds that the vehicle-taxi was completely

damaged.

4. Non-applicants and the appellant resisted the claim petition. Following issues came to be framed:

1. Whether on 12.03.1999 respondent 1 Ishpal Singh was driving vehicle (petrol tanker) No. 7701/]KE rashly and negligently as a result of which

at Solina Bazar near Petrol Pump it hit taxi bearing Reg. No. 4757/JKT due to which said taxi got totally damaged? OPP

2. In case issue No. l is proved in affirmative, to what amount of compensation the petitioners are entitled to, from whom and in what proportion?

OPP

3. Whether the driver of the offending vehicle was not holding driving license and as such insurance company can not be saddled with the liability?

OPR4

4. Relief.

5. Nissar Ahmad Sheikh besides themselves examined, Mohammad Saleem Khan, Rafiq Ahmad Najar, Karan Singh, Mushtaq Ahmad Shah, and

also produced copies of site plan, FIR, challan and seizure memo.

6. Non-applicants 1 to 3 examined only one witness, namely, Ghulam Nabi Sheikh and non-applicant No. 4-insurer-appellant also examined one

witness, namely, Vijay Sharma, Licensing Clerk RTO Jammu.

Brief resume of evidence of the claimants:

7. All the witnesses have deposed that the driver of the offending vehicle-tanker has driven the vehicle rashly and negligently and hit the taxi in

which Mst. Fareeda, her newly born child and Mst. Shaha were traveling sustained injuries and succumbed to injuries at Solina Bazar near Khaliq

Crossing. The taxi turned turtle and was completely damaged. The said accident was outcome of rash and negligent driving of driver-Ishpal Singh.

The said evidence has remained un-rebutted.

Brief Resume of the Evidence of non-applicant No. 4- Appellant.

8. Witnesses have deposed that driver, Ishpal Singh, was having licence to drive heavy goods vehicle and the licence was also bearing the

endorsement/authorization to drive Hazardous Goods Vehicle but that endorsement was valid for a period of one year from 28th of December,

1997 to 27th of December, 1998 and thereafter the endorsement was not renewed but again endorsement of renewal was made from 30th of

December, 2001 to 29th December, 2002 but the insurer has not led any evidence in order to indicate that the driver was dis-qualified to drive

Hazardous Goods Vehicle during the said period. Nor there is any evidence that he was not competent to drive Hazardous Goods Vehicle after

27th of December, 1998 till 30th of December, 2001. The factum of insurance is admitted.

Issuewise finding:

9. There is ample evidence on record of the Tribunal that driver-Ishpal Singh has driven the offending vehicle-tanker rashly and negligently and

caused the vehicular accident resulting in damage to the taxi. In the given circumstances of the case, I am of the considered view that finding

returned by the Tribunal needs no interference.

Issue No. 2:

10. Admittedly, the vehicle-taxi was completely damaged. The insurer- appellant has not disputed the amount awarded but learned Counsel for the

appellant raised a legal plea that the insurer had to pay only Rs. 6000/- and rest was to be paid by the owner- insured and has made foundation of

his argument while relying on Section 147 of the Motor Vehicles Act.

11. Learned Counsel for the insured-owner while rebutting the arguments pleaded that it was for insurer to plead and prove that its liability was

limited, it has failed to prove it.

12. It is apt to reproduce Section 147(2) of the Motor Vehicles Act herein:

147.Requirements of policies and limits of liability:

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any

accident, up to the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand;

13. While going through mandate of Section 147, the insurer has to pay Rs. 6000/- in respect of damage to any third party but the question is

whether the ground relating to limited liability in respect of damage to any property was raised by the appellant-insurer before the Tribunal.

14. In order to reply this, it is necessary to notice the reply/written statement

filed by the insurer before the Tribunal. It has taken this ground in

para-4 and 9 of the reply. It is profitable to reproduce the said paras herein:

4. That in reply to para No. 5 of the petition it is submitted that the income shown by the petitioner is exaggerated one and has no nexcess with the

instant claim which pertains to the proper damage, where the liability of the answering respondent can not exceed beyond Rs. 6000/= under the

M.V. Act.

9. That para No. 11 of the claim petition is denied. It is submitted that the answering respondents are not liable to pay any compensation to the

petitioner in absence of valid driving licence of the respondent driver. The basis on which the compensation is claimed are not in accordance with

the provisions of the M.V. Act as the liability under the Act is limited to the extent of Rs. 6000/- in all. However, if this hon'ble court adjudicates

otherwise and the petitioners proves the quantum beyond any doubt, even then answering respondent can not be asked to pay the amount claimed

as the same is highly infilated, exaggerated and against the provisions of the M.V. Act.

15. The Tribunal has failed to discuss this legal issue and has straightway saddled the insurer with the liability to the tune of Rs. 50,000/-.

16. In the given circumstances, I deem it proper to remand the case in so far as it relates to saddling the insurer with liability viz-a-viz damage

caused to the taxi. The Tribunal is directed to allow the insurer-appellant and insured/owner of the offending vehicle to lead evidence in order to

prove their stand viz-a-viz limited/unlimited liability.

17. It is made clear that the amount be disbursed to the claimant-owner of the damaged vehicle (taxi). In case the Tribunal holds the liability of the

insurer/appellant was limited then the insured/owner of the offending vehicle has to reimburse the insurance company with 6% interest.

Accordingly, the impugned award in so far it relates to saddling the insurer with entire liability viz-a-viz damage of the vehicle (taxi) is set-aside and

the case is remanded to Motor Accident Claims Tribunal, Srinagar, for the above referred purpose. Appellant and owner of the offending vehicle

are directed to cause appearance before the Motor Accident Claims Tribunal, Srinagar on 16th day of June, 2008. The Tribunal shall return the

finding on the issue within three months commencing from 16th day of June, 2008.

Registry to send down the record along with a copy of this judgment.

