

(2016) 05 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : CMA No. 335 of 2012 c/w CIMA No. 334 of 2012 and Connected MPs

National Insurance Co. Ltd.

APPELLANT

Vs

Pinki

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, Section 166, Section 173

Citation : (2016) 4 JKJ 375

Hon'ble Judges : Mr. B.S. Walia, J.

Bench : Single Bench

Advocate : Mr. Suneel Malhotra, Advocate, for the Appellant/Petitioner; None, for the Respondent Nos. 2-3; Mr. Zulker Nain Sheikh, Advocate, for the Respondent No. 1

Final Decision : Partly Allowed

Judgement

Mr. B.S. Walia, J. (Oral) - This order shall dispose of CIMA No. 335/2012 and CIMA No. 334/2012. While claimant in CIMA No.

335/2012 is Pinki Kumari, claimant in CIMA No. 334/2012 is her husband-Pupinder Singh. On submission of learned counsel for the parties,

facts are being taken from CIMA No. 335/2012.

2. Brief facts of the case are that appeal has been filed under Section 173 of the Motor Vehicles Act against award dated 08.06.20.12 passed by

the Motor Accidents Claims Tribunal, Jammu under Sections 166 and 140 of the Motor Vehicles Act in claim petition titled ""Pinki Kumari v.

National Co. Ltd. & Ors."" with a prayer for setting aside the same and for dismissing the claim petition.

3. Main plea of learned counsel for the appellant is that the accident took place due to collision between the bus enroute Ludhiana and a truck

coming from the opposite direction in the early hours of 08.12.2007 near Raipur Rasoolpur, G.T. Road, Jalandhar.

4. On vernacular of FIR being read out by learned counsel for the appellant, it transpires that aforementioned plea of the appellant is factually

incorrect and in fact, the bus in which the claimants were traveling and the truck with which the collision took place, were both going in the same

direction i.e. towards Jalandhar. Faced with the position emerging from reading of the FIR, learned counsel for the appellant states that he does not

press the plea with regard to the accident having been caused due to negligence of the truck driver.

5. An important aspect of the matter which needs mention is that the accident took place at approximately 4:10 A.M. on 08.12.2007 i.e. at a time

when there was fog/mist in the area, as is evident from the statement of claimant-Pinki Kumari.

6. Learned counsel for the appellant has not been able to refer to any evidence to show that the statement of Pinki Kumari-Respondent No. 1-

claimant is factually incorrect on either of the aforementioned two aspects, namely, of the bus in which she was traveling having struck against the

truck going in the same direction, secondly of the accident having taken place at 4:10 A.M. in foggy weather in the month of December, 2007.

7. The other plea put forth by learned counsel for the appellant is that Respondent No. 3 i.e. driver of the bus in question did not have a valid

driving license on the date of accident, but the Tribunal erred in not granting liberty to the appellant to effect recovery of the compensation to be

paid by it to the claimant from the owner of the bus i.e. Respondent No. 2. It was contended that the finding of the learned MACT, Jammu with

regard to license of Respondent No. 3 was not borne out from the evidence and that despite the appellant having established before the MACT,

Jammu that driving license No. 1464/ARTO purported to have been issued on .10.04.2002 by the Licensing Authority Udhampur and Doda in the

name of Respondent No. 3 had in fact been issued in the name of one-Dalip Kumar and not in the name of driver of the offending vehicle i.e.

Respondent No. 3, MACT, Jammu had proceeded on considerations which were not relevant by recording that there was only one Licensing

Authority for Udhampur and Doda and later on the said Licensing Authority was bifurcated and a separate Authority for each of the districts was

established, therefore, the record pertaining to the respective districts was shifted to the office of concerned Licensing Authority and that since the address of Respondent No. 3 was of Pull Doda, therefore, record pertaining to Doda was with the Licensing Authority Doda, therefore, record pertaining to driving license could not be available with the Licensing Authority Udhampur, consequentially was not found available in the said office and that unless it was shown that the particulars of Respondent No. 3 did not tally with the record of the Licensing Authority, Doda, it could not be said with certainty that the driving license of Respondent No. 3 was fake.

8. Learned counsel for the appellant contends that the aforementioned finding is absolutely erroneous since as on 10.04.2002 i.e. date of issuance

of license, there was only one Licensing Authority for Udhampur and Doda districts with its headquarters at Udhampur and RW-Rattan Lal, Junior

Assistant ARTO, Udhampur had stated that driving license with serial number 1464/ARTO available on MACT record, stated to have been

issued in the name of Hira Lal S/o Dhyan Chand i.e. Respondent No. 3 valid from 10.04.2002 to 09.04.2005 was in fact issued in the name of

some other person i.e. Dalip Kumar. It was contended that in the circumstances, the fact that later on, the Licensing Authority was bifurcated and a

separate Authority for Doda district was established was irrelevant.

9. The submission of learned counsel for the appellant merits acceptance for once it was stated by RW-Rattan Lal, Junior Assistant ARTO,

Udhampur that driving license bearing No. 1464/ARTO purported to have been issued in the name of Respondent No. 3 on 10.04.2002 by the

Licensing Authority Udhampur and Doda was not issued in the name of Respondent No. 3 i.e. Hira Lal, but in the name of some other person,

namely, Dalip Kumar, then in that situation the fact that subsequently the Licensing Authority Udhampur and Doda were bifurcated and separate

Licensing Authority was created would not make any difference for the purpose for determining as to whether on 10.04.2002 and for the number

of license, which had been issued by the then Licensing Authority Udhampur and Doda, license had been issued in the name of Respondent No. 3

or some other person. Aforementioned aspect assumes significance in the light of Respondent. Nos. 2 & 3 having been proceeded ex-parte not

only before the MACT, Jammu but also in the instant appeals vide order dated

08.03.2013.

10. Viewed thus, the finding of the learned MACT, Jammu that the insurer-appellant failed to discharge burden of proving that the driving license

of Respondent No. 3 was fake is not sustainable. Accordingly, award of the MACT, Jammu is modified to the extent of finding with regard to the

appellant having failed to discharge burden of proving that driving license of respondent No. 3 was fake.

11. In the aforementioned background, learned counsel for the appellant contended that the award of the Tribunal in not permitting the appellant to

recover the amount of compensation payable in terms of the award from Respondent No. 2 is contrary to law settled by the Hon'ble Supreme

Court reported as (2004) 3 SCC 297 in case titled ""National Insurance Co. Ltd. v. Swaran Singh & Ors"". Relevant paragraph of the

aforementioned judgment relied upon by learned counsel is reproduced hereunder:

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(i).....

(x) Where an adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in

accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the

insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party

under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the

insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of

land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the

Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the

Tribunal.

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12. In view of the award of the MACT having been modified to the extent of finding with regard to the appellant having failed to discharge burden

of proving that driving license of Respondent No. 3 was fake, consequentially, the appellant not being liable, however, in view of compensation payable in terms of the award already having been deposited, awarded amount is directed to be released to the claimants with liberty to the appellant to recover the same from the owner of the insured bus i.e. JK08B-0291 (Temp. Veh. No. JK08B-0181) by taking out proceedings in accordance with law. Both the appeals are partly accepted to the extent noted above.