
(2020) 07 J&K CK 0061

In the Jammu And Kashmir High Court

Case No : IA No. 01 Of 2018, Miscellaneous Appeal No. 629 Of 2010

National Insurance Co. Ltd

APPELLANT

Vs

Yousaf Din And Others

RESPONDENT

Date of Decision : 17-07-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(21)

Citation : (2020) 07 J&K CK 0061

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : C.S.Gupta, Sheikh Najeeb

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1 This appeal filed by the National Insurance Company Ltd. (hereinafter referred to as the ?insurer?) is directed against the award dated 30.04.2010 passed by the Motor Accident Claims Tribunal, Jammu (hereinafter referred to as the ? Tribunal?) in claim petition No. 785/claim titled ?Yousaf Din and others vs Vinod Kumar and others? whereby respondent Nos.1 & 2 (hereinafter referred to as the ?claimants?) have been held entitled to the compensation of Rs.4,44,000/-, to be paid by the insurer along with interest @ 7.5 % per annum from the date of institution of the petition till its realization.

2. The insurer has assailed the impugned award on the sole ground that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of alleged accident.

3. On the basis of the pleadings of the parties, the Tribunal framed the following issues:-

"1. Whether an accident occurred on 15.06.2006 at Khanpur NHW near Sapru Enclave, Nagrota due to rash and negligent driving of offending vehicle No. 6415

DL5CB in the hands of erring driver in which deceased Shabir Mohammed and Bobby Khatian sustained fatal injuries ?

2 If issue No.1 is proved in affirmative whether petitioners are entitled to the compensation in each case, if so, to what amount and from whom ? OPP

3 Whether driver of offending at the time of accident driver was not holding valid and effective driving licence, if so how and what is its effect ? OPR-3

4 Relief O.P. Parties.

4. Learned counsel for the insurer submits that the offending vehicle was being driven in breach of the terms and conditions of the insurance policy, in that, driver of the offending vehicle, at the time of accident, was not holding a valid and effective driving license, therefore, the insurer is not liable to indemnify the insured. He further submits that the offending vehicle i.e Toyota Qualis was a transport vehicle and its driver was holding a driving licence to drive ?light motor vehicle? only and not for the transport vehicle, therefore, the insurer be exonerated from the liability to pay the compensation.

5. On the other hand, learned counsel appearing for the claimants, supports the impugned award and submits that the vehicle in question comes within the category of light motor vehicle and, therefore, there was no breach of terms of the policy.

6. Heard learned counsel for the parties and perused the record.

7. The only controversy involved in this matter is about the validity or otherwise of the driving licence of the driver at the time of the accident.

8. In order to deal with the submission of learned counsel for the insurer that the driver was holding a driving licence to drive ?light motor vehicle? only, it would be appropriate to reproduce Section 2(21) of the Motor Vehicles Act, 1988 which is as under:

"Light Motor Vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road roller the unladen weight of any of which, does not exceed 7500 kilograms"

"Transport vehicle" means a public service vehicle, a goods carriage, an education institution bus or a private service vehicle.

"Public Service Vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward and includes a maxicab, a motorcab, contract carriage and stage carriage"

9. Admittedly, the vehicle involved in the accident i.e Qualis is a Light Motor Vehicle with its unladen weight of 2225 kgs which is less than 7500 Kg and, therefore, in terms of provisions of Section 2(21) of the Motor Vehicles Act, 1988, a driver who holds LMV driving licence would be entitled to drive a light commercial/transport vehicle.

12. Otherwise also, the issue raised in this appeal is no longer res integra, having been decided by the Judgment of Hon?ble Supreme Court rendered in the case of Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668.

13. For the foregoing reasons, I find no merit in this appeal. The same is, accordingly, dismissed.

The amount deposited in the Registry of this Court shall be released in favour of the claimants after proper identification strictly in terms of the award of the Tribunal.