
(2008) 04 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : CIMA No. 83 Of 2006

National Insurance Co.Ltd.	Vs	APPELLANT
Manzoor Ahmad Bhat		RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Citation : (2009) JKJ 103 Supp : (2009) 1 SriLJ 379

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : J.A.Kawoosa, Advocates appearing for the Parties

Judgement

By the medium of this appeal appellantinsurer has questioned the award dated 01.08,2006 passed by Motor Accident Claims Tribunal, Srinagar,

whereby and where under the claim petition of claimants, Manzoor Ahmad Bhat & Mst. Dilshada, came to be allowed and Rs.2,40,000/ came to

be awarded as compensation.

One, Imtiyaz Ahmad Bhat aged 19 years was hit by a vehicle Tata Sumo Mini Bus bearing registration No.JK01B/1527 at Kadalbal, Pampore on

19th August, 2000, which was being driven rashly and negligently by its driver, Mohammad Yousuf Mir respondent No.6, who sustained injuries

and succumbed to injuries on spot.

Claimantparents of the deceased filed claim petition and claimed compensation to the tune of Rs.25,13,000/ as per the break up given in the

claimpetition. Driver and owners respondents 3 to 6 have not appeared before the learned Tribunal and were setexparte. Insurerappellant

contested the claim petition and following issues came to be framed:

1. Whether on 19.08.2000 respondent No.4 Mohd. Yousuf Mir while driving a

vehicle (TATA Minibus) bearing registration No.JK131527

rashly and negligently hit and injured one Imtiyaz Ahmad Bhat at Kadlabal Pampore who later on succumbed to the injuries on spot? O.P.P.

2. Whether the driver of the offending vehicle was not holding a valid driving licence and as such the Insurance Company cannot be saddled with the liability? O.P.R5.

3. In case issue No. 1 is proved in affirmative, to what amount of compensation are the petitioners entitled to, from whom and in what proportion?

O.P.P.

4. Relief.

Claimantspetitioners besides themselves examined Mohammad Shaft Bhat, Nazir Ahmad Bhat, Nazir Ahmad Rather, Manzoor AhmadInspector.

Respondents examined only two witnesses viz; Peerzada NooruddinLicensing Clerk RTO, Srinagar, and Jung Bahadur, Assistant Administrative

Officer of the appellant company. Appellantinsurer also filed application under Section 170 of the Motor Vehicles Act before the tribunalcame to

be allowed vide order dated 8th of November, 2005.

Issue No.1;

Claimants as well as their witnesses have deposed that Mohammad Yousuf Mirdriver has driven the vehicle TATA Mini Bus bearing registration

No.JK13/1527offending vehicle rashly and negligently at Kadlabal Pampore and deceased sustained the injuries and succumbed to the injuries.

FIR was lodged and Manzoor Ahmad Inspector (Investigating Officer) conducted investigation and came to the conclusion that accident was

outcome of rashness and negligence of the driver. I am of the considered view that claimants have proved by leading evidence that driver

Mohammad Yousuf Mir has driven the vehicle rashly and negligently. Thus, issue No.1 came to be rightly decided by the tribunal.

Issue No.2;

Admittedly, driverMohammad Yousuf Mir was having valid driving licence for driving vehicles of 'C' Kind. The vehicles which fall within the

category 'C' are LMV, LGV and HGV. Thus, driver was competent to drive the vehicles of the kind of LMV, LGV and HGV. It is beaten law of

the land that Tata Mini Bus falls within the category of LMV vehicles and driver

who is authorized to drive LMV is not required to have PSV endorsement in its licence.

This court in case titled National Insurance Co. Ltd. Vs. Irfan Sidiq Bhat, reported as 2004(11) SIJ 623, has held that Light Motor Vehicle

includes transport vehicle and transport vehicle includes public service vehicle and public service vehicle includes any motor vehicle used or deemed

to be used for carriage of passengers. Further held, that the authorization of having PSV endorsement in terms of Rule 4(1)(a) of the Rules is not

required in the given circumstances. It is profitable to reproduce paras 13 and 17 of the judgment herein:

13. A combined reading of the above provisions leaves no room for doubt that by virtue of licence, about which there is no dispute, both Showkal

Ahmad and Zahoor Ahmad were competent in terms of section 3 of the Motor Vehicles Act to drive a public service vehicle without any PSV

endorsement and express authorization in terms of rule 4(1)(a) of the State Rules. In other words, the requirement of the State Rules stood

satisfied.....

17. In the case of Mohammad Aslam Khan (CIMA No.87 of 2002) Peerzada NoorudUin appearing as witness on behalf of Regional Transport

Officer did say on recall for further examination that PSV endorsement on the licence of Zahoor Ahmad was fake. In our opinion, the fact that the

PSV endorsement on the licence was fake is not at all material, for, even if the claim is considered on the premise that there was no PSV

endorsement on the licence, for the reasons stated above, it would not materially affect the claim. By virtue of "C to E" licence Showkat Ahmad

was competent to drive a passenger vehicle. Intact, there is no separate definition of passenger vehicle or passenger service vehicle in the Motor

Vehicles Act. They come within the ambit of public service vehicle under section 2(35). A holder of driving licence with respect to "light motor

vehicle" is thus competent to drive any motor vehicle used or adapted to be used for carriage of passengers i.e. a public service vehicle.

18. The Division Bench of this court has also taken the same view in case titled National Insurance Co. Ltd. Vs. Muhammad Sidiq Kuchey &

Ors., LPA No. I 80/2002 decided on 27.09.2007. It has held that where driving licence authorizes a person to drive LMV, there is no need to

have authorization or endorsement in terms of Rule 4(1)(a) of State Rules. The state rules are to be read as complimentary to the Act and not in

derogation of it. Rule 4(1)(a) of the State Rules is to be read with Section 235 of Central Act.

The Apex Court also in a case National Insurance Company Ltd. V. Annappa Irappa Nesaria, 2008 AIR SCW 906 held that a driver having

licence of light motor vehicle can drive "light passenger carriage vehicle" and "light goods carriage vehicle". Thus, driver cannot be said to be not

possessing effective driving licence to drive a Matador.

Keeping in view the above discussion, the driver was competent to drive the offending vehicle and finding returned by the tribunal needs no

interference.

Issue No.3;

19. There is ample evidence on the file that deceased 19 years was a student and unmarried. Deceased was 19 years of age and at the best could

have been labourer and by guess work he could have been earning an amount of Rs.4500/ per month if taken as a labourer. However, he was a

student and may be he would have earned more than that but unfortunately his life was cut short by the road accident and thereby has brought

claimants on streets who have lost their source of hope, assistance and dependency during old age.. The compensation awarded though being on

lower side appears to be just but is not excessive or exorbitant. In the given circumstances, I am of the considered view that tribunal has awarded

just compensation. However, the Tribunal has fallen in error while awarding the interest at the rate of 9%. Thus, I deem it proper to reduce the

interest from 9% to 6%.

20. Impugned award is accordingly modified and the appeal is disposed of Registry to send down the record along with a copy of this judgment.