

(2006) 05 J&K CK 0034
In the Jammu And Kashmir High Court

National Insurance Company	Vs	APPELLANT
Abdul Rehman Dantoo and Others		RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Motor Vehicles Act, 1988 — Section 147, 149, 168

Citation : (2007) 1 JKJ 23

Hon'ble Judges : B.A. Khan, Acting C.J.; J.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.P. Singh, J.—National Insurance Company Limited is in appeal against judgment dated 3.6.2002 in CIMA No. 85/2001 passed by a

Learned Single Judge of this Court, whereby its appeal against award dated 15.6.2001 of Commissioner Under Workmen's Compensation Act,

Kashmir Division, Srinagar, was dismissed with the modification that the awarded amount would be payable only to first respondent Abdul

Rehman Dantoo.

2. Facts leading to the filing of this original side appeal of National Insurance Company Limited may be summarized thus:

One Bilal Ahmad Dantoo s/o Abdul Rehman Danloo, was driving Truck No. JKO1-A 5244 owned by Manzoor Ahmad Bhat from Jammu to

Srinagar, when it met with an accident near Keela Mode Ramban on 11.4.1997, resulting in instantaneous death, of the driver.

3. First respondent and other dependants of the deceased driver filed a claim petition before Motor Accidents Claims Tribunal, Srinagar, arraying

Manzoor Ahmad Bhat and appellant-company as party respondents. This petition

was, however, dismissed on 7.9.1999 holding that the claims Tribunal did not have jurisdiction to entertain the claim petition.

4. The Claimants thereafter moved Commissioner under Workmen's Compensation Act 1923 vide their claim petition bearing No. 183/WC, seeking compensation from the owner and insurer of the vehicle.

5. Commissioner under Workmen's Compensation Act Kashmir recorded evidence of the parties and vide his award dated 15.6.2001, issued a direction to the National Insurance Company through its Divisional Manager to make payment of the awarded amount within a period of 30 days.

This award was in addition to amount of Rs. 50,000/- which had been received by the claimants before the 'Motor Accidents Claims Tribunal'

Srinagar, which had ultimately ruled that the Tribunal did not have jurisdiction to entertain the claim petition.

6. Aggrieved by the award of Commissioner under Workmen's Compensation Act, appellant-Insurance Company filed CIMA No. 85/2001 in

this Court. The Learned Single Judge of this Court, vide his judgment dated 3.6.2002, rejected the submissions of the appellant - Insurance

Company that the driver of the vehicle did not hold an effective and valid driving licence and that claim petition was not maintainable before

Commissioner under Workmen's Compensation Act after the dismissal of claim petition by Motor Accidents Claims Tribunal, Srinagar. Learned

Single Judge, however, non-suited respondents 2 to 4 in the appeal on the ground that they were not dependants on the deceased driver.

7. Aggrieved by the award of Commissioner under Workmen's Compensation Act and Judgment of the Learned Single Judge in CIMA No.

85/2001, appellant has come up in this Original Side Appeal before us.

8. Shri Javed Ahmad Kawoosa, Learned Counsel for the appellant Insurance Company, submits that the company had produced sufficient

evidence to prove that the driver of the vehicle in question did not have a valid Driving Licence at the time of the accident. His grievance is that the

Commissioner Workmen's Compensation Act and the Learned Single Judge have erred in recording a finding that the Company had failed to

prove that the licence was fake. Further submission of Learned Counsel for the appellant is that after the dismissal of claim petition of the

respondents by Motor Accidents Claims Tribunal, Srinagar, no further petition

would lie before Commissioner under Workmen's Compensation

Act. Shri Kawoosa additionally urged that observation of the Learned Single Judge that the insurer must first pay and then recover from the owner

of the vehicle, was not correct position of law.

9. Shri Mohamad Amin Tibatbakal, Learned Counsel for the claimant, submits that the finding of fact recorded by the two forums cannot be

assailed by the Company in this original side appeal, because right of appeal against an award under Workmen's Compensation Act, is not

absolute and is rather circumscribed by the provisions of Section 30 of the Act which permits an appeal against an award of the Commissioner

under the Workmen's Compensation Act 1923 only, if the case involved a substantial question of law.

10. We have considered the submissions of Learned Counsel for the parties. Appeal against an award under the Workmen's Compensation Act

1923, is not a regular appeal on facts. It on the other hand is an appeal on a substantial question of law. This substantial question of law, must

appear from the pleadings of the parties or from the award sought to be impugned in the appeal. We, however, don't find any substantial question

of law contemplated by first proviso to Section 30 of the Workmen's Compensation Act 1923 having been raised either before the appellate court

or before us. All that the appellant questions, is the factual finding recorded by the forums holding that the appellant had failed to prove, as a fact,

that the deceased driver was not holding a valid driving licence at the time of the accident. Although, an Appellate Court, under the Workmen's

Compensation Act as observed above, does not hold any power to go into the facts, yet in order to do complete justice, we went through the

records of the Commissioner under Workmen's Compensation Act to satisfy ourselves as to whether or not the appellant company had led any

such evidence on the basis whereof a finding could be recorded that the licence held by the deceased driver was fake. We, however find that

appellant Insurance Company had not succeeded in discharging its initial burden of proof to prove that the driver of the vehicle did not hold a valid

Driving Licence at the time of the accident. Although Insurance Company had produced some evidence but that evidence in our opinion was not

sufficient to record a positive finding that the licence held by the driver was a

fake licence. We thus could not find any material to disturb the finding of the fact recorded by the two forums.

11. We are not impressed by submission of Shri Kawoosa that the first Appellate Court was not right in observing that the Insurance Company

must first pay and then recover it from the owner if it could prove that the licence held by the driver was fake. It now stands settled in view of

various Judgments of Supreme Court of India that in terms of Section(s) 147 and 149 of the Motor Vehicles Act 1988, an Insurer is required to

first satisfy the Award/Judgment and then recover it from the owner in case it was able to prove that it could avoid its liability on proof of one or

the other factors contemplated by law which would absolve it of its liability to indemnify the owner. It would be profitable to refer to National

Insurance Co. Ltd. Vs. Baljit Kaur and Others, , where their Lordship of the Supreme Court held as follows:

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the

decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair

and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect, The Tribunal as also the High Court

had proceeded in terms of the decision of this Court in Satpal Singh . The said decision has been overruled only in Asha Rani. We, therefore, are

of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant,

if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the

insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the

subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the

aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof, it is not only

entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or

severally but also the dispute between the insurer on the one hand and the

owner or driver of the vehicle involved in the accident in as much as can be resolved by the Tribunal in such a proceeding.

12. We further find that view taken by Learned Single Judge that the dismissal of Claim Petition by the Claims Tribunal on the ground of lack of

jurisdiction would not debar the claimant from seeking any other remedy available to him under law in force in the State is sound in law. Filing of a

claim petition by the dependants of deceased Driver, was a remedy which the Workmen's Compensation Act 1923 provides to the dependants of

the deceased employee. Dismissal of the petition of the dependants on the ground of lack of jurisdiction by MACT does not deprive the

dependants of the remedy which statute provides to them.

13. For all what is said above, we do not find merit in this appeal, which is accordingly dismissed with costs quantified as Rupees five thousand

(Rs. 5000/-).