

(2023) 07 J&K CK 0023
In the Jammu And Kashmir High Court
Case No : CMAM No.173 Of 2012

National Insurance Company

APPELLANT

Vs

Jigmet Kunzang And Others

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Citation : (2023) 07 J&K CK 0023

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Areeb Kawoosa

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. Nobody has been appearing on behalf of the respondents in this case for quite some time, as such, they are set ex parte.
2. Through the medium of instant appeal, the appellant has challenged award dated 28.06.2012, passed by Motor Accidents Claims Tribunal Leh Ladakh (hereafter for short "the Tribunal"), whereby respondent No.1/claimant has been held entitled to compensation for an amount of Rs.10,24,000/- to be payable by the appellant/Insurance Company.
3. It appears that on 25.04.2009, respondent No.1/claimant was travelling in a vehicle bearing registration No.JK10-2153 from his school at Leh to his native village Shang. On reaching Choglamsar near State Bank of India, the vehicle in question came in close contact with a rashly and negligently driven tipper bearing registration No.JK10-2215, as a result of which respondent No.1/claimant received grievous injuries to his elbow and his right hand had to be amputated, resulting in his permanent disability to the extent of 70%. Respondent No.1/Claimant was a student of 9th class at the relevant time. On the basis of these facts respondent No.1/claimant filed a claim petition before the

Tribunal claiming compensation from the owner, driver and insurer of the vehicle bearing registration No.JK10-2215 as also from the owner, driver and insurer of the vehicle bearing registration No.JK10-2153.

4. The owner and driver of the vehicle bearing No.JK10-2215 did not contest the claim petition and infact the driver was deleted from the array of parties. The owner and driver of other vehicle bearing No.JK10-2153 filed their objections and contested the claim petition. The appellant-Insurance Company also contested the claim petition by filing its objections. On the basis of the pleadings filed by the parties, the following issues were framed:-

"1. Whether petitioner suffered the injury leading to the amputation of his right hand causing 70% of disability in an accident which took place at Choglamsar on 25.04.2009 at 3.45 PM due to the rash and negligent driving of the vehicles bearing registration no.JK10-2215 and JK10-2153?...OPP

2. Whether petitioner spent Rs.1.50 lacs on his treatment?...OPP

3. If issues 1 and 2 are proved in affirmative, to what amount of compensation is the petitioner entitled ?... OPP "

5. The learned Tribunal, after recording the evidence of the claimant, came to the conclusion that the accident had taken place due to rash and negligent driving of vehicle No.JK 10-2215. It was also found by the Tribunal that respondent No.1/ claimant was entitled to compensation of Rs.1,50,000/- on account of expenses on medical treatment and a further amount of Rs.8,74,000/- under other heads like loss of earning, expenses on special diet, pain and sufferings, loss of amenities of life and cost of future treatment.

6. The appellant-Insurance Company has challenged the impugned award primarily on the ground that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident and that this aspect of the matter has not been considered by the learned Tribunal. It has been also contended that the compensation awarded by the Tribunal is on a higher side and that the Tribunal was not justified in awarding penal interest in favour of the claimant.

7. I have heard learned counsel for the appellant and perused the impugned award, the grounds of appeal and record of the Tribunal.

8. So far as the ground regarding validity of the driving license of the offending vehicle is concerned, it is to be noted that the appellant/ Insurer had specifically pleaded before the Tribunal that it is not liable to pay any compensation to the claimant, unless it is proved that the driver of the vehicle involved in the accident was holding a valid driving license at the time of the accident.

9. The learned Tribunal has in its impugned award made observation that the offending vehicle was being plied by respondent No.4, who was holding a valid driving license and, as such, the appellant/Insurance Company is liable to pay

compensation. This observation of the learned Tribunal is factually incorrect for the reason that respondent No.4 before the Tribunal was driver of vehicle bearing No.JK10-2153 and not driver of offending vehicle i.e Tipper bearing No.JK10-2215. While deciding issue No.1, the Tribunal has clearly arrived at the conclusion that the accident was caused due to the rash and negligent driving of Tipper bearing No.JK10-2215 by its driver so it is the validity of the driving licence of driver of Tipper bearing No.JK10-2215 which is relevant for determining the issue as to whether or not there has been any breach of policy condition that would entitle the appellant/Insurance Company from being exonerated of its liability to pay compensation to the claimant. Validity of driving license of driver of other vehicle involved in the accident i.e vehicle bearing No.JK10-2153 in the facts and circumstances of the case is not relevant to the issue for the reason that the accident is not attributable to the negligence of driver of the said vehicle.

10. The learned Tribunal has missed this important aspect of the matter. It appears that the learned Tribunal has neither framed any issue as regards the validity of the driving license of the driver of the offending vehicle nor has it given an opportunity to the insurer and owner of the offending vehicle to lead any evidence on this issue. As a result of this, liability of satisfying the award has been fastened upon the appellant insurer without determining the question regarding validity of the driving license of the offending driver, thereby rendering the impugned award unsustainable under law to this extent.

11. That takes us to the adequacy of quantum of compensation that has been awarded by the Tribunal in favour of the claimant. It has come in the evidence on record that the claimant who was a student of 9th Class, due to the accident, lost his right hand, thereby rendering him disabled to the extent of 70%. Having regard to the extent of disability suffered by the claimant, that too at a tender age, and keeping in view the expenses that he may have incurred in getting himself treated at places outside the UT of Ladakh, the amount of compensation awarded by the Tribunal in his favour can by no stretch of imagination be termed as exorbitant or on higher side. The argument of learned counsel for the appellant in this regard is without any merit.

12. So far as contention of the appellant that penal interest has been levied on awarded sum by the Tribunal is concerned, the same is also without any substance. A perusal of the impugned award reveals that the Tribunal has not awarded any interest to the claimant for the period the claim petition remained pending before it. Instead the Tribunal has given one month's time to the appellant/Insurer to pay the amount of compensation to the claimant and it has been provided that if the award is not satisfied within the aforesaid period, the same would carry interest @8% per annum. So no penal interest has been awarded by the Tribunal. What the Tribunal has awarded is only future interest. Even interest pendent lite has not been awarded by the Tribunal. The contention of the appellant is, therefore, without any merit.

13. In view of the foregoing discussion, the impugned award to the extent of quantum of compensation and the interest awarded by the Tribunal in favour of the claimant is upheld. However, the impugned award, to the extent it fastens liability to satisfy upon the appellant Insurance Company, is set aside. In this behalf the case is remanded to the learned Tribunal with a direction to frame an issue as regards validity of the driving license of the offending vehicle bearing No.JK10-2215 and to allow the appellant as well as the owner of the offending vehicle opportunity of leading evidence as also of hearing. After deciding the issue regarding validity of the driving license, the Tribunal shall pass a fresh direction as regards the liability relating to payment of compensation. The appeal stands disposed of.

14. Record of the trial Court alongwith a copy of this judgment be sent to the Tribunal.