

(2004) 10 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : CIMA Nos. 47/1998, 109 Of 1999, 39 Of 2002, 41 Of 2002, 38 Of 2002, 40 Of 2002, 32 Of 2003 and 59 Of 2003

National Insurance Company

APPELLANT

Vs

Shah Mali and other connected petitions

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 3

Citation : (2005) 2 SriLJ 580 : (2005) SriLJ 580

Hon'ble Judges : R.C.Gandhi, J

Bench : Single Bench

Advocate : P.S.Ahmad, M.Y.Bhat, M.H.Attar, M.Amin, M.A.Makhdoomi, J.A.Kawoosa, B.A.Wani, B.A.Bedar, Advocates appearing for the Parties

Judgement

1. The appellant in these appeals has challenged the award of the Motor Accident Claims Tribunal on common legal grounds. These appeals have

been consolidated and are being disposed of by common order having involved common questions for adjudication.

2. As a result of the accident the claimants filed their Claim Petitions before the respective Tribunals having the jurisdiction. The Tribunal awarded

the compensation, on appreciation of the evidence and the law relating to the facts of the MACT claim petition. While awarding compensation to

the claimants/victims, the Tribunal also allowed interest @9% and 12% in various Claim Petitions.

3. Appellant has challenged the award of the Tribunal mainly on the ground that the driver at the time of the accident possessed a light motor

vehicle licence was not in law authorized for plying a Public Service Vehicle, as the said driving licence was not duly endorsed by the Licensing

Authority to drive such vehicle. The finding of the tribunal is that the driver having a light motor vehicle licence do not require the endorsement by

the Licensing Authority to ply Public Service Vehicle as the licence impliedly contains the authorization of driving a Public Service Vehicle. The

appellant relying upon Rule 4 of the J and K Motor Vehicles Rules, 1991 has challenged the legality and correctness of the finding of the Tribunal.

The appellant has also challenged the award of interest by the Tribunal beyond 9% on the awarded amount. Direction of the Tribunal issued in

some of the claim petitions if the award is not satisfied within a period of three months or so, the appellant shall be liable to pay 12% interest till

realization has also been challenged. Another ground set out in the appeal by the appellant is that the claimants have been awarded compensation

for shock, pain and consortium etc., by the Tribunal which could not have been granted, keeping in view schedule II of the Motor Vehicle Act,

1988 and thus is without jurisdiction.

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

5. Learned counsel for the Claimants/victims in whose favour the Tribunal has passed the award on account of consortium, shock and pain, mental

inconveniencies etc. has agreed at the bar that they do not press for that award/claim. On their admission the award of the Tribunal to that extent

shall stand modified.

6. The legal ground contested at the bar by the parties is with regard to not having the endorsement, on the licence authorizing the driver to drive

light motor vehicle license or heavy transport vehicle licence issued by the competent authority. The specific plea urged is that unless the Licensing

Authority records an endorsement on the Driving Licence issued authorizing to ply Light Motor Vehicle or Heavy Motor Vehicle, to the extent to

ply the Public Service Vehicle, the Driver, being not authorized, cannot ply Public Service Vehicle and for such action of the driver and the owner,

the appellant is not liable to indemnify the Claim.

7. Mr. J. A. Kawoosa, learned counsel for the appellant, relying on Rule 4(l)(a) of the J and K Motor Vehicle Rules, 1991 framed under the

Motor Vehicle Act, 1988, has submitted that the driver having a light motor vehicle licence or heavy transport vehicle licence is not authorized to

drive Public Service Vehicle without having any endorsement recorded by the

competent authority on the said license to drive Public Service

Vehicle which carries the passengers. The respondents to controvert this plea has relied upon the judgment of the Supreme Court reported in AIR

1999 SC 3181 with a view to impress upon the Court that it is not the licence but the weight of the vehicle which determines the nature of the

vehicle and, therefore, the driver having light motor vehicle licence has not to meet the requirement of an endorsement as pleaded by the appellant.

8. Before dealing with these submissions it will be apt to advert to the relevant provisions of law. Section 2(10), 5.3 of Motor Vehicle Act and

Rule 4(1) (a) of 1991 Rules relevant for the purposes are extracted below:

2(10) ""Driving License"" means the license issued by a competent authority under Chapter II authorizing the person specified therein to drive,

otherwise obtain as a learner, motor vehicle or motor vehicle of any specified class or description.

Sec:3. Necessity for driving license.(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued

to him authorizing him to drive the vehicle; he holds an effective driving licence issued to him authorizing and no person shall so drive a transport

vehicle other than a motor cab or a motor cycle hired for his own use or rented under any scheme made under subsection (2) of Sec.75 unless his

driving licence specifically entitles him so to do.

Rule 4. ""authorization to drive public service vehicle.

CD (a) No person shall drive a public service vehicle unless an authorization in the form aforesaid by the Central Government has been granted or

countersigned by a licensing authority in the State.

9. The licencing authority under the Motor Vehicle Act has the jurisdiction to issue light motor vehicle and heavy motor vehicle licence which are in

issue in these appeals. Claimants are the victims of an accident wherein plying public service vehicle driven by a driver possessed of a Licence to

drive Light Motor Vehicle is involved.

10. The point for consideration is as to whether the driver possessing light motor vehicle licence or heavy motor vehicle licence, heavy transport

vehicle licence Can drive public service vehicle, also without any endorsement recorded on the licence by the licencing authority, as stipulated by

Rule 4(i) (a) of the Rules.

11. While dealing with such a plea, the Supreme Court in case Ashok Gangadhar Maratha Vs. Oriental Insurance Co. Ltd. reported in AIR 1999

SC 3181 observed as under:

In the present case, the insurer alleged that the appellant had committed breach of the terms of the insurance policy and had violated the

provisions of the Act by entrusting a "transport vehicle" to a person who did not hold a valid licence and the insurer was, not liable to indemnify

appellant. Under the policy firstly light motor vehicle meant the gross weight of which did not exceed 6,000 kilograms and secondly against the

column "driver" the policy stated.

Drivers clause: Person or classes of persons entitled to drive any person including the insured.

Provided that a person driving holding an effective driving licence at the time of accident and is not disqualified from holding or obtaining such a

licence.

Provided also that if a person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time

of the accident and that such a person satisfy the requirements of Rule 3 of the Central Motor Vehicle Rules, 1999.

Now the vehicle in the present case weighted 5,920 kilograms and the driver had the driving licence to drive a light motor vehicle. It is not that,

therefore, that insurance policy covered a transport vehicle which meant a goods carriage. The whole case of the insurer has been built on a wrong

premise. It is itself the case of the insurer that in the use of the light motor vehicle which is a non transport vehicle, there was no statutory

requirement to have specific authorization on the licence of the driver under form 6 under the Rules. It had, therefore, to be held that Jadhav was

holding effective valid licence on the date of accident to drive light motor vehicle bearing registration No. KA28567.

12. The Himachal Pradesh High Court while dealing with such plea did not hold the appellant liable to indemnify the claim where the licence does

not contain the endorsement of authorizing him to drive public service vehicle. The court in case New India Assurance Co. Ltd. Vs. Suraj Prakash,

reported in AIR 2000 HP 91 held as:

Sec. 3 (1) of the Motor Vehicles Act, 1988 stipulated that no person shall drive a motor vehicle in any public place unless he holds an effective

driving licence issued to him to drive the vehicle and that no person shall so drive a transport vehicle [other than a motor cab or motor cycle] hired

for his own use or rented under any scheme made under section 75 (2) of the Act, unless his driving licence specifically entitled him so to do.

Section 2(47) defines transport vehicle to mean a public service vehicle, a goods carriage, an educational institutions bus or a private service

vehicle. Therefore, the vehicle in question answer the description of public service vehicle even on the materials disclosed on record. The

conclusion of the Tribunal below to the contra is indicative of non application of mind to a valid and relevant piece of material on record. In as

much as Ex.R1 driving licence does not contain any specific endorsement to drive a transport vehicle, the driver who drove the vehicle at the time

of accident must be held to be not possessed of a valid and effective driving licence. The mandatory requirement of Sec. 3(1) having not been

satisfied by the driver, in not holding a licence to drive with a specific endorsement to drive the transport vehicle (public service vehicle) such a

conclusion has become inevitable on the facts of the case.

The reliance placed upon the decision reported in AIR 1999 SC 3181 (1999) 6 SCC 620 (supra) by the respondents is of no avail. Their

Lordships of the Apex Court in that case arrived at the conclusion to hold the Insurance Company liable only on account of the peculiar facts of

the case in that there was neither any evidence therein nor was there any claim for the insurer that the vehicle concerned therein was having a

permit for goods carriage or that it had a permit or authorization for plying the vehicle as transport vehicle.

13. The driver authorized by the licencing authority to drive a particular class of vehicle can drive the said particular vehicle in law. While framing

rules under the Act, specific care has been taken in this respect and for this purpose rule 4 has been framed and incorporated in the Rules. Rule 4

is mandatory in character as the word ""shall"" has been used. It envisages that no person shall drive the public service vehicle unless an authorization

has been granted by the Central Government or countersigned by the licencing authority in the State.

14. It qualifies that if an authorization has not been granted, the driver is not authorized to drive Public Service Vehicle. If the finding of the Tribunal is accepted, the mandate of this law contained in Rule 4 would become redundant. Licence to drive the heavy goods vehicle does not authorize the driver to drive public service vehicle unless there is an endorsement recorded thereon in terms of Rule 4 (supra). The driving licence has reference to the particular transport vehicle. The finding of the Tribunal when touched on this touch stone if law, cannot be maintained. It is, therefore, held that the driver for plying public service vehicle should hold a licence with the authorization recorded on the Licence either by the Central Government or by the licencing authority in the State to drive Public Service Vehicle. In these cases the drivers are not holding such licences.

Therefore, the findings of the Tribunal to that extent deserves to be set aside.

15. The aforesaid observation gave rise to a situation, whether the appellant is liable to pay the award amount to third party. This point has been settled by the Supreme Court in the case ""National Insurance Co. Ltd. v. Swaran Singh reported in AIR 2004 SC 1531. The conclusion drawn at para 99 reads as:

It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver therefore has been holding the field for a long time.

16. The insurance company is liable to satisfy the award of the Tribunal and thereafter, entitled to recover the loss from the owner after having proved before the Tribunal, the breach of the policy condition on the part of the insured concerning the policy with regard to holding of a valid driving licence as pronounced by the Apex Court in the summary of findings, in the same case National Insurance Co. Ltd. vs. Swaran Singh, at

Para 105 which reads as:

(iii). The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of

Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving

licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the

insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licenced driver or one who was not disqualified to drive at the relevant time.

(vi). Even where the insurer is liable to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply within "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

17. Another plea of Mr. Kawoosa, learned counsel for the appellant is that the award of interest beyond 9% awarded by the Tribunal is against the mandate of law and beyond the pale of controversy as settled by the Supreme Court in case "Smt. Kaushnuma Begum and Others v. The New Indian Insurance Co. Ltd. and Others" reported in JT 2001 (1) SC 375, wherein it is held that:

Earlier 12% was found to be the reasonable rate of simple interest. With a charge in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalized Banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.

18. The interest awarded beyond 9% per annum being contrary to the judgment (supra) deserves to be set aside and is accordingly set aside. The claimants are entitled to interest @9% per annum till realization of the award.

19. The observations made by the Tribunal that in case the amount is not deposited within the specified period, the enhanced rate of interest shall be applicable, such imposition upon the appellant amounts to penal interest which has not been approved by the Supreme Court in its judgment delivered in case "National Insurance Co. Ltd. vs. Keshav Bahadur" reported in

AIR 2004 SC 1581. [he finding of the Tribunal of award of

interest if the amount is not deposited within the stipulated period, is set aside.

20. For the aforesaid reasons these appeals are allowed with the following directions:

1. The award disputed on account of shock, pain, mental inconvenience and consortium are set aside to that extent.

2. The Driver is not authorized to drive the Public Service Vehicle in contravention to Rule 4 (i) (a) of the Rules.

3. The claimants shall be entitled to interest @ 9% per annum till realization of the award.

4. The Appellants will satisfy the award as modified.

21. The claim petitions are remanded to the Tribunal with liberty to prove the breach of policy conditions as observed above for recovery of the

loss from the owner. No order as to costs.