(2023) 03 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : CMAM No. 11 Of 2015

National Insurance Company Limited — APPELLANT

Vs

Imran Khan And Ors — RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 337
Motor Vehicles Act, 1988 — Section 16, 165

Citation : (2023) 03 J&K CK 0002

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Aatir Javid Kawoosa, Sajad Ashraf

Final Decision : Disposed Of

Judgement

Vinod Chatterji Koul, J

1. Impugned in this Appeal is Award dated 19th June 2014, passed by Motor Accident Claims Tribunal, Srinagar, (for short "Tribunal") on a Claim Petition bearing File no. 55/2007 titled Imran Khan. v. National Insurance Company Limited and Ors., directing appellant Insurance Company to pay compensation of Rs. 2.00 lacs along with 6% interest from the date of institution of claim till realization, on the ground that driver of offending vehicle was not holding valid and effective driving licence at the time of accident.

2. Perusal of file reveals that a claim petition was filed by claimant/respondent no.1 before the Tribunal on 31st March 2007, averring therein that he was a mechanic by profession and when he was at his workshop situated at Lasjan, respondent no.3 came there along with his vehicle bearing Registration No. Jk04A-0942 who want to get his vehicle checked which had some problem in the break. The driver parked the vehicle in the workshop and went for taking tea with instructions to respondent no.1 herein to immediately adjust/effect necessary repairing of the breaks in the vehicle. The respondent no.1 while

making necessary adjustment of breaks laid down himself beneath the parked vehicle, the driver of the vehicle, respondent no.3 rashly and negligently drive the vehicle over the lower part of abdomen of the respondent no.1 leading to multiple injuries to his body. The police while taking the cognizance of the occurrence has registered a case at Police Nowgam under FIR No. 07/2007 for offences under Section 279, 337 RPC. The photocopy of FIR is on the file which, however, reveals that the accident has taken place at near Lasjan when the Tanker bearing Registration No. JK04A/0942, which is the offending vehicle herein had got struck with the respondent no.1 who was walking on one side of the road.

3. Respondent no.1 while claiming the compensation have claimed that he has undertaken training as motor mechanic at Delhi. Initially, he was working at Roshan Ara Road with one Shamshad Mistri for a period of eight years. Thereafter, he has come to Srinagar and working as owner of Star Service Station popularly known Rafiq Pump Wala at Srinagar. The respondent no.1 was getting Rs. 12000/-per month as his salary. He had been working with the firm from 2000 to 2002. In the year 2003, he started his own business of spare-parts there. Due to accident, the respondent no.1 is unable to do any work. He is neither able to move nor sit or walk affectively. He was hospitalized for the injuries which he has suffered and has claimed the compensation on account of Hospitalization, Medication, shock trauma of Rs.63,63000/- along with interest.

4. Appellant Insurance Company resisted the claim petition before the Tribunal on the ground that driver of the offending vehicle was not holding valid driving license at the time of accident.

5. The Tribunal, in view of pleadings of parties, framed following Issues for determination, which are:

1. Whether on 25.01.2007 Irshad Ahmad Mir respondent no.3 had come to the mechanic shop of the petitioner for repairs of the brakes of the offending vehicle No. JK04A-0942 and while the petitioner was engaged in the process of adjustments, the driver rashly and negligently drew the vehicle as a result of which petitioner sustained multiple grievous injuries rendering him permanently disabled ? OPP

2. Whether the driver/respondent no.3 of the offending vehicle was not holding valid and effective driving license to driver the crime vehicle and the offending vehicle was without valid R/P and other vehicular documents on the date of accident so no liability can be saddled on the company because the insured has breached policy stipulations ?..OPR

3. In case issue no.1 is proved in affirmative, to what amount of compensation the petitioner is entitled to, from whom and in what proportion ?...OPP

6. Claimant produced and examined three witnesses before the Tribunal; besides claimant/respondent no.1. Appellant Insurance Company produced and examined

two witnesses in support of its stand. In terms of impugned Award, the Tribunal found claimant/respondent no.1 entitled to receive compensation of Rs. 2.00 lacs along with 6% interest from the date of institution of claim till realization.

7. Heard and considered.

8. Perusal of file as also impugned Award reveal that appellant Insurance Company produced two witnesses in support of its stand, namely, Harish Raina Legal Administrative Officer of appellant-Insurance Company and Abdul Rashid Kanth, Licensing Clerk of ARTO Office Pulwama. Before the Tribunal, the driver of the offending vehicle was Irshad Ahmad Mir S/o Mohammad Ismail Mir R/o Lasjan (respondent no.3 herein). The Tribunal while deciding Issue no.1 with reference to occurrence in question has found that accident took place due to negligence of driving of offending vehicle, namely, Irshad Ahmad Mir. It is made mention of by the Tribunal that essential requirement under Section 165 of the Motor Vehicles Act is that there must be an accident and accident must be an outcome of use of motor vehicle, which stands otherwise proved and is sine qua non for filing a claim petition under Section 16 of the Act. The driver of offending vehicle as the record, particularly impugned Award, would show is respondent no.3 (Irshad Ahmad Mir), who showed his driving licence bearing no.2014/MVD/PK, purportedly issued by licencing authority at Pulwama. The Licensing Clerk of the ARTO Pulwama, namely, Abdul Rashid Kanth, was produced and examined by appellant-Insurance Company, who deposed and stated that the licence in question was not in the name of respondent no.3 but in the name of some Irfan Ahmad Taja S/o Nissar Ahmad Taja R/o Nai Basti, and thus, a fake one. Notwithstanding this proved fact, the Tribunal has passed impugned Award, saddling appellant Insurance Company with the liability of paying compensation without giving it right of recovery. Thus, impugned award is liable to be set-aside to the extent of above.

9. The question, whether Insurance Company can be and ought to be directed to pay claim amount, with liberty to recover the same from the owner/driver of the vehicle, has been answered by the Supreme Court in National Insurance Company Ltd v. Swaran Singh and others (2004) 3 SCC 297, and reiterated in Pappu and others v. Vinod Kumar Lamba and others, (2018) 3 SCC 208. The Supreme Court has held that even if insurer succeeded in establishing its defence, the Tribunal or the Court could direct Insurance Company to pay the award amount to claimant and, in turn, recover the same from owner of vehicle. The three-Judge Bench of the Supreme Court in Swaran Singh (supra), after analysing earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle.

10. For the reasons discussed above, the instant appeal is allowed and the Award dated 19th June 2014, passed by Motor Accident Claims Tribunal, Srinagar, on a Claim Petition bearing File no. 55/2007 titled Imran Khan. v. National Insurance Company Limited and others, to the extent of issue no.2 (viz. Whether the driver/respondent no.3 of the offending vehicle was not holding valid and effective

driving license to drive the crime vehicle and the offending vehicle was without valid R/P and other vehicular documents on the date of accident so no liability can be saddled on the company because the insured has breached policy stipulations) is set-aside.

11. Appellant Insurance Company shall pay, if not already paid, award amount along with interest as given by the Tribunal, to claimant/respondent. However, appellant Insurance Company shall have a right to recover the same from owner of offending vehicle.

12. Disposed of in terms of above.

13. Record of the Tribunal, if summoned/received, be sent down along with copy of this judgement.