(2021) 02 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : MA No. 80 Of 2018

National Insurance Company Limited — APPELLANT

Vs

Mohammad Iqbal Bhat And Others — RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Citation : (2021) 02 J&K CK 0003

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : J.A.Kawoosa, Areeb Kawoosa, M.Ayoub Bhat

Final Decision : Dismissed

Judgement

1. Impugned in this Appeal is Award dated 8th August 2019, given by Motor Accident Claims Tribunal, Anantnag (â??Tribunalâ? for short), on a

claim petition, bearing Claim no.18/2017, titled Mohammad Iqbal Bhat and others v. Waaseem Khan and another, directing appellant Insurance

Company to pay compensation in the amount of Rs.21,40,000/- to the claimants, with right to recover the same from owner of offending vehicle, on

the grounds made mention of therein.

2. Heard and considered.

3. A claim petition, as is discernible from perusal of file, was filed by claimants â?" respondents 1 to 5 herein, before the Tribunal, stating therein that

due to vehicular accident occurred on 26th April 2017, at Kasa Garden Village Dhilwa, one Talib Iqbal alias Asif Iqbal son of Mohammad Iqbal Bhat

resident of Akingam, Kokernag, suffered grievous injuries in his head and subsequently died. On presentation of claim petition, notices were issued

upon respondents. Appellant Insurance Company appeared and submitted its objections. However, Owner/driver - respondent no.2, is said to have not

chosen to contest claim petition and was, accordingly, set ex parte.

4. The Tribunal, given pleadings of parties, framed following issues for adjudication:

1) Whether on 26.04.2017 the deceased namely Talib Iqbal alias Aasif Iqbal, while travelling along with colleagues in a vehicle (Auto) bearing

registration no.PB-65H-6788 towards Mohallai, the vehicle turned down tot eh left side in a ditch at Kasa Garden, village Dhilwa, which was being

driven rashly and negligently by respondent no.1 (driver/owner) as a result whereof deceased sustained critical injuries on his head who succumbed to

his injuries at Civil Hospital, Samrala? OPP

2) In case issue no.1 is decided in affirmative then whether petitioners are entitled for compensation, if so, to what extent and from whom? OPP

3) Whether respondent no.1, i.e., driver cum owner of offending vehicle was not having valid and effective D/L and owner knowing about it had

engaged and permitted him to ply the offending vehicle and thereby committed breach of policy conditions? OPR3

4) Relief?

5. Claimants produced and examined two witnesses, besides claimant no.1. Appellant Insurance Company produced one witness.

6. The Tribunal, while adjudicating upon Issue no.1 as regards vehicular accident and cause of death, and making elaborate discussion, decided it in

favour of claimants and against respondents before it.

7. Issue no.2 pertained to computation and entitlement of compensation, which was also decided in favour of claimants and respondents there.

8. Onus of proving Issue no.3 qua validity of driving licence, was upon appellant Insurance Company. It produced before the Tribunal a photocopy of

licence that according to it was that of owner/driver of offending vehicle. Appellant claims to have got driving licence of owner/driver of offending

vehicle verified from RTO Mohali, who reported that the same was found as genuine. The witness, namely, Owais Nazir Wani, Legal Assistant NIC,

produced by appellant Insurance Company in support of its stand, is stated to have deposed that driver of offending vehicle was having a licence,

which was learnerâ??s licence. Taking into account statement of witness of appellant Insurance Company, the Tribunal held that driver of offending vehicle was not having an effective licence at the time of accident, and accordingly decided Issue no.3 in favour of insurer. It may be added here that

driver/owner of offending vehicle had been set ex parte by the Tribunal as he did not choose to appear before the Tribunal to defend himself.

9. Submission of learned senior counsel for appellant Insurance Company is that driver/owner of offending vehicle was not having valid driving licence

and, therefore, liability to pay ought to have been fastened upon him directly and not upon appellant Insurance Company and that Tribunal ought to

have directed owner of vehicle to furnish security for entire amount before release of amount and offending vehicle should have also been attached as

a part of security. Such submission of learned senior counsel for appellant is misconceived and baseless. 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. On the contention of Insurance Company that once the defence taken by insurer is accepted by

Tribunal, it is bound to discharge insurer and fix liability only on owner and/or driver of vehicle, the Supreme Court held that even if insurer succeeds in

establishing its defence, the Tribunal or the Court can direct insurance company to pay award amount to claimant(s) and, in turn, recover the same

from owner of vehicle. The three-Judge Bench of the Supreme Court in Swaran Singh (supra), after analysing the earlier decisions on the point, held

that there was no reason to deviate from the said well-settled principle. Having said that, impugned Award does not warrant any interference and as a

corollary thereof, Appeal on hand is liable to be dismissed.

10. For the reasons discussed above, the Appeal on hand is dismissed with connected CM(s). Interim direction, if any, shall stand vacated.

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