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(2021) 05 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : MA No. 84 Of 2018

National Insurance Company Limited — APPELLANT

Vs

Sitara Begum And Ors — RESPONDENT

Date of Decision : 20-05-2021

Acts Referred:

Citation : (2021) 05 J&K CK 0042

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : J. A. Kawoosa, Areeb Kawoosa, M. Altaf Khan

Final Decision : Disposed Of

Judgement

1. Impugned in this Appeal is Award dated 17th September 2018, passed by Motor Accident Claims Tribunal, Srinagar, (for short â??Tribunalâ??) on a

Claim Petition bearing File no. 134 of 2011 titled Mst Sitara Begum and others v. Khursheed Ahmad Nala and others, directing appellant Insurance

Company to pay compensation in the amount of Rs. 5,75,104/-along with 6.5% interest per annum from the date of institution of claim till realization,

on the grounds made mention of therein.

2. A claim petition, as is discernible from perusal of the file, was filed by respondent nos. 1 to 3 before the Tribunal on 6th May 2011, averring therein

that Mohammad Yousuf Bhat S/o Abdul Samad Bhat R/o Dumdulla, Yaripora, Kulgam, aged 50 years, died in an accident, which took place on 15th

April 2011 at Badru Kulgam, due to rash and negligent driving of the driver of offending vehicle (Tata Mini Bus), bearing Registration no. JK03-3297,

which was insured with appellant Insurance Company. Claimants/Respondent nos. 1 to 3, sought compensation to the tune of Rs.11.00 Lacs.

3. Appellant Insurance Company resisted the claim before the Tribunal on the ground that driver of the offending vehicle was not holding a valid and

effective driving licence on the alleged date of accident and was not authorized to drive the insured vehicle (Tata Sumo) and more so the insured

vehicle was being plied without valid and effective Route Permit, Fitness etc. and, thus, is not liable to pay any compensation.

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

1. Whether on 15.04.2011, a vehicle (Tata 407) bearing Regd. No. JK03/3297 being driven by respondent no. 1 rashly and negligently from Yaripora

towards Anantnag and the driver of offending vehicle lost control over is vehicle and turned turtle, with the result, the deceased who was travelling in

the said vehicle sustained multiple fatal injuries on various parts of his body, resulting in his death? (OPP)

2. Whether the owner of the said offending vehicle permitted the respondent driver knowingly to ply the offending vehicle on the material date of

occurrence with invalid and ineffective and other vehicular documents, if yes, the respondent/owner has committed the breach of policy stipulation,

absolving respondent no. 4-insurance company from its liability on account of petitionersâ?? claim? (OPR-4)

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

OPP

4. Relief?

5. Claimants in support of their claim petition have examined three witnesses before the Tribunal; besides claimant/respondent no.1. Appellant

Insurance Company also examined two witnesses, namely, Kumail Murtaza, Administrative Officer, and Mahfooz Ahmad, Licensing Clerk, ARTO

Poonch, in support of its contentions.

6. By impugned Award, the Tribunal found claimants/respondents entitled to receive compensation of Rs. 5,75,104/- along with 6.5% interest per

annum from the date of institution of claim till realization.

7. Heard and considered.

8. Learned senior counsel appearing for appellant Insurance Company has stated that the Tribunal erred in passing impugned Award as the Tribunal

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did not appreciate that driving licence bearing No.1038/MVD/ARTO/P-08 has been issued in the name of Rajinder Kumar S/o Hari Chand R/o 20

JAK C/o 56 APO and was not in the name of Khurshid Ahmad Nala, i.e., respondent no.4 herein, as such, was a fake licence. It is stated that above

driving licence was placed on record before the Tribunal and in this regard, appellant Insurance Company produced one Mahfooz Ahmad, Licensing

Clerk ARTO Poonch and also employee of the company who categorically deposed that licence was not issued in the name of the respondent no.4,

but in the name of Rajinder Kumar, as such, the licence was not genuine one, but a fake licence. The Tribunal is stated to have not appreciated the

evidence in its right perspective and decided the Issue with regard to driving licence against the company. Learned senior counsel has relied upon a

judgement passed by a Bench of this Court in CIMA No.85/2006, titled National Insurance Company limited v. Mst. Zeba and others, to contend that

if a driver had a fake driving licence at the time of accident, then Insurance Company was not liable to indemnify the owner of the vehicle.

It is further submitted that the Tribunal did not appreciate that the Route Permit of offending vehicle has been issued for District Anantnag whereas

accident took place in District Kulgam. The vehicle at the time of accident was being driven in violation of Route Permit, as such, appellant is not

liable to pay compensation. It has been proved that owner has committed breach of policy conditions by driving vehicle in violation of Route Permit.

As regards above contentions of learned senior counsel for appellant Insurance Company, it may be mentioned here that the Tribunal framed Issue

no.2 to see as to whether driver of offending vehicle was holding effective and valid driving licence and offending vehicle was being plied without valid

documents. Perusal of impugned Award reveals that onus to prove Issue no.2 was upon appellant Insurance Company. It examined two witnesses,

namely, Kumail Murtaza, Administrative Officer, and Mahfooz Ahmad, Licencing Clerk ARTO Poonch. It had been deposed that driving licence

no.1038/MVD/ ARTO/ P-08 was issued in the name of one Rajinder Kumar S/o Hari Chand R/o JAK C/o 56 APO and not in the name of driver of

offending vehicle. The Tribunal, while adjudicating upon Issue no.2, has mentioned that it is not known how investigator of appellant Insurance

Company had laid his hands on photocopy of driving licence, which he sought to verify from ARTO, Poonch and that he had sought verification of

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driving licence half-heartedly because of the fact that erased number of driving licence contained in its photocopy, which was enclosed by him with

the application made by investigator for verification of ARTO Poonch. The Tribunal has also mentioned that it has not been explained as to why

investigator of appellant Insurance Company had not taken assistance of police to get verified the seized driving licence of driver of offending vehicle.

Thereafter, the Tribunal adverted to statement of witnesses adduced by appellant Insurance Company. The Tribunal said that had appellant Insurance

Company got verified driving licence of driver of offending vehicle, it might have supported the same by documentary evidence and relevant record to

that extent would have been produced by it before the Tribunal. It was also found by the Tribunal that photocopy of driving licence was got verified by

investigator of appellant Insurance Company from ARTO, Poonch, which contained erased number of driving licence and that the same was not

legible due to its erasing. Accordingly, the Tribunal held that appellant Insurance Company miserably failed to prove that driving licence number of

respondent-driver is 1038/MVD/ ARTO/P and stand issued by ARTO Poonch. It has also been said by the Tribunal that in absence of crucial

evidence, statements of both witnesses lose importance and relevance and therefore the same could not be relied upon as admissible piece of

evidence.

The view of the Tribunal on Issue no.2 insofar as it relates to driving licence appears to be convincing at a first look, but it pales into insignificance

when it is tested on the touchstone of the contention of learned senior counsel for appellant Insurance Company that the Tribunal was required to take

into account statement of official of ARTO Poonch, in which he had in clear terms stated that no driving licence or any endorsement was issued in

favour of respondent-driver as also the law laid down in this regard. Appellant Insurance Company has discharged its onus and it was thereafter the

responsibility of driver/owner of offending vehicle to discharge the onus. So, the Tribunal was required to ask owner and driver of offending vehicle to

produce driving licence before the Tribunal so as to keep the record straight and come up with a clear cut and definite view and opinion vis-Ã -vis

Issue no.2. However, this important aspect of the matter is missing from the impugned Award. In that view of matter impugned Award qua Issue no.2

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is liable to be set-aside and owner of offending vehicle is liable to be fastened to pay compensation. At the first instance the appellant Insurance

Company shall pay amount of compensation with a right to recover the same from owner of offending vehicle.

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. 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 succeeded in establishing its defence, the Tribunal or the Court could direct insurance Company to pay the

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 earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle.

10. For the foregoing reasons, the Appeal on hand is allowed and the Award dated 17th September 2018, passed by Motor Accident Claims Tribunal,

Srinagar, on a Claim Petition bearing File no. 134 of 2011 titled Sitara Begum and Ors. v. Khursheed Ahmad Nala and others, is set-aside to the

extent of Issue No.2 (viz. whether owner of the offending vehicle permitted the respondent driver knowingly to ply the offending vehicle on the

material date of occurrence with invalid and ineffective and other vehicular documents, if yes, the respondent/owner has committed the breach of

policy stipulation, absolving respondent No.4 â?" insurance company from its liability on account of petitionersâ?? claim). Appellant Insurance

Company shall pay, if not already paid, award amount along with interest as given by the Tribunal, to claimants/respondents. However, appellant

Insurance Company shall have a right to recover the same from owner of offending vehicle.

11. Disposed of in terms of above.

12. Record of the Tribunal be sent down along with copy of this judgement.

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