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(2004) 12 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : CIMA No. 82 of 2003

National Insurance Company Ltd. — APPELLANT

Vs

Abdul Rashid Malik and Others — RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2), 149(7), 168(3), 173, 174

Citation : (2005) 3 JKJ 118

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Advocate : J.A. Kawoosa, for the Appellant; A.A. Teeli and G.N. Shaheen, for the Respondent

Judgement

Hakim Imtiyaz Hussain, J.—This appeal filed by National Insurance Company U/s 173 of Motor Vehicles Act, is directed against the award

dated 08.05.2003 passed by the Motor Accident Claims Tribunal, Srinagar in claim petition No. 56/claim of 1999 titled Abdul Rashid Malik and

Ors. v. Abdul Rehman Soft and Ors.

2. A claim petition came to be filed before Motor Accident Claims Tribunal at Srinagar by Abdul Rashid Malik and others for untimely death of

one minor Azra Jan in road traffic accident which took place on 29.01.1999. It is alleged that on that date one Gulam Mohi-ud-din was plying a

passenger bus No. JKE-4366 rashly and negligently and was going towards Srinagar at Baramulla-Srinagar National Highway. At Lawaypora it

hit an Auto rickshaw in which minor Azra Jan alongwith her mother namely Gulshan Akhter was going towards Narabal. Due to the accident both

daughter and mother sustained serious injuries to which the said minor succumbed later.

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3. The Tribunal framed as many as six issues in the case which were as under:

1. Whether the accident has taken place on 29.01.1999, at Lawaypora, due to the rash and negligent driving of respondent No. 2 while driving the

offending vehicle No. 4366/JKE, resulting in the death of the deceased Azra Jan? O.P.P.

2. In case issue No. 1 is proved in the affirmative, to what amount of compensation are the petitioners entitled to, from whom and in what

proportion? O.P.P.

3. Whether the driver of the offending vehicle was not holding a valid D/L at the time of alleged accident? O.P.R-3.

4. Whether the claim petition is not maintainable for mis-joinder/non-joinder of necessary parties? O.P.R-3

5. Whether the claim petition does not disclosed any cause of action against the respondent? O.P.R.

6. Relief.

4. After taking the evidence of parties on record the Tribunal found the petitioners before it entitled to a compensation of Rs. 1,56,000/-. It

ordered as under:

Viewed thus the petitioners are held entitled to receive an amount of Rs. 1,56,000/- (Rupees one Lakh Fifty Six thousand only/-) in all under

different heads as enumerated hereto-force with 9% interest from the date of application till its final realisation minus interim relief of Rs. 50,000/- if

the petitioners have received the same.

The share of minor petitions 3 and 4 who have been impleaded later on will remain in fixed deposit till they attain the age of majority. From the

share of petitioners 1 and 2 Rs. 12,500/- each shall be deducted and it will be credited to the shares of minor petitioners 3 and 4 as petitioners 1

and 2 while withdrawing the share of minors from No Fault Liability have themselves voluntared that at the time of final award this amount be

deducted from their shares and the same be credited to the shares of minor petitioners. So for safeguarding the rights of minors. Order is

accordingly, passed.

The court fee shall be the first charge on the awarded amount. A copy of this order be forwarded to respondent No. 3 for immediate compliance.

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In order to avoid any future mishap at the hands of the driver who is holding a fake and forged licence the R.T.O Kashmir/S.S.P. Traffic Srinagar

is directed to seize the forged/fake licence No. 41471/K of 1986 of the driver Ghulam Mohi-ud-din Sheikh S/o Ghulam Rasool Sheikh R/o

Wagharath, Handward, Kashmir.

5. It is against this order of compensation passed by the Tribunal that the present appeal has been filed on various grounds.

6. Heard. Considered. During arguments Mr. J. Kawoosa, raised only one issue regarding the liability of appellant to pay the compensation

amount. It was argued that at the time of accident the driver of the vehicle was driving the vehicle with a fake driving licence, as such, the owner of

the vehicle and not the Insurance Company was liable to pay the compensation amount.

7. The Tribunal has raised issue No. 3 in the case relating to driving licence. It reads as under:

Whether the driver of the offending vehicle was not holding a valid D/L at the time of alleged accident? O.P.R-3.

8. The Tribunal has come to the conclusion that at the time of occurrence the driver of the vehicle was driving the vehicle with a fake driving licence

which actually stood in the name of one Vijay Kumar Malla of New Khanda and which was a licence valid for Scooter only. In view of these facts

the Tribunal decided the issue in favour of Insurance Company and against the owner and the driver. The Tribunal observed as under:

The onus of proving this issue rested on the shoulders of Insurance Company. The Insurance Co. has examined Peerzada Noor-u-din Licensing

Clerk of R.T.O., Kashmir. The witness has made a statement from the records. He has in clear and categoric terms deposed that licence No.

41471-K issued on 01.01.1986 stands in the name of one Vijay Kumar Malla of New Khanda which is valid for Scooter only and if by virtue of

photostat copy of licence available on file Gulam Mohi-ud-din Sheikh respondent No. 2 claims the licence to be in his name the same is not correct

and the licence is fake. Therefore, by examining the most relevant witness who has deposed from the records the Insurance Company has been

able to show that respondent No. 2 was holding a fake licence under Driving Licence No. 41471/Kor 1986 photo-stat copy of which has been

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placed on record.

The issue is, therefore, decided in favour of the Insurance Company and against the owner and the driver.

9. Per contra Mr. Teeli appearing for the owner of the vehicle would argue that the driver at the time of driving the vehicle was holding a valid

driving licence and that he had employed the driver after being satisfied about the genuineness of the driving licence which was shown to him.

10. The stand taken by Mr. Teeli cannot be accepted on the ground that the Tribunal has given a clear finding of fact that the driver was holding a

fake driving licence and that even the licence was valid for Scooter only. This finding has neither been challenged by the owner nor by the driver of

the vehicle, as such is binding on them.

11. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, it was observed by the Apex Court (at page 342):

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in

accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the

insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party

under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the

insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner u/s 174 of the Act as arrears of land

revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act

the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the

Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section () which are intended to cover specified contingencies

mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse

to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to remedy before regular court in

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cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

12. The Insurance Company has no liability to pay any compensation where the accident has taken place by a vehicle driven by a driver without

driving licence is also now settled by the Apex Court in Malla Prakasarao Vs. Malla Janaki and Others, .

13. In view of the settled position the appeal is accepted and the order of the Tribunal is modified to the extent that the appellant shall pay the

amount fixed by the Tribunal as compensation to the respondent 1 to 4. The appellant shall, however, be free to recover the amount from the

insured in accordance with the directions laid down by the Apex Court in Swaran Singh's case (supra). The appellant shall be free to approach the

Tribunal for the purpose.

Order accordingly.

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