(2021) 03 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : MA No. 33 Of 2018

National Insurance Company Ltd — APPELLANT

Vs

Naseema Begum And Others — RESPONDENT

Date of Decision : 16-03-2021

Acts Referred:

Citation : (2021) 03 J&K CK 0034

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : J. A. Kawoosa, Areeb Javed Kawoosa, Aijaz Bedar, G. N. Shaheen

Final Decision : Disposed Of

Judgement

1. Impugned in this Appeal is Award dated 11.04.2018 passed by Motor Accident Claims Tribunal, Srinagar (for short "Tribunal") on a Claim petition bearing File no 29 of 2014 titled Naseema Begum and others v. National Insurance Company Ltd and others, directing appellant Insurance Company to pay compensation in the amount of Rs 5,55,000/- 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 respondents 1 to 3 before the Tribunal on 03.03.2014 averring therein that deceased namely Hilal Ahmad Lone S/O Mohammad Maqbool Lone R/O Naribal Tehsil and District Baramulla aged 21 years, died in an accident, which took place on 21.02.2009 at Dagar Mohalla, Chandoosa, due to rash and negligent driving of driver of offending vehicle, (Tata Mini Bus) bearing Registration no. JK01B / 2920, which was insured with appellant Insurance Company. Before the Tribunal, claimants/respondents sought compensation in the amount of Rs.56,00,000/-

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

4. The Tribunal, in view of pleadings of parties, framed Issues for determination,

which are:

1) Whether on 21.09.2009 deceased namely Hilal Ahmad Lone while travelling in a Mini Bus bearing regd No. JK01B/2920 from Rajpora towards Babreshi met with an accident at Dagar Mohalla Chandoosa due to rash and negligent driving of the offending vehicle by its driver i.e. respondent no. 3, as a result of which deceased got seriously injured and succumbed to his injuries on spot.? (OPP)

2) Whether on the date of accident offending vehicle was under insurance cover of respondent no. 1? (OPP)

3) Whether the owner of the offending vehicle i.e. respondent no. 2 had permitted the respondent no. 3 to ply the offending vehicle without valid and effective D/L and R/P of vehicle and thereby committed breach of conditions of the policy, if so, what would be its effect on the claim petition? (OPP-1)

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

5) Relief. OP Parties.

5. Claimants produced and examined five witnesses before the Tribunal; besides claimants/respondent no 1. Appellant Insurance Company also produced three witnesses.

6. By impugned Award, the Tribunal found claimants/respondents entitled to receive compensation of Rs.5,55,000/ along with 6.5% interest per annum.

7. Heard and considered.

8. Learned senior counsel appearing for appellant Insurance Company has stated that the claim petition was contested among other grounds, on the ground that the insured vehicle was being plied without valid Route Permit at Chandoosa in District Baramulla. In this regard issue No.3 was also framed by the Tribunal. Appellant produced officer of the Company as a witness, who deposed that the Route Permit of the offending vehicle was valid for Eastern area Srinagar city while as the accident took place at Dagar Mohalla Chandsoosa, as such, owner committed breach of Policy conditions. He has further deposed that the eastern area falls within jurisdiction of District Srinagar. Appellant also produced Iqbal Ahmad Bhat, Senior Assistant RTO Kashmir, Srinagar, who has deposed that offending vehicle was authorized to ply on eastern area and the place of accident, i.e., Chandoosa, does not come within the jurisdiction of eastern area. The Tribunal has wrongly decided the issue against Appellant on the ground that Appellant has not clarified that the place of occurrence namely Dagar Mohalla Chandoosa does not fall in the eastern area of Srinagar City. It is submitted by learned senior counsel that the witnesses have categorically stated that Route Permit was valid for the eastern area Srinagar City and the place of accident namely Chandoosa does not come within jurisdiction of eastern area. It has been also proved that the owner has committed breach of Policy conditions. Thus, the

Tribunal has wrongly decided the issue with regard to the Route Permit against the appellant.

9. Learned senior counsel for appellant has also contended that the Tribunal has failed to appreciate that the owner has committed breach of the Policy conditions as the offending vehicle as being driven 10. whether the owner of the offending vehicle had permitted driver to ply without Route Permit. Thus, the finding recorded by the Ld. Tribunal is misplaced. Since there is apparent breach of terms and conditions of the Policy of Insurance committed by the Insured wilfully and consciously and also the subject matter was not plied in accordance with its "limitation as to use" detailed in the Policy Schedule itself. Therefore, the impugned Award is bad in law and liable to be set aside.

10. According to learned senior counsel for appellant it is settled position of law as has been held by Supreme Court in the case of National Insurance Company Ltd v. Chella Bharathamma and others, (2004) 8 SCC 517, that the vehicle, which does not have valid Route Permit on the date of accident amounts to fundamental breach. Not only that plying of the vehicle without a valid a route permit is not only breach of the Policy conditions but also breach of law, as such, the Appellant could not be held liable to indemnify the owner, therefore, the impugned award is bad in law.

11. It may be mentioned here that the Tribunal while deciding Issue no.3, (viz. offending vehicle without valid and effective driving licence and route permit, thereby committing breach of conditions of the policy; if so, what would be its effect on the claim petition), has taken into account statement of witnesses produced by appellant Insurance Company as burden to prove Issue no.3 was upon appellant Insurance Company. Appellant Insurance Company produced three witnesses before the Tribunal.

12. There is substance in submission of learned senior counsel for appellant Insurance Company. The reference made by him to National Insurance Company Limited v. Challa Bharathamma and others, (2004) 8 SCC 517, has direct bearing on the present case. In the said cited judgement the Supreme Court has said that if offending vehicle is plied without valid route permit on the date of accident, it amounts to fundamental breach of insurance contract and that plying of vehicle without valid route permit is not only breach of policy conditions but also breach of law. In that view of matter, the impugned Award is liable to be set-aside and modified to the extent that recovery rights are given to insurance company.

13. For the reasons discussed above, the impugned Award dated 11.04.2018 passed by Motor Accident Claims Tribunal, Srinagar on a Claim petition bearing File no 29 of 2014 titled Naseema Begum and others v. National Insurance Company Ltd and others, is set-aside and modified to the extent that appellant Insurance Company shall pay compensation in the amount of Rs 5,55,000/- along with 6.5% interest per annum from the date of institution of claim till

realization and then recover the same from the owner of the offending vehicle.

14. Disposed of in terms of above.

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

