
(2020) 08 J&K CK 0058

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 272 Of 2011

New India Assurance Co. Ltd

APPELLANT

Vs

Ghulam Qadir And Others

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Employee Compensation Act, 1923 — Section 4(A)(3), 30
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2020) 08 J&K CK 0058

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D.S.Chouhan

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This appeal by the New India Assurance Company Ltd. (hereinafter referred to as the ?Insurer?) under Section 30 of the Employees? Compensation Act (hereinafter referred to as "the Act) is directed against the award of the Commissioner Employees? Compensation Act (ALC), Doda (hereinafter referred to as "the Commissioner") dated 25.03.2011 in file No. 99/D titled ?Ghulam Qadir vs. Divisional Manager, New India Assurance Co. Ltd and another, whereby the workman i.e respondent No.1 has been held entitled to compensation of Rs.4,52,700/- along with interest at the rate of 12% per month from the date after one month of the date of accident till the date of deposit.

2. The impugned award has been assailed primarily on the ground that the workman, who was engaged as driver by the insured, was not possessing a valid driving licence authorizing him to drive the offending vehicle bearing Registration No. JK02J-3335 and, therefore, the vehicle was being driven in violation of the terms and conditions of the insurance policy.

3. It is vehemently urged by Mr. Chauhan, learned counsel for the insurer that,

for the aforesaid violation of the terms and conditions of the insurance policy, the insurer was not liable to indemnify the insured and pay compensation to respondent No.1. It is in this context the insurer has proposed the following questions for adjudication in this appeal:

(i). Whether the insurance company is precluded from raising any defences as envisaged in Section 149(2) of the Motor Vehicles Act, 1988 while defending an action under the Employees Compensation Act, 1923 ?

(ii) Whether the learned Commissioner under Employees Compensation Act, Jammu can direct the New India Assurance Company Limited to pay amount of compensation to the legal heir of the deceased Driver, when admittedly the Driver namely Shri Mudassir Ahmed, who was driving the offending vehicle i.e Passengers Carrying Commercial Vehicle No. JK02J-3335 was not holding any valid and effecting driving licence ?

(iii) Whether the insurance company is liable to indemnify the insured for the interest awarded against him under section (3) of Section 4-A of the Workmen's Compensation Act, 1923 ?

(iv) Whether learned Commissioner, Employees Compensation Act, 1923 (Assistant Labour Commissioner), Doda was justified in directing the payment of interest from the date of accident, when the interest is payable on completion of one month from the date on which it fell due and it fell due on the date of adjudication ?

3. The questions suggested and proposed by the insurer revolve around the factual issue; as to whether, at the time of accident, respondent No.1, who was driving the offending vehicle, was holding a valid and effective driving licence or not ?.

4. With a view to find out as to how this issue has been dealt with by the Commissioner, I have gone through the entire record and have found that no such objection was ever taken by the insurer before the Commissioner. In the absence of any pleadings, there was no question of Commissioner framing the issue in this regard.

5. The issue with regard to the validity of the licence has been raised by the insurer for the first time in this appeal. Whether or not, respondent No.1 was holding a valid and effective driving licence on the date of accident, is a pure question of fact and the same, if alleged, was required to be proved by the party alleging it. Since the insurer in its objections filed before the Commissioner had not raised any such issue or objection, as such, there was no issue framed by the Commissioner in this regard, nor the parties led any evidence.

6. Needless to say that the issue of fact which needs determination cannot be permitted to be raised for the first time in this appeal. The appeal is grossly misconceived and does not involve any question of law, much less substantial question of law as envisaged under Section 30 of the Act. The appeal is, thus,

found to be without any merit. The same is, accordingly, dismissed.