
(2020) 07 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 479 Of 2009, Civil Miscellaneous No. 9338
Of 2019, IA No. 266 Of 2011, 691 Of 2014

New India Assurance Company Limited

APPELLANT

Vs

Ramesh Lal And Others

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0004

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R. K. Gupta, Jugal Kishore Gupta, B.S. Charak

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. This appeal filed by the New India Assurance Company Limited (hereinafter "the insurer") is directed against the award dated 07.07.2009 passed by the Motor Accidents Claim Tribunal, Jammu (hereinafter "the Tribunal") in file No. 859/Claim titled "Ramesh Lal Vs. The New India Assurance Company Limited and another", whereby the appellant-insurer has been held liable to pay a compensation of Rs 3,86,000/- along with pendent lite and future interest @ 7.5% per annum in indemnification of respondent No. 2, the owner of the offending vehicle. The appellant has not assailed the award on merits or on the quantum of the compensation awarded by the Tribunal.

2. The sole issue raised by learned Senior counsel appearing for the appellant is that the appellant-insurer was not afforded an adequate opportunity to lead its evidence and to discharge the burden of proof of issue No. 3. Before proceeding further to appreciate the arguments of learned counsel, it would be appropriate to set out issue No. 3, which reads thus:-

"3. Whether driver of offending vehicle at the time of accident was not holding a valid and effective driving license and drove the vehicle in violation of terms and

conditions of insurance policy?

OPR1".

3. It is this issue, the onus of proof whereof had been placed on the appellant. The issue was held not proved by the Tribunal on the ground that despite opportunities, the appellant-insurer did not produce any evidence, oral or documentary. It is the argument of learned counsel for the appellant that before the closure of its evidence by the Tribunal, the appellant had moved an application for summoning of the witnesses and had also deposited their diet expenses. The application, however, remained undecided and the Tribunal proceeded to decide the claim petition and returned the finding that the appellant had failed to discharge the burden of proof of issue No. 3.

4. It is urged that in case the appellant had been allowed to lead its evidence, it was certain that it could have proved before the Tribunal that the driver of the offending vehicle was not possessing any license, much less, an effective and valid driving license. Reference in this regard is also made to the final report of the police wherein the police has concluded that the driver of the offending vehicle was not possessed of any license and, accordingly, charge-sheeted him.

5. Be that as it may, from perusal of the record, it transpires that the appellant had moved an application before the Tribunal on 02.03.2009 for seeking permission of the Court to deposit the diet expenses of the two witnesses, namely, Lt. Col. Harpal Singh and Sh. Tilak Raj, the owner and driver of the offending vehicle, respectively.

6. It further transpires that sum of ₹ 300/- towards diet expenses was also deposited by the appellant on the same day. However, neither from the record nor from the interlocutory orders passed by the Tribunal from time to time, it is coming forth that this application was ever considered by the Tribunal. True it is, that the application was moved by the appellant only after availing of several opportunities to lead evidence, and when the Tribunal had vide its order dated 28.02.2009, given last opportunity to the appellant to lead its evidence.

7. In the back-drop of aforesaid position obtaining in the record, I am in agreement with learned counsel for the appellant that the Tribunal should have decided the application of the appellant one way or the other. It was rather in the interest of justice to allow such application and give opportunity to the appellant to lead its evidence. More so, when the appellant had a, prima facie, good defense to offer.

8. Having said that, I am of the view that even if, the matter is remitted to the Tribunal for affording an opportunity to the appellants to lead their evidence, the position of the appellant vis-à-vis the claimants in the case would not change in any manner. Even if, the appellant, on the basis of evidence propose to be led, proves issue No. 3, it would not be absolved of its liability to pay compensation to the claimants. He may, however, be entitled to recovery rights against the

owner.

9. In view of the forgoing, I am of the view that the appellant has succeeded in making out a case for remand to the limited extent. Accordingly, the appeal is allowed and the order impugned is set aside to the aforesaid extent.

10. The matter shall go back to the Tribunal for the purpose of allowing the appellant to record the statement of two witnesses, named above and, accordingly, decide the issue No. 3 afresh and, accordingly, determine as to whether the appellant would be entitled to recover the award amount paid to the claimants, from the insured/owner of the offending vehicle.

11. This order shall, however, be subject to the appellant's satisfying the entire award along with interest. Ordered accordingly.

12. The award amount, if already deposited in this Court, shall be released in favour of the claimants, as per the award. The Tribunal shall proceed with the matter after putting the concerned parties to notice.