(2006) 06 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : CIMA No. 158 Of 2006

Oriental Insurance Co.Ltd. APPELLANT

Vs

Ramesh Kumar & Ors. RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 3 JKJ 123

Hon'ble Judges : J.P.Singh, J

Bench : Single Bench

Advocate : Vishnu Gupta, A.Hamal, Advocates appearing for the Parties

Judgement

1. This appeal under Section 173 of the Motor Vehicles Act, 1988, is directed against award dated 30th of September, 2004, in File

No.37/Claim of Motor Accidents Claims Tribunal, Kishtwar, awarding an amount of Rs.1,20,000/ (Rupees one lac and twenty thousand) along

with interest @ 6% from the date of application, to respondent, Ramesh Kumar, for the injuries suffered by him in motor vehicle accident, which

took place on 6102001 when a goods carriage, bearing registration No. JK02H3585, had been driven rashly and negligently by its driver near

Gulab GarhPaddar.

2. Facts giving rise to this appeal are that the claimamt, Ramesh Kumar, had been travelling along with others in a goods carriage bearing

registration No. JK02H3585 when the vehicle met with an accident because of rash and negligent driving of the vehicle by its driver. Ramesh

Kumar received several injuries and his student career, thus, suffered irreparable loss because of the tortious act of the driver and owner of the vehicle. Ramesh Kumar had been studying in 7th class when he met with the accident. He was initially referred to SubDistrict Hospital, Kishtwar,

where he remained admitted as an indoor patient from 6102001 to 9112001.

3. The Insurance Company objected to the claim preferred by Ramesh Kumar saying that as per the medical report, the injuries suffered by the

claimant were simple in nature and, as such, he was not entitled to the compensation, which he had claimed in his claim petition.

4. Out of the pleadings of the parties, following issues came to be framed.:

1. Whether the petitioner (Ramesh Kumar) has received the injuries in an accident occurred on 6.11.01 involving vehicle No.3585JK02H at near

Gulab Garh Paddar, which has been caused due to rash and negligent driving of the said vehicle by its driver?OPP

2. In case issue No.1 is proved in affirmative to what amount of compensation the petitioner is entitled to and from whom? OPP

3. Whether the driver of the offending vehicle was not holding a valid driving licence at the time of accident if so, what is its effect?OPR1

4. Whether the petitioner was travelling in the said vehicle as a gratuitous passenger, if so what is its effect?OPR1

5. Whether the owner and driver have violated the terms and conditions of Insurance Policy if so how and what is its effect?OPR1.

5. The claimant produced Thakur Chand, Manohar Lal, Prahlad Singh and Dr. Ravinder Singh as his witnesses; whereas no evidence was led by

the Insurance Company.

6. Dr. Ravinder Singh deposed that he had been posted as Surgeon Specialist in Kishtwar, when Ramesh Kumar, claimant, was admitted in

hospital on 6102001 under CR No.2397 MLC. He was having lacerated wound on the right leg with avulsion skin. He later developed a big raw

area on the leg which required skin grafting. The skin grafting was required to be done at Medical College, Jammu, but because of poverty, the

claimant could not get it done there and continued having his treatment at the hospital by purchasing medicines from the market. The grafting was

done at Kishtwar, but it did not yield required results and the raw area continued to remain on his leg. The disability was assessed by the doctor at

57%. Doctor further deposed that the claimant would not be in a position to do his extracurricular activities because of the injuries. He stated that he would not be in a position to join Armed Forces.

7. After considering the evidence of the claimant, the Tribunal awarded an amount of Rs. 1,20,000/ along with interest @ 6% per annum to the

claimant, who had been allowed Rs.25,000/ as interim relief during the currency of the proceedings. This amount of Rs.1,20,000/ was inclusive of

the amount awarded as interim relief to the claimant.

8. Shri Vishnu Gupta, learned counsel appearing in support of the appeal, had nothing much to say, because other persons injured in the same

accident too had preferred claim petitions, which had been allowed by the Claims Tribunal and against which appeals were filed in this Court. One

of the appeals had been registered as CIMA No. 127/2003.

Shri Gupta raised all those points, which had been raised by him in CIMANo.127/2003.

9. Learned counsel for the claimant, however, submits that the Insurance Company cannot avoid its liability, which was statutory in character and

in view of the judgment dated May 23,2006 of this Court, the appeal of the Insurance Company was required to be decided on the lines of the

decision in CIMA No. 127/2003.

10. I have considered the submissions of learned counsel for the parties and gone through judgment dated May 23, 2006 of this Court in CIMA

No.127/2003.

11. It is true that Shri Gupta had raised similar points in CIMA No.127/2003.1 had held in CIMA No.127/2003 as follows:

In view of the judgments cited by Shri Vishnu Gupta and the law laid down in recent judgments of Supreme Court, i.e., National Insurance Co.

Ltd. u. Baljit Kaur and others, reported as 2004 ACJ 428 and M.V. Jayadevappa and another v. Oriental Fire & Genl. Ins. Co. Ltd. and others,

reported as 2005 ACJ 1801, the question in dispute is no longer res integra that in case of a goods vehicle, insurer is not required to indemnify the

owner, if the owner/driver of the goods carriage carries passengers in such vehicle against the terms of the permit.

Judgments cited by Shri Vishnu Gupta, however, provide that the Insurance Company, in terms of Sections 147 and 149 of the Motor Vehicles

Act, 1988, has to first satisfy the award to recover it later from the owner.

12. I, therefore, for the same reasons as were given in CIMA No. 127/2003, upset the finding of the Tribunal on Issue No.4 and modify the

award to the extent that the amount awarded by the Tribunal shall be satisfied by the Insurance Company to recover it later by taking out execution

proceedings against the owner of the vehicle in which case, Tribunal shall expedite the execution proceedings and take all requisite measures to

ensure speedy recovery of the amount by the Insurance Company,

13. The amount deposited by the appellant in this Court is ordered to be released by Registrar Judicial in favour of Ramesh Kumar, respondent,

after proper identification, along with interest accrued thereon in accordance with this judgment minus the amount already received by the

respondent/claimant during the currency of proceedings.