

(2016) 02 J&K CK 0017
In the Jammu And Kashmir High Court
Case No : CIMA No. 104 of 2008

Randeep Singh

APPELLANT

Vs

National Insurance Co.

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) AAC 1760 : (2016) 3 JKJ 531

Hon'ble Judges : Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Mr. Nirmal Kotwal, Advocate, for the Appellant; Mr. Suneel Malhotra, Advocate, Mr. Vishnu Gupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Yaqoob Mir, J.—This appeal is directed against the order dated 06.07.2004 to the extent it provides that the interim award

amounting to Rs. 25,000/- shall be payable by Respondent No.2-owner of the vehicle and is also against the order dated 21.05.2005 in

pursuance whereof the application filed by the owner of the vehicle seeking recall of the order dated 06.07.2004 to the same extent has been

refused.

2. Appellant (claimant) student of Electrical Engineering at the age of 22 years allegedly suffered injuries on 10.04.2003 at Poloura in a road

accident caused by rash and negligent driving of the offending vehicle No. 4754-JK02L (Tipper) which was driven by the owner-cum-driver of the

vehicle. He remained hospitalised for more than 9 months. Ultimately he suffered permanent disability of 94 per cent.

3. Claim petition titled Shri Randeep Singh v. National Insurance Co. Ltd and ors.

was filed alongside an application for award on no fault basis

under Section 140 of MV Act was filed. Learned Tribunal passed a composite order on 06.07.2004 i.e. he has framed the issues in the claim

petition filed under Section 166 of MV Act and at the same time disposed of the application for grant of compensation on no fault basis amounting

to Rs. 25,000/- (Twenty five thousand only) with interest payable by Respondent No. 2-owner of the vehicle.

4. Respondent No. 2 filed petition before the Tribunal seeking review of the order on the ground that the vehicle was insured at the time of

occurrence. It is the insurance company (insurer) who has to indemnify. Therefore, the award amount of Rs. 25,000/- may be ordered to be paid

by the National Insurance co. Ltd. Review petition has been rejected vide order dated 21.05.2005.

5. Dissatisfied therewith the appellant (claimant) had filed an application seeking condonation of delay in filing the revision petition which has been

withdrawn. Liberty had been given to the petitioner to file an appeal against the interim award of the Tribunal and to seek condonation of delay in

filing appeal. This is how this appeal has been filed. Application seeking condonation in preferring the appeal stands allowed on 15.12.2009.

6. First owner of the vehicle was Gulshan Kumar who had transferred the same to Respondent No. 2-Amarjit Singh on 18.10.2001. Gulshan

Kumar had insured the vehicle as such insurance policy was in his name. The insurance policy normally is for year to year which would mean that in

the year 2003, it should have been in the name of Amarjit Singh as having become owner of the vehicle on 18.10.2001 instead the insurance policy

for the period 29.09.2002 to 28.09.2003 and subsequently another policy was also issued in the name of Gulshan kumar for the next year i.e.

from 29.09.2003 to 29.08.2004. As such it is pleaded even though the insurance policy is in the name of first owner, the insurance company

cannot be absolved of its liability to indemnify. In short Respondent No. 2-Amarjit Singh precisely wanted that since the insurance policy was in

existence, therefore, insurance company was liable to pay the amount of Rs. 25,000/- awarded on no fault basis under Section 140 of MV Act.

Learned Tribunal after referring to Section 157 of MV Act has observed that when a vehicle is sold, during the currency of the existing insurance

policy, the policy automatically is deemed to have been transferred to the name of the transferee. However, the transferee is required to intimate

the same to the insurance company which the transferee has not. That apart, occurrence is of 2003, there was no justification for the first owner to

insure the vehicle in his name when he was not the owner.

7. The position as aforesaid has been taken note of and finally learned Tribunal has rejected review petition.

8. Respondent No.2 has not challenged the basic order or the order passed in review instead it is claimant who has filed the instant appeal. He also

wants award amount to be paid by the insurance company. There is no logic for the claimant to file this appeal. He allegedly has suffered disability.

He has been awarded compensation of Rs. 25,000/- on no fault basis. Either the insurer or the insured may pay it. It shall not be a worry for him.

Unnecessarily he has filed the instant appeal.

9. It is to be made clear that the observations made in the order dated 07.04.2004 as well as in the order dated 21.05.2005 shall not cause any

prejudice to Respondent No. 2-Amarjit Singh owner of the vehicle in raising all defences during adjudication of the claim of compensation under

Section 166 MV Act.

10. For the stated reasons, appeal is not tenable, as such dismissed. Learned Tribunal is directed to conclude the trial of the claim petition as is

pending under Section 166 of MV Act with promptitude preferably within a period of six months. Learned counsel for the parties to ensure

presence before the learned MACT Jammu on 31.03.2016.