

(2020) 07 J&K CK 0086

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 432 Of 2014, IA No. 01 Of 2018

United India Insurance Co. Ltd

APPELLANT

Vs

Govind Sharma And Others

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0086

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. Impugned in this appeal is an award dated 16.11.2017 passed by the Motor Accident Claims Tribunal Rajouri (hereinafter referred to as the Tribunal) in file No. 144/claim titled "Govind Sharma vs Zubair Ahmad and others by virtue of which respondent No.1 (hereinafter referred to as the ?claimant?) has been held entitled to a compensation of Rs. 3,80,964/- along with interest at the rate of 7.5% per annum.

2. The impugned award has been assailed on the sole ground that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident. There is, however, no challenge raised insofar as quantum of compensation awarded to the claimant is concerned. The appeal was filed belatedly. Vide order dated 31.08.2018, delay was condoned and subsequently, on 22.10.2018, notice in the appeal was issued.

3. Mr. Satinder Gupta has filed his Power of Attorney on behalf of respondent No.1 and there is deemed service qua respondent No.2. However, despite the appellant having been granted number of opportunities, no steps have been taken to furnish fresh particulars for effecting the service upon respondent No.3. The appellant has stopped appearing since 29.10.2018.

4. Registry has fixed more than eight dates for facilitating the appellant to furnish fresh particulars of respondent No.3. The appellant has failed to do so. Hence, the matter before the Court.

5. Keeping in view the conduct of the appellant and his failure to furnish fresh particulars of respondent No.3 coupled with the merits of the appeal and the meager amount of compensation awarded to the claimant, this Court is of the view that keeping this petition on Board of this Court would be a sheer wastage of precious time of the Court.

6. The grounds of challenge taken by the appellant herein are adequately dealt with by the Tribunal in the impugned award. It may be relevant to mention here that with regard to the grounds of challenge raised, there was a specific issue i.e issue No.3 framed by the Tribunal which, for facility of reference, is reproduced herein below.

"Whether the offending vehicle was being driven in violation of insurance policy ? OPR"

7. The Tribunal has discussed issue Nos. 3 and 4 together in paragraph 14 of the impugned award and has come to the conclusion that the appellant has miserably failed to discharge the onus of proof of issues and demonstrate by leading cogent evidence to indicate that the driver of the offending vehicle at the time of accident was not possessing a valid and effective driving licence. The findings of the trial Court given in paragraph 15 of the award impugned deserves to be reproduced herein below.

"15. It is well discernible from the legal preposition propounded by the Hon'ble High Court that Insurance Company is required to plead and prove by cogent evidence that breach of Insurance Policy was deliberate and willful, hence the plea raised by the insurance company on the case on hand that on the basis of witnesses examined, it came to fore that the driver of the offending vehicle was not having valid driving licence at the time of accident, would not be sufficient to discharge the onus, particularly when the Insurance company has not examined any official from the RTO or the RTO concerned to enquire about the validity of D/L, in this way the testimonies of DWs Mohd Farooq and Sunila Kumari having no probative value, hence it goes without saying that Insurer fail to prove that the insured willfully violated the terms and conditions of the Insurance policy, therefore, issue no. 3 and 4 are decided against the respondent No.3 and in favour of the petitioner".

8. The findings returned by the Tribunal are in consonance with the evidence on record and, therefore, unexceptionable.

9. The cumulative result of the discussion made hereinabove is that this appeal is devoid of any merit and, therefore, deserves to be dismissed.

Ordered accordingly.