
(2016) 07 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : CIMA No. 42 of 2012

United India Insurance Co. Ltd. .	Vs	APPELLANT
Pawan Sumbly		RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 14, Section 166

Citation : (2016) 4 JKJ 36

Hon'ble Judges : Mr. Janak Raj Kotwal, J.

Bench : Single Bench

Advocate : Mr. Sudershan Sharma, Advocate, for the Respondent No. 1; Already set Ex parte, for the Respondent No. 3; Nemo, for the Respondent No. 2; Mr. Vishnu Gupta, Advocate, for the Appellant

Final Decision : Allowed

Judgement

- (1),loss of future income,;,"Rs. 2,15,000/-
- (2),pain and sufferings,;,"Rs. 50,000/-
- (3),loss of amenities of life,;,"Rs. 25,000/-
- (4),Medical expenses,;,"Rs.60,000/
- (5),Transport and attendant charger,;,"Rs.10,000/-
- ,Total,,,"Rs. 3,60.000/-

driver did not bear any endorsement authorizing him to drive a vehicle used for carrying dangerous or hazardous substances. Observation of the,,,

learned Tribunal that an endorsement in this regard would have been made simply because the driver had undergone driving training to drive a,,,

vehicle meant for carrying such substances is a speculation only, which cannot be taken as a substitute for fulfilment of the requirement.",,,

12. Section 3 read with section 4 of the Act costs obligation on a driver to hold an effective driving licence for a type of vehicle which he intends to,,,

drive and likewise, section 5 costs duty on the owner to engage a driver who possesses a licence authorizing him to drive a vehicle of that type.",,,

13. On examining the record on the file of the learned Tribunal I have found that the appellant-Insurance Company had taken a specific plea in its,,,

reply that the driver of the offending Tanker-respondent No. 3 was not possessing a valid and effective driving licence and the act of the owner in,,,

plying his Tanker through respondent No. 3 was a breach of policy of insurance. In this regard say of the owner-respondent No. 2 in its reply,,,

before the Tribunal was that the driver of the offending Tanker possessed a valid and effective driving licence. It is, thus, clear that the owner was",,,

aware of the nature of licence possessed by the driver engaged by him. As against this, the driver in his statement as appellant's witness before the",,,

Tribunal has admitted that the driving licence possessed by him did not bear endorsement for driving a vehicle carrying dangerous and hazardous,,,

goods. The owner, however, did not lead any evidence before the learned Tribunal to prove his plea that the driver engaged by him possessed a",,,

valid and effective driving licence, in particular that driver was authorised to drive a Tanker, which was designed to carry highly inflammable gas.",,,

This in turn shows that the owner of the offending Tanker was aware that the driver engaged by him for driving the offending Tanker was not,,,

authorised to drive a vehicle used for carrying dangerous and hazardous goods.,,,

14. Learned Tribunal seems to have acted too liberally in taking the view that the breach was of very minor nature, particularly because the driver",,,

was entitled to get his driving licence endorsed on the basis of refresher course undergone by him. The ratio of Swarn Singh's case was not,,,

properly applied by the learned Tribunal. Key to determine as to whether the breach relating to the driving licence is minor or otherwise, is",,,

available in the judgment (para 83) itself as Their Lordships have stated that breaches like want of medical fitness certificate, requirement about age",,,

of the driver and the like not found to have been the direct cause of the accident would be treated as minor breaches.,,,

15. Even reliance on judgment in Darshana Devi's case by the learned Tribunal is not strictly well placed. It is not a case of merely driving a vehicle,,,

of the type other than the one for which licence had been issued. It rather is a case of driving a special type of vehicle, which is meant for carrying",,,

dangerous and hazardous gas. Bringing out vehicle carrying dangerous and hazardous goods on public places involves a great element of risk to life,,,

and property of public at large. Owners of such vehicles must exercise special care to ensure that such vehicles are entrusted for driving and given,,,

in the charge of persons, who are duly trained and specifically authorised to take charge of such vehicles. No lenient view is justified if breach in",,,

this regard is proved by the insurer. 16. Respectfully and in my considered view the ratio of judgment in Darshana Devi's case cannot be applied to,,,

the fact situation of this case for the reason that it is not a case of driving a vehicle of a type other than for which licence has been issued. Here the,,,

breach relates not to the type of vehicle but to the kind of goods for which the vehicle is meant for.,,,

17. Viewed thus, appeal succeeds on the above discussed score and appellant-Insurance Company cannot be held liable to indemnify the owner",,,

(insured). The other ground of assail to the impugned judgment and award would not arise for consideration for the reason that insurer after having,,,

been exonerated of the liability loses locus standi to assail the judgment and award on any other ground.,,,

18. For all that said and discussed above, appeal is allowed to the extent of exonerating the appellant from satisfying the award. Award and",,,

judgment rendered by the learned tribunal is modified by providing that the award shall be satisfied by the owner of the offending Tanker-,,,

respondent No. 2.,,,

19. Amount deposited by the appellant in this Court, whatsoever available, be returned to the appellant along with interest accrued on that.",,,

Recovery from the claimant of the amount released in his favour, if any, shall not be effected. It shall remain open for the appellant to claim",,,

recovery of any such amount from the owner (insured) on the strength of this judgment.,,,

20. Record of Tribunal be remitted back along with a copy of this order.,,,