

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No.1422/2023 in Mac App No.08/2023

Date of Pronouncement: 02.02.2026

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NAZIR AHMAD BHAT

...Petitioner/Appellant(s)

Through: Mr. Sami Lone, Advocate vice
Mr. Syed Sajad Geelani, Advocate.

Vs.

BAJAJ ALLIANZ INSURANCE COMPANY LTD & ...Respondent(s)
ANR.

Through: Mr. Sheikh Manzoor, Advocate for R 2
Mr. Imtiyaz Ahmad, Advocate with
Ms. Bushra, Advocate for R 1

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER (ORAL)

02.02.2026

CM No.1422/2023

1. Through the medium of instant application filed by the appellant/applicant herein, condonation of 837 days is being sought for filing the appeal against the award dated 31.08.2020 (for short 'the impugned award') passed by the Motor Accident Claims Tribunal, Kupwara, (for short 'the Tribunal') in claim petition titled as "*Mohammad Amin Mir Vs. Bajaj Allianz General Insurance company and Ors.,*"

2. Facts emerging from the record would reveal that the respondent/non-applicant 1 herein had maintained the aforesaid claim petition before the Tribunal seeking compensation therein for the death of one Yaser Amin Mir S/o respondent 2 herein caused in the vehicular accident on 18.03.2011 by vehicle bearing No. JK09-3645 (TATA SUMO). In the said claim petition,

the claimant respondent 2 have had impleaded the Insurance Company respondent/non-applicant 1 herein as respondent, as also the owner and driver of the said offending vehicle as respondents 2 and 3. The aforesaid respondent 3 therein the claim petition being the appellant/applicant herein and also the respondent/non-applicant 1 herein contested the claim petition after filing objections thereto, whereafter the Tribunal framed issues on the pleadings of the parties, in furtherance whereof the Tribunal passed the award holding the claimant/non-applicant 2 herein entitled to the compensation of Rs.5,95,000/- along with interest @ 7.5% payable jointly and severally by the owner and driver of the offending vehicle providing further that in the event of failure to pay the said amount of compensation along with interest within the stipulated period, the amount of interest had to be paid @ 9%.

3. The appellant/applicant 1 herein being both the owner and driver of the offending vehicle while maintaining the instant application has sought condonation of delay as the following grounds: -

- a) *That the Id. tribunal has passed the impugned award as against the facts and law and without application of judicial mind hence the same is liable to be set aside.*
- b) *That the Ld. tribunal has erred in passing the impugned award against the appellant on the ground that the offending vehicle at the relevant time was driven by Appellant without having effective and valid license in breach of the terms of the Insurance policy on the date of accident. The matter of fact is that the Appellant at the time of accident was having the Valid and effective license bearing No: 1207/R/08 issued on 15.04.2008 by ARTO. Rajouri and renewed from time to time by the competent authority like ARTO Sopore for plying Medium Goods Vehicle and Medium Passenger Motor Vehicle. So the offending vehicle bearing registration No. JK09-3645 was plying with proper documents and also the driver of the vehicle was having the valid and effective license on the date of accident.*

- c) That the Ld. Tribunal has examined the witness namely Subash Chander (Junior Assistant ARTO Rajouri) produced by the Respondent No.1 and in his statement the witness has deposed that the Licenses No: 1207/ARTOR/08 dated 28.06.2008 is in the name of Swarn Singh and is valid for LMV/Scooter and has stated that the license is not in the name of the Nazir Ahmad Bhat (Appellant) and on his cross examination by the counsel of the Appellant the witness has deposed that there is a separate record for issuance of license and further that there is a separate record for LMV, PSV and HV and he has come in the court along with the record maintained for issuance of license which pertains to LMV only and he has further deposed that the license which he has seen today relates to MPMV and MGV and he was not asked for the production of the said record. That despite the statement of the witness that there is a separate record for MPMV and MGV and he has only verified the licenses Issued for LMV under the aforementioned registration number and not the License of the Appellant issued for MPMV and MGV and without examining the record of the MPMV and MGV license the Ld. Tribunal has passed the impugned award in violation of the facts of the case and in contradiction to the evidence on record as such the Impugned award deserves to be set aside by this Hon'ble Court.
- d) That the alleged accident in which the driver of the offending vehicle hit the deceased namely Yaser Amin Wani resulting the death of him. The fact that the offending vehicle was insured on the date of the accident and the driver was having the valid and effective license was brought into the notice of the Ld. tribunal by appellant in its written statement to the claim petition That despite specific pleadings of the appellant and its arguments in support of the said pleadings and in view of the established legal position that the adjudicating tribunal has to analyze evidence and pleading to ascertain whether the vehicle owner was aware that the driving license of the driver was fake, before absolving the liability of the insurer. The said position was settled by the Hon'ble Apex Court in case titled Ram Chandra Singh vs. Rajaram & ors., Civil Appeal No. 8145 of 2018 decided on 14.08.2018 and the Ld. Tribunal without analysing the said fact and without any evidence and enquiry in the matter has declared the license of the Driver as ineffective as such the award impugned is bad in law as such deserves to be set aside by this Hon'ble Court.
- e) That the Appellant has the license in his possession issued by the competent authority in the year 2008 and the license was also renewed from time to time by the officers of the transport department and the Appellant has not an iota of doubt that the license is fake or not genuine as he has been engaged as driver for plying vehicles on the basis of the said license and no where he was

confronted the issue that such license is not genuine even during its renewal before various competent authorities of the state and for that purpose he produced the said license before the Tribunal and the Ld. Tribunal has erred in law by holding the license of the Appellant as not genuine without calling for the record of the MPMV and MGVS licenses issued by the department and without providing the opportunity of being heard to the Appellate during COVID-19 Period when the access to courts was restricted and in the particular facts of the case the Hon'ble Apex Court in case titled NIRMALA KOTHARI VERSUS UNITED INDIA INSURANCE CO. LTD. (CIVIL APPEAL NOS. 1999-2000 OF 2020 (ARISING OUT OF SPECIAL LEAVE PETITION (C) NOS. 14739-14740 OF 2018) has held as under:

"While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable. 12. On facts, in the instant case, the Appellant/Complainant had employed the Driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It is not the 10 contention of the Respondent/ Insurance Company that the Appellant/complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment is not liable to be sustained and is hereby set aside. The appeals accordingly stand allowed. The respondent/ Insurance Company is held liable to indemnify the appellant....

- f) That it is a settled position of law that Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced as held by the Hon'ble Apex Court in the

case of *United India Insurance Co. Ltd. vs. Lehu & Ors.* in which a two Judge Bench of the court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in the case of *Pepsu RTC vs. National Insurance Co.* (SCC pp. 223-24, para10) 1 (2003) 3 SCC 338: the relevant paragraph from the Judgment: is reproduced herein

"In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in *Swaran Singh's case* (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation." It has been further held in the case of *National Insurance Co. Ltd. vs. Swaran Singh & Ors.*³ (SCC pp.341, para 110) that, "110. (iii)... Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of

fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time."

That the Ld. Tribunal has not given any consideration to the pleadings and the arguments of the appellant and the precedents set by the Apec court and passed the impugned award against settled principles of law as such needs to be set aside by this Hon'ble Court.

- g) That primarily it is liability of the insurer of offending vehicle respondent no.1 under the provisions of Motor Vehicle Act to pay the compensation to the victims of the accident caused by vehicle and in case insurance company established that offending vehicle was plying in breach of the terms of insurance policy, in that event insurer can seek indemnification of the liability from owner. As the offending vehicle was insured on the date of the accident, so insurance company is liable to pay the claimant at the first instance, but the Ld. tribunal has failed to appreciate the provisions of law and the guidelines laid down by the Apex Court in passing the impugned award which merits to be set aside against the appellant.*

4. **Objections** to the application have been filed by respondent/non-applicant 1 herein wherein the application is being opposed on the premise that the delay sought to be condoned by the appellant/applicant herein has not been explained so much so, no sufficient cause as well has been expressed in the application.

Heard counsel for the parties and perused the record.

5. Perusal of the aforesaid grounds urged by the appellant/applicant herein in the instant application reveals that the fundamental ground for seeking condonation of delay is that the appellant/applicant herein came to know about the award only in the month of February 2023 upon receiving notice from the Tribunal qua the execution of the award whereafter an application is stated to have been filed for obtaining the certified copy of the award and furnished on 07.02.2023 as the award had been passed during COVID-19 period and that the counsel who had been engaged by the

appellant/applicant herein for contesting the claim petition did not inform the appellant/applicant herein about the passing of the award and that as such there has been no deliberate delay caused by the appellant/applicant herein in maintaining the application.

6. Perusal of record available on the file in general and impugned award would manifestly tend to show that indeed the appellant/applicant herein had engaged the counsel before the Tribunal in contesting the claim petition, however, no material worth the name has been produced or placed on record by the appellant/applicant herein in support of the plea that the counsel did not inform the appellant/applicant herein about the passing of the award. The aforesaid plea thus, under these circumstances, cannot but be said to be vague, ambiguous inasmuch as a figment of imagination.

7. Insofar as the law of limitation is concerned, it is settled position that the decisive factor in condonation of delay is not the length of delay but sufficiency of satisfactory explanation. It is equally beaten position of law, that law of limitation may harshly affect a particular period but it has to be applied with all its rigor when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds and the discretion vested in the Court in extending the period of limitation has to be exercised in a proper and judicious manner.

8. It is also significant to mention here that an appeal filed under Motor Vehicles Act against an award of the Tribunal is aimed at providing a cheap and speedy remedy and that justice oriented approach has to be adopted by the Courts in such matters only if the Court is of the view that appeal has been filed within a reasonable period of time without taking a lenient

approach against the person who seeks extension of time /condonation of delay who has been casual or non-diligent in the matter.

9. As has been noticed in the preceding paras, the grounds/pleas urged by the appellant/applicant herein for seeking condonation of delay on a plain reading are cryptic besides being vague and ambiguous thus, not warranting indulgence and in exercise of discretion by this Court.

10. For the aforesaid reasons, instant application is found without any merits and is accordingly **dismissed**, as a consequence whereof, accompanying Mac App No.08/2023 as well shall stand **dismissed** along with connected CMs.

SRINAGAR

02.02.2026

Ishaq

(JAVED IQBAL WANI)
JUDGE

Whether the order is speaking ?

Yes/No

Whether approved for reporting ?

Yes/No