

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Mac App No. 8/2022

Divisional Manager,
National Insurance Company Ltd.,
M. A. Road, Srinagar,
(Policy No. 421000/31/14/0700002962)
Valid upto 12.06.2015,
Through its Administrative Officer, Law,
Mr. Kumail Murtaza.

... Appellant(s)

Through: -
Mr N. A. Dendru, Advocate.
V/s

1. **Mst. Shareefa**
Wd/O Late Mohammad Yousuf Wani
2. Fayaz Ahmed Wani
3. Mohammad Maqbool Wani
2 & 3 sons of Late Mohammad Yousuf Wani
4. Haneefa
D/O Late Mohammad Yousuf Wani
5. Zahoor Ahmed Wani
S/O Late Mohammad Yousuf Wani

1 to 5 Residents of Gurweth Kalan, District Budgam.
6. Irshad Ahmed Sheikh
S/O Abdul Gani Sheikh
R/O Chinar Colony, JVC, Bemina
(Driver of vehicle bearing No. JK04/5559).
7. Abdul Aziz Bhat
S/O Abdul Rehman Bhat
R/O Gowharpora, Chadoora,
District Budgam
(Owner of offending vehicle bearing No. JK04/5559).

... Respondent(s)

Through: -
Mr Mohammad Amin Tibetbaqal, Advocate for R-7.

CORAM:**HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.****(ORDER)***18.09.2026*

01. The Appellant-National Insurance Company Ltd., through its Divisional Manager, has filed this appeal against the Judgment/ Award dated 15th of December, 2021 passed by the learned Motor Accident Claims Tribunal, Budgam (for short "the Tribunal"), essentially on the ground that the Tribunal had not returned any finding on issue No.3.

02. Learned Counsel appearing for the Appellant-Insurance Company submits that the Appellant is not aggrieved of the findings returned on other issues vide the impugned Award, but is only filing this appeal to the extent that the Tribunal did not return any finding on issue No.3, onus of which had been placed on the Appellant herein, as Respondent-Insurer before the Tribunal, in view of the objection having been raised by it that the offending vehicle was being driven on the date of accident, without legal valid Route Permit.

03. Learned Counsel appearing for the contesting Respondent No.7, on the other hand, fairly concedes and submits that, although, no finding has been returned by the Tribunal on issue No.3, yet the impugned Award is perfectly in consonance with law, inasmuch as, the Appellant-Insurance Company, as Respondent-Insurer before the Tribunal, had not led any evidence in support of its contentions with regard to the said issue, onus of which had been placed on the Appellant itself and, therefore, on the basis of no evidence on this particular issue, this same is deemed to have been not proved. He has, thus, prayed that the appeal, being misconceived, be dismissed.

04. Heard and considered.

05. It appears that a Claim Petition titled "**Mst. Shareefa & Ors. V. Irshad Ahmad Sheikh & Ors.**" came to be filed before the Tribunal, seeking compensation for the death caused to one Mohammad Yousuf Wani S/O Abdul Ahad Wani R/O Wahargam, Qzmroo, Gurwait, Tehsil Beerwah, District Budgam in a Road Traffic Accident (RTA). It was alleged that the accident had occurred due to rash and negligent driving on

part of the Respondent No.6, while driving a passenger vehicle bearing registration No. JK04-5559, which was owned by Respondent No.7 and insured with the Appellant-Insurance Company herein.

06. On the basis of the pleadings of the parties, the following issues were framed by the Tribunal:

“I. Whether deceased Mohammad Yousuf Wani had suffered Motor Vehicle accident on 07.12.2014 because of rash and negligent driving of respondent No.1 while driving vehicle bearing registration No. JK04/5559 at Warahgam Qumroo? OPP

II. In case issue No.1 is proved in affirmative, to what amount of compensation, the petitioners are entitled to? OPP

III. Whether there has been any breach of terms and conditions of the insurance policy, if so, whether the respondent No.3 is absolved of its liability to indemnify the insured in respect of the compensation payable? OPR-3; and

IV. Relief to what the parties are entitled to? OPP.”

07. The Tribunal, after conducting trial of the Claim Petition, decided the same vide the impugned Judgment/ Award dated 15th of December, 2021, thereby granting compensation to the Claimants/ Respondents No. 1 to 5 herein to the tune of ₹11,02,500/-, along with interest @ 8%, from the date of institution of claim Petition till the amount is deposited by the Respondent-3 (Insurer)/ Appellant Insurance Company herein.

08. It is apt to mention here that pursuant to Order dated 6th of May, 2022, the Appellant-Insurance Company has deposited the entire awarded amount before the Registry of this Court and same has been released in favour of the Claimants/ Respondents No. 1 to 5 herein on an application moved by them vide Order dated 16th of August, 2022.

09. From the perusal of the impugned Judgment/ Award, it is clearly discernible that the Tribunal has not returned any finding on issue No.3 which was relating to the fact as to whether there has been any breach of the terms and conditions of the insurance policy and, if so, whether the Respondent No.3/ Appellant-Insurance Company herein is absolved of its liability to indemnify the insured in respect of the compensation payable.

The onus to prove this issue had been placed on the Respondent No.3/ Appellant-Insurance Company herein.

10. Therefore, without going into other issues and having regard to the fact that the Tribunal has skipped to return any finding on issue No.3, onus of which had been placed on the Appellant herein, as Respondent-Insurer before the Tribunal, the instant appeal is accepted and the case is remanded back to the Tribunal only to the limited extent for considering the matter afresh on issue No.3, obviously after hearing the contesting parties, who are directed through their Counsel to appear before the Tribunal on 5th of October, 2026.

11. At this stage, the learned Counsel for the Appellant-Insurance Company submits that the Tribunal be directed to allow the parties to lead evidence for and against the aforesaid issue, however, this Court, while hearing the appeal, will not be in a position to pass such a direction and it will be for the Tribunal to take a call on the issue, as otherwise the Tribunal has to decide the issue on the basis of evidence recorded earlier owing to the fact that it was not the case of the Appellant, at any stage, that it was not allowed to lead evidence.

12. Appeal is, thus, **disposed** of on the above terms, along with CM(s) pending therewith.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

September 18th, 2026

"TAHIR"