Sr. No. 09

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case:- **MA No. 330/2009**
IA No. 475/2009

New India Assurance Co.Ltd.
Divisional Office No. 1,
Shalamar Road, Jammu
through its Divisional Manager
Sh. V. K. Anand, Aged 47 years.

….Appellant

Through: Mr. Udhay Baskar, Advocate

Vs

1. **Gurmeet Kour, Wd/o S. Moti Singh.**
2. **Gurpreet Singh S/o Moti Singh.**
3. **Aman Deep Kour, D/o S. Moti Singh.**
4. **Prabjot Singh, S/o S. Moti Singh.**
5. **Nama Singh S/o S. Uttam Singh.**
   All residents of Gobind Nagar near Digiana Ashram, Jammu.
6. **Kaka Ram, S/o Chucha Ram, R/o Makwal, Tehsil Billawar, District Kathua.**
7. **M/s J. K. Oil Mills, Bari Brahmana, Tehsil Samba, District Jammu**.

….. Respondents

Through: Mr. G. S. Sarkaria, Advocate

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
02.04.2024

(Oral)

01. In the instant appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short ***"the Act of 1988"***), award

dated 26.05.2009 (for short ***"the impugned award"***) passed by Motor Accident Claims Tribunal, Jammu in claim petition titled as ***"Gurmeet Kour and others Vs Kaka Ram and others"*** is under challenge.

02. The facts giving rise to the filing of the instant appeal would reveal that the respondents 1 to 5 herein filed a claim petition under and in terms of the provisions of the Act of 1988 for compensation owing to the death of one Moti Singh (for short ***"the deceased"***), being the husband of the respondent 1 herein, the father of respondents 2 to 4 herein and son of respondent 5 herein, caused by the vehicle bearing registration No. JK02AD-6831 (for short ***"offending vehicle"***) on 12.12.2006. The claimants/respondents 1 to 5 herein besides impleading the owner and the driver of the offending vehicle as party respondent in claim petition, being respondents 6 & 7 herein also impleaded the appellant herein as a party respondent on account of the offending vehicle being insured with it.

03. The Tribunal after entertaining the claim petition summoned the respondents including the appellant herein, whereupon the respondents contested the claim petition by filing

their response thereto and on the basis of the pleadings of the parties, the Tribunal framed the following issues:-

1. **Whether an accident occurred on 12.12.2006 at J. K. Oil Mills, Bari Brahmana, Jammu due to rash and negligent driving of offending vehicle No. JK02AD-6831 in which deceased Moti Singh sustained fatal injuries? OPP**

2. **If issue No. 1 is proved in affirmative whether petitioners are entitled to the compensation, if so to what amount and from whom? OPP**

3. **Relief. O. P. Parties**

04. The claimant/respondent 1 during the course of the proceedings before the Tribunal appeared as her own witness, besides examining the witnesses, namely, Preem Singh and Mohinder Singh, whereas on the contrary the respondent owner appeared as his own witness with the driver of the offending vehicle and the Insurance Company/ appellant herein examined driver of the offending vehicle and Jagdish Raj, Clerk in the office of the Regional Transport Office, Jammu. Besides, one Rakesh Khosla, working as a Manager with the owner of the vehicle also appeared in witness box.

05. The Tribunal after adjudicating the claim petition passed the impugned award in favour of the

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claimants/respondents 1 to 5 herein along with an interest @ 7.5% per annum to be satisfied by the Insurance Company/appellant herein on the basis of no fault liability against the owner of the offending vehicle.

06. The impugned award is being challenged in the instant appeal, *inter-alia*, on the grounds that the same is bad and contrary to the facts of the case and law.

Heard learned counsel for the parties and perused the record.

07. Before proceeding to advert to the grounds urged in the appeal, it would be significant to note here that the respondents in the appeal being the owner and the driver of the offending vehicle though did initially appeared before this Court, yet subsequently did not choose to appear and contest the appeal.

08. The moot ground which is being raised by the Insurance Company/appellant herein in the instant appeal is that the Tribunal wrongly fastened the liability upon the Insurance Company/appellant herein as admittedly on the date of accident i.e. 12.12.2006, the driver of the offending vehicle was not holding a valid and effective driving licence.

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Perusal of the record reveals that the Tribunal initially framed the aforesaid three issues, however, subsequently, during the course of proceedings on 04.02.2009 framed the following issue as well:-

(1) Whether driving of the offending vehicle at the time of accident was not having valid and effective driving licence? OPR

09. The onus to prove the aforesaid issue was put on the Insurance Company/appellant herein and to discharge its onus, the Insurance Company/appellant herein examined the driver of the offending vehicle, namely, Kaka Ram, besides the above named Jagdish Raj, Clerk in the RTO Office, Jammu. The witness-Kaka Ram deposed in the witness box that the driving licence bearing No. 11064/ARTOD was valid w.e.f. 06.01.2003 to 05.01.2006, whereafter it came to be renewed w.e.f. 23.01.2007 to 22.01.2010. The witness-Jagdish Raj while appearing in the witness box had brought the relevant record of the licence in question and deposed that the certificate of renewal on record is correct and that on 12.12.2006, i.e., the date of accident, the driving licence was not renewed and, as such, the driver of the offending vehicle was not competent to drive the vehicle on that day.

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Record further reveals that the Tribunal, however, did not accept the version/statement of both the aforesaid witnesses and consequently while passing the impugned award fastened the Insurance Company/appellant herein with the liability.

10. Insofar as, the renewal of a driving licence is concerned, Section 15 of the Act of 1988 provides as under:-

"Section 15 -Renewal of driving licences:-

(1) Any licensing authority may, on application made to it, renew a driving licence issued under the provisions of this Act with effect from the date of its expiry:

Provided that in any case where the application for the renewal of a licence is made 1[either one year prior to date of its expiry or within one year] after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal:

Provided further that where the application is for the renewal of a licence to drive a transport vehicle or where in any other case the applicant has attained the age of forty years, the same shall be accompanied by a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8, and the provisions of sub-section (4) of section 8 shall, so far as may be, apply in relation to every such case as they apply in relation to a learners licence.

(2) An application for the renewal of a driving licence shall be made in such form and accompanied by such documents as may be prescribed by the Central Government.

(3) Where an application for the renewal of a driving licence is made previous to, or not more than 2[one year] after the date of its expiry, the fee payable for such renewal shall be such as may be prescribed by the Central Government in this behalf.

(4) Where an application for the renewal of a driving licence is made more than 1 [one year] after the date of its expiry, the fee payable for such renewal shall be such amount as may be prescribed by the Central Government:

Provided that the fee referred to in sub-section (3) may be accepted by the licensing authority in respect of an application for the renewal of a driving licence made under this sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from applying within the time specified in sub-section (3):

Provided further that if the application is made more than 3[one year after the driving licence has ceased to be effective, the licensing authority shall] refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of section 9.

(5) Where the application for renewal has been rejected, the fee paid shall be refunded to such extent and in such manner as may be prescribed by the Central Government.

(6) Where the authority renewing the driving licence is not the authority which issued the driving licence it shall intimate the fact of renewal to the authority which issued the driving licence."

A bare perusal of the aforesaid provisions would tend to show that a licence under Section 15(1) can be renewed from the date of its expiry, if an application is made for its renewal, however, proviso appended to Sub-section (1) provides that where the application for renewal of a licence is made more than thirty days after the date of its expiry, the driving licence is to be renewed with effect from the date of its renewal.

11. Having regard to the aforesaid provision of the Act of 1988 and reverting back to the case in hand, it is an admitted fact that the licence in question have had been renewed on 23.01.2007 i.e. after the date of happening of the accident on 12.12.2006, *ex-facie*, thus suggesting that on the date of accident,

the driver was not holding a valid and effective driving licence. In presence of the aforesaid factual position, inasmuch as, the evidence led thereof by the Insurance Company/appellant herein before the Tribunal, there was no reason or occasion for the Tribunal to have fastened the liability upon the Insurance Company/appellant herein while passing the impugned award, though nonetheless, the Insurance Company/appellant herein is liable to indemnify the insured, yet on account of the breach committed by the owner of the offending vehicle by allowing the driver of the offending scooter to drive the same without holding an effective and valid driving licence on the date of accident, the Insurance Company/appellant herein needs to be provided a liberty on the principle of **pay and recover** the amount of compensation from the insured, more so, in the light of the judgment passed by the Apex Court in case titled as **"National Insurance Company Limited Vs Jarnail Singh and others,"** reported in **(2007)15 SCC 28**, wherein at paras 6, 7, 8 & 9 following has been observed:-

> **"6. Under Section 15(1) of the Motor Vehicles Act, 1988 a driving licence can be renewed from the date of its expiry if an application is made to it for that purpose. But the proviso to the said sub-section says that:**
>
> > **"Where the application for the renewal of a licence is made more than thirty days after the date of its expiry,**

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the driving licence shall be renewed with effect from the date of its renewal."

In the present case, the fact that the driving licence was renewed only with effect from 28-10-1996 shows that the first proviso to Section 15(1) above-quoted had applied and its corollary is that driver had no licence to drive the vehicle on the date of accident i.e. 20-10-1994.

7. There is no dispute that the policy stipulated a condition that the vehicle would not be driven by a person without a valid driving licence. It means that the policy condition had been violated.

8. This Court held in New India Assurance Co. vs. Kamla, (2001) 4 SCC 342, that the insurance company is nonetheless liable to pay the compensation to the third party on the strength of the valid insurance policy issued in respect of a vehicle, but the remedy of the insurer when there was breach or violation of the policy condition was to recover the amount from the insured. Para 22 of the said judgment clarifies the position and hence, it is extracted below: (SCC p.349)

"22. To repeat, the effect of the above provisions is this: when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured."

9. Learned counsel for the appellant submits that the appellant Insurance Company has already deposited the amount covered by the award to be disbursed to the claimants. We, therefore, allow this appeal by permitting the appellant Insurance Company to realize the said amount from Respondent 3, the insured. It is open to the Insurance Company to apply to the authorities concerned for execution of this direction as per law."

12. Viewed thus, what has been observed, considered and analyzed hereinabove, the appeal succeeds and the impugned award dated 26.05.2009, as such, is modified by providing that

the Insurance Company/appellant herein shall have a right to recover the amount of compensation granted and paid by the Insurance Company to the claimants/respondents 1 to 5 herein from the owner and the driver of the offending vehicle in equal proportions.

13. The amount of compensation deposited and lying with the Registry of this Court is directed to be released in favour of the claimants/respondents 1 to 5 herein along with interest, if any, accrued thereon after their proper verification and identification by their counsel.

14. ***Disposed of*** accordingly along with connected application.

15. Record of the Tribunal be remitted back to the Tribunal.

(JAVED IQBAL WANI)
JUDGE

JAMMU
02.04.2024
Muneesh

Whether the order is speaking : Yes / No
Whether the order is reportable : Yes / No

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Muneesh Sharma
2024.04.03 17:37
I attest to the accuracy and
integrity of this document