Sr. No.39

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case:- **Mac App no. 132/2019**

IFFCO TOKIO General Insurance Co. Ltd.
9(A-1) Block North near ICICI Bank,
Bahu Plaza, Jammu.

….Appellant(s)

Through: Mr. Sumeet Bhatia, Advocate

Vs

1. **Tazeenm Akhter Wd/o Mohd. Sharief**
   (Widow of the deceased)
2. **Maryam Sharief**
3. **Asma Sharief**
4. **Fasail Sharief**
   daughters and son of Mohd. Sharief.
5. **Mst. Nazira Bi Wd/o Nizam Din,**
   (Mother of deceased)
   (Respondent nos. 1-5 All residents of Village Darran Dulian, Tehsil Haveli, District Poonch, Minors Respondents through Respondent No. 1 as their next friend).
6. **Mohd. Rafiq S/o Sattar Din**
   R/o Ajote,
   Tehsil Haveli, District Poonch
   (Owner of the Vehicle)
7. **Mohd. Saleem S/o Mohd. Bashir**
   R/o Darran Dullian,
   Tehsil Haveli, District Poonch
   (Driver of the Vehicle)

….. Respondent(s)

Through: Mr. Ashish Sharma, Advocate for R-1.
Mr. Altaf H. Januja, Advocate for R- 2 to 5.
Mr. S. H. Rather, Advocate for R-6.
Mr. Shamas-ud-Din Shaaz, Advocate for R-7.

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

ORDER
13.03.2024

(Oral)

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

Company/appellant herein has challenged award dated 26.07.2019 (for short ***"the impugned award"***) passed by the Motor Accident Claims Tribunal, Poonch (for short ***"the Tribunal"***) in claim petition tilled as **"Tazeenm Akhter and other Vs IFFCO TOKYO General Insurance Co. Ltd. and others."**

02. Facts reveal that the respondents 1 to 5 herein filed a claim petition under the provisions of the Act of 1988 before the Tribunal seeking compensation therein for the death of one Mohd. Sharief (for short ***"the deceased"***) having died in a vehicular accident on 01.06.2015 while travelling in vehicle bearing registration No. JK12/4338 (Tractor) (for short ***"the offending vehicle"***) owned and driven by respondents 6 & 7 herein respectively.

03. The Tribunal upon entertaining the claim petition and after issuing notice to the respondents in the claim petition on the basis of the pleadings of the contesting parties framed the following issues:-

1. **Whether the deceased Mohd. Sharief s/o Nizam Din R/o village Dara Dullian, Tehsil Haveli, District Poonch, died due to the accident of vehicle Tractor bearing registration No. JK12-4338 on 01.06.2015 at 14.30 hours at Kas Darra Dullian as a result of which deceased received grievous injuries and died on the spot due to rash and negligent driving of the respondent no. 3 ...? OPP**

2.	**In case issue No.1 is proved in affirmative, whether the petitioners are entitled for compensation, if yes, to what extent... ?**	**OPP**
3.	**Whether the claim of the petitioners are not covered by the Insurance policy as the driver of the offending vehicle has violated the terms and conditions of the policy, because the driver was not holding a valid and effective driving licence at the time of the accident, if yes what is its effect... .?**	**0PR-1**
4.	**Relief.?**	**0.P. Parties**

04. After adjudicating the claim petition, the Tribunal passed the impugned award holding the claimants/respondents 1 to 5 herein entitled to the compensation payable by the owner of the offending vehicle to be paid to the claimants/respondents 1 to 5 herein by the Insurance Company/appellant herein in the first instance with the liberty to the Insurance Company/appellant herein to recover it from the owner of the offending vehicle thereafter.

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05. The impugned award is assailed by the appellant herein in the instant appeal on multiple grounds.

Heard learned counsel for the parties and perused the record.

06. Perusal of the record would reveal that the claimants/ respondents 1 to 5 herein proved the aforesaid issues 1 & 2 with regard to the fact that the deceased died in the vehicular accident

on 10.06.2015 while travelling in the offending vehicle having been driven by its driver rashly and negligently as also the fact that the offending vehicle was insured with the Insurance Company/ appellant herein and that the claimants/respondents 1 to 5 herein were dependent on the deceased who used to be a shopkeeper and would earn Rs.15,000/- month besides doing agriculture work and selling milk.

07. Insofar as aforesaid issue 3 is concerned, onus whereof to prove the same was put on the Insurance Company/appellant herein, record reveals that the Insurance Company/appellant herein did not lead any evidence to prove the said issue. However, the claimants/ respondents 1 to 5 herein having admitted the fact that the deceased was travelling in the offending vehicle, the Tribunal took recourse to the **Pay and Recover Principle** laid down by the Apex Court in this regard and consequently while allowing the claim petition and awarding compensation to the claimants/respondents 1 to 5 herein provided a liberty to the Insurance Company/appellant herein to pay the amount of compensation in the first instance to the claimants/ respondents 1 to 5 herein and thereafter recover it from the owner of the offending vehicle/respondent 6 herein.

08. Having regard to the aforesaid facts and circumstances of the case and principles of law referred by the Tribunal in the impugned award, it can safely be held that the Tribunal did not

commit any legality or perversity while passing the impugned award. **Resultantly**, the impugned award is upheld and the appeal is consequently ***dismissed***.

09. The awarded amount which is claimed to have been deposited by the Insurance Company/appellant herein before this Court be released in favour of the claimants/respondents 1 to 5 herein along with interest, if any accrued thereon, after their proper identification and verification by the counsel.

(JAVED IQBAL WANI)
JUDGE

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Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**

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