

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

**CIMA No. 39/2003**

**Date of Decision: 26.12.2008**

**New India Assurance Co. Ltd.    Vs.    Jaswinder Singh & Ors.**

**Coram:**  
***Mr. Justice J.P.Singh, Judge.***

<b>Appearing counsel:</b>		
For Appellant(s)	: Mr. Baldev Singh, Advocate.	
For Respondent(s)	: Mr. Karanjit Singh, Advocate.	
i)	Whether to be reported in Press/Journal/Media	<b>Yes/No</b>
ii)	Whether to be reported in Digest/Journal	<b>Yes/No</b>

New India Assurance Company Limited has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as ~~the Act~~<sup>the Act</sup>), questioning Motor Accidents Claims Tribunal, Jammu ~~to~~<sup>an</sup> award of January 25, 1995, directing it to pay an amount of Rs.10,25,400/- to claimant-Jaswinder Singh, respondent, as compensation for the injuries he had received in a motor vehicular accident while driving his Scooter which had been hit by a rashly and negligently driven Truck bearing registration no. JKQ-6515 by its driver S. Gurnam Singh.

Appellant ~~to~~<sup>the</sup> learned counsel submits that the Tribunal had denied fair hearing to the appellant to contest respondent no. 1 ~~to~~<sup>claim</sup> petition, in that, despite its having done all that it was required to do to

secure the presence of its witnesses, the Tribunal had arbitrarily closed its evidence thereby depriving it of its right to defend respondent no. 1's claim against the Appellant- Insurance Company.

Appellant had filed an application seeking permission to defend respondent no. 1's claim petition, on grounds other than those available to an insurer under Section 149(2)(a) of the Act because the owner of the Vehicle had opted not to contest respondent no.1's claim. Although no objections had been filed by the claimant to appellant's application despite having been allowed opportunity to do so, yet the Tribunal had not passed any orders on it. Learned counsel says that appellant had sought disposal of its application seeking permission to defend respondent no. 1's claim petition, by moving yet another application seeking *inter alia*, inquiry as to how objections on behalf of S. Narinder Singh, owner of the Vehicle, had been filed before the Tribunal when he had died on March 24<sup>th</sup>, 1995, i.e., before the filing of the claim petition. Neither any inquiry is stated to have been held by the Tribunal in the matter, nor had it passed any orders on appellant's application seeking permission under Section 170 of the Act. Appellant's learned counsel, therefore, seeks setting aside of the impugned award with permission to the appellant-company to contest respondent no. 1's claim on merits.

Claimant's counsel, S. Karanjit Singh, on the other hand, disputed the maintainability of appellant's appeal in the absence of requisite permission to it under Section 170 of the Act. Learned

counsel submits that sufficient opportunity had been allowed to the appellant to produce its evidence and Tribunal's order closing its evidence may not thus require interference.

I have considered the submissions of learned counsel for the parties and gone through the records of the Tribunal.

Appellant's submission that its application, seeking permission to defend respondent no.1's claim petition because the owner and the claimants were in league with each other, though noticed in Tribunal's order of 17<sup>th</sup> of December, 1997, appears to have remained undecided although claimant had opted not to file any objections thereto.

The Tribunal was required to dispose of appellant's application one way or the other on its merit. It has, however, omitted to pass requisite orders on it despite appellant's bringing to its notice, through its subsequent application, seeking *inter alia* inquiry as to how objections on behalf of a dead person had come to be filed before the Tribunal.

Act or omission of a Court or a Tribunal should not prejudice any one, as discernable from the Maxim *Actus curiae neminem gravabit*", is a position, well settled in law. Omission of the Tribunal to pass orders on appellant's application under Section 170 of the Act, when construed in the light of respondent-claimant's omission to file any objection thereto, suggests, in the facts and circumstances of the case, that the Tribunal had impliedly permitted the appellant to contest respondent no.1's claim, on grounds, other than those available to an insurer under Section 149(2)(a) of the Act. This is additionally so

because permission granted by the Tribunal to the appellant to deposit diet money and process fee of its witnesses, demonstrates that Tribunal had permitted the appellant to contest claimant's claim petition on grounds other than those available to an insurer, because the witnesses whose diet money and process fee had been deposited, if produced, would have deposed on issues, other than those which are covered by the defences available to an insurer under Section 149 of the Act.

In view of the aforementioned circumstances, the appellant's application under Section 170 of the Act which had remained undecided, is deemed to have been allowed by the Tribunal. In this view of the matter, respondent-claimant's objection that the appellant's appeal may not be maintainable, is, accordingly, rejected.

It is further revealed from the records of the Tribunal that requisite opportunity had not been allowed by the Tribunal to the appellant to produce its evidence in the case. Although the Insurance Company had taken all such steps as it was required so to do, to secure the presence of its four witnesses, yet the Tribunal had closed its evidence after recording the statement of one of its witnesses. It had omitted to take requisite steps to serve summons on rest of its witnesses.

The appellant-Insurance Company, as directed by the Tribunal, had even taken summons, on its own, and tried to effect service thereof on the witnesses and a detailed report to this effect had been submitted by the Insurance Company through its Investigator, Mr.

Swami Raj, who had been deputed by the Company to effect service of summons on the witnesses, yet the Tribunal had not taken requisite steps to compel the presence of these witnesses. It appears that appellant's Investigator's report, indicating the steps he had taken to serve the witnesses, which the appellant-Company wanted to produce in the case, had escaped notice of the Tribunal. Rather than taking requisite steps to summon these witnesses or proceed against them in accordance with law, the Tribunal had erroneously proceeded to close appellant's evidence on 31<sup>st</sup> October, 2002.

The facts and circumstances of the case thus indicate that the Tribunal had erred in omitting to take steps as warranted under law, to summon appellant's witnesses. Closure of appellant's evidence by the Tribunal without taking steps to secure the presence of its witnesses has thus, in my opinion, deprived the appellant of its right to contest respondent no.1's claim petition.

As appellant is found to have been deprived of its right to lead evidence to contest respondent no.1's claim petition, because of an erroneous order passed by the Tribunal on October 31, 2002, the award of the Tribunal, therefore, becomes unsustainable.

For all what has been said above, this appeal, therefore, succeeds and is, accordingly, allowed setting aside Tribunal's award and remanding respondent-claimant's claim petition to the Tribunal for its disposal, in accordance with law. The Tribunal shall take all requisite steps to serve summons on remaining witnesses of the appellant.



The Tribunal is further directed to hold inquiry simultaneously as to who was/were responsible for facilitating filing of objections on behalf of a dead person, in answer to respondent-claimant's claim petition, before it. Appropriate proceedings against those found responsible, after inquiry, for polluting the stream of justice by facilitating filing of objections on behalf of a dead person, shall also be initiated, as warranted under law.

Copy of the inquiry report and of the orders passed thereon, shall be sent to this Court by the Tribunal.

Parties through their counsel are directed to appear before the Tribunal on 2<sup>nd</sup> of February, 2009.

**( J. P. Singh )**  
**Judge**

**Jammu**  
**26.12.2008**  
Anil Raina, Secy.