

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**CIMA no. 35/2008
CMP no. 50/2008**

Date of Decision:04.06.2009

National Insurance Co. Ltd. Vs. Zahida Begum and ors.

Coram:

Mr. Justice J. P. Singh, Judge.

Appearing counsel:

For Appellant(s) : Mr. D. S. Chauhan, Advocate.
For Respondent(s) : Mr. F. S. Butt, Advocates.

- i) Whether to be reported in Press/Journal/Media : **Yes/No**
- ii) Whether to be reported in Digest/Journal : **Yes/No**

National Insurance Company Limited has filed this appeal questioning Commissioner, Workmen's Compensation Act, Assistant Labour Commissioner, Kishtwar's Award dated 24.10.2007 whereby an amount of Rs.4,07,700/- has been awarded to the respondents as compensation for the death of Mohd. Ayub Sheikh who died during the course of his employment with Rajeev Kumar, respondent no. 7, as driver of Vehicle No. JK02K-1540 which met with an accident on its way from Kishtwar to Paddar near Naw Natnoo Morh.

Appellant's learned counsel Mr. D.S.Chauhan submitted that the appellant Insurance Company was not liable to indemnify the owner and satisfy the award, in

that, the vehicle in question, had been driven by a person who did not hold a valid Driving License, at the time of the accident. Learned counsel refers to *Ram Babu Tiwari vs. United India Insurance Co. Ltd and ors*, reported as 2008 AIR SCW 6512 to support his submission.

Learned counsel appearing for the claimants, on the other hand, urged that the judgment cited by the appellant's learned counsel has no application to the facts of the present case because the Insurance Company had failed to produce any evidence to prove that the driver of the vehicle did not possess valid Driving License, despite having been provided sufficient time to prove the issue raised on the aforementioned plea.

I have considered the submissions of learned counsel for the parties and find that the appellant's plea, that the driver of the offending vehicle did not possess valid Driving License at the time of the accident, has not been substantiated by the appellant-Insurance Company by leading any evidence in its support despite having been provided sufficient opportunity to discharge the onus of proof of the issue on the question.

The judgment cited by the appellant's counsel could be considered for its application only when the Insurance

Company had established, as a fact, that the driver of the offending vehicle did not hold valid Driving License at the time of the accident, which the appellant Company has failed so to do.

The appellant, having failed to prove that the driver of the offending vehicle did not possess valid Driving License at the time of the accident, cannot thus be heard to urge that it was not liable to indemnify the owner in satisfying the award.

Appellant's plea to avoid its liability to satisfy the impugned award on the ground that the driver did not hold valid Driving License, having not been substantiated on facts, thus fails and is, accordingly, rejected.

For all what has been said above, no substantial question of law arises in this appeal for determination.

The appeal is, accordingly, dismissed.

Interim order passed by the court staying the operation of the impugned award shall accordingly stand vacated.

(J. P. Singh)
Judge

Jammu
04.06.2009
Anil Raina, Secy.

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**CIMA No. 35/2008 & CMP No. 50/2008****Date of Order:20.04.2009**

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For Respondent(s) : Mr. F.S.Butt, Advocate.

Heard. Reserved.

**(J.P.Singh)
Judge****JAMMU:****20.04.2009***Pawan Chopra*