

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**CIMA No. 108/2007 & CMP No. 213/2009
Cond. No. 103/2007 & CIMA No. 163/2007**

Date of Decision: 04.06.2009

**National Insurance Co. Ltd. Vs. Tahira Begum and ors.
National Insurance Co. Ltd. Vs. Rubina Begum & ors**

Coram:

Mr. Justice J. P. Singh, Judge.

Appearing counsel:

For Appellant(s) : Mr. D. S. Chauhan, Advocate.
For Respondent(s) : M/s A. A. Hamal, Advocate.

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| i) | Whether to be reported
in Press/Journal/Media : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal : | Yes/No |
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Appellant-National Insurance Company Limited has sought condonation of delay in filing appeal CIMA No. 163/2007 against the Award dated 28.04.2007 of the Motor Accident Claims Tribunal, Kishtwar, on the ground that, it's counsel did not inform it about the decision of the Motor Accident Claims Tribunal, Kishtwar, as a result whereof the appeal could not be filed within the period prescribed therefor.

Referring to the merits of the case, the issue raised in the appeal, and the prompt action taken by the Company in filing the appeal immediately after having come to know about the award of the Tribunal, the

Insurance Company seeks condonation of the delay which had occasioned because of the negligence of its counsel, And for hearing the appeal on merits.

For the reasons stated in the application and keeping in view the fact that the issue raised by the appellant-company in this appeal is similar to the one raised in its another appeal, CIMA No. 108/2007 directed against the award arising out of the same motor vehicular accident, I am inclined to condone the delay and dispose of appellant's appeal on merits along with connected appeal which raises similar issue as has been raised in this appeal.

Condonation Application No. 103/2007 is, accordingly, allowed and the appeals are taken up for consideration.

National Insurance Company Limited has filed these two appeals questioning Awards dated 5.2.2007 and 28.4.2007 of the Motor Accidents Claims Tribunal Kishtwar, awarding Rs. 10,31,896 in File No. 103/Claim, and Rs. 11,12,068 in File no. 97/Claim, as compensation for the death of Irshad Ahmad Sheikh and Arshad Hussain respectively, who had succumbed to the injuries received by them on November 23, 2004, while travelling

in a Motor Vehicle, Tata Sumo bearing registration no. JK02K-1540, which had been driven rashly and negligently by its driver on Kishtwar-Paddar Road, at Naw Natnoo Morh.

Appellant's learned counsel Mr. D.S.Chauhan questions the awards impugned in these appeals only on a short ground, urging that the appellant Insurance Company was not liable to indemnify the owner and satisfy the awards, in that, the vehicle in question, had been driven by an unauthorized person who did not hold 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, submitted that the judgment cited by the appellant's learned counsel has no application to the facts of the present case because the Insurance Company, despite having been allowed sufficient time to lead evidence to discharge the onus of proof of the issue framed on the appellant's plea that the driver of the vehicle did not possess valid driving license at the time of

the accident, had not led any evidence to substantiate its plea.

I have considered the submissions of learned counsel for the parties and find 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 Insurance Company because it had failed to lead any evidence whatsoever to prove that the driver of the offending vehicle did not hold valid driving license at the time of the accident.

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 required to indemnify the owner in satisfying the awards.

The judgment cited by the appellant's learned counsel could be considered for its application only when the Insurance Company had established by leading evidence in this behalf that the driver of the offending vehicle did not hold valid driving license at the time of the accident.

As no evidence has been led by the appellant to substantiate the fact aforementioned, so the appellant

cannot derive any benefit of the judgment cited by its counsel.

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

There is thus no merit in these appeals, which are, accordingly, dismissed.

Amount deposited by the appellant Insurance Company in these appeals is directed to be released in favour of the claimants in terms of the awards along with interest accrued thereon.

(J. P. Singh)
Judge

Jammu
04.06.2009
Anil Raina, Secy.