

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.

OWP No.:363/2007
CMP No.549/2007

Date of Decision: 29.06.2009

Oriental Insurance Company Ltd. Vs Bansi Lal

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

APPEARING COUNSEL:

For Petitioner (s) : Mr.D.S. Chauhan, Advocate.

For Respondent (s) : Mr. M.L. Gupta, 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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Plying on Udhampur-Ghordi road on December 31,1999, Public Service Vehicle bearing registration no.JK02G-6807 suffered an accident. Bansi Lal-respondent, its owner lodged a claim for indemnification of the loss suffered in the accident, with the petitioner-Oriental Insurance Company Limited, the insurer.

Aggrieved by the repudiation of his claim, by the insurer, the respondent filed compensation claim no.446 of 2001 with the Divisional Forum, Jammu, constituted under the Jammu & Kashmir Protection Act, 1987.

Disallowing petitioner's plea that the vehicle was overloaded and the driver of the vehicle did not hold valid driving license, at the time of the accident, the Divisional Forum, allowing the respondent's claim directed the Insurance company to pay Rs.1,26,765/- along with interest @ 8% per annum and Rs.2,000/- as costs to the respondent vide its order of July 7,2005.

Petitioner's appeal having failed in the Jammu & Kashmir State Consumer Disputes Redressal Commission, Jammu has approached this court with this writ petition questioning the Divisional Forum as also the appellate State Consumer Disputes Redressal Commission, Jammu's order raising all those objections which it had taken before the two Forums, and seeking setting aside of the orders passed by the authorities under the Jammu & Kashmir Consumer Protection Act, 1987.

Relying on Section 149 (2)(a)(i) of the Motor Vehicles Act, 1988, petitioner's learned counsel Mr. D.S. Chauhan, submitted that the petitioner-Company stood absolved of its liability to indemnify the owner as he had contravened the terms and conditions of the policy in carrying passengers beyond its sanctioned seating capacity of 42 plus 2 in the vehicle in question at the time of the accident and that the orders passed by the Forums under the Jammu & Kashmir Consumer Protection Act were unwarranted.

Supporting the orders passed by the Forums, respondent's learned counsel Mr. M.L.Gupta, on the other hand, submitted that the petitioner company cannot invoke the Extra Ordinary Writ jurisdiction of the court to question the concurrent findings of the fact recorded by two Forums when it had failed to produce any evidence to prove that the respondent's vehicle was overloaded at the time of the accident and its driver did not hold valid driving license.

I have considered the submissions of the learned counsel for the parties and perused the orders passed by two Forums under the Jammu & Kashmir Protection Act, 1987.

Perusal of the findings of the Forums indicate that the petitioner-Insurance Company had not discharged satisfactorily, the onus of proving that the vehicle in question was overloaded, And that the driver of the vehicle did not possess valid driving license at the time of accident.

The Divisional Forum, whose finding was upheld by the State Commission, has accepted respondent-claimant's version that there was only 34 passengers in the vehicle and that besides the passengers, some other persons working as labourers and others using the road as pedestrians, too had either been injured or died because of the accident. Finding corroboration of the respondent's case from the other evidence available on records, the Divisional Forum has rejected

petitioner-Insurance Company's plea that the vehicle was overloaded at the time of the accident.

Findings of fact recorded by the Divisional Forum, that the vehicle in question was not overloaded and the Insurance Company had failed to prove that the driver of the vehicle did not possess valid driving license at the time of the accident are based on proper appreciation of evidence and I do not find any material on records to take a view, on facts, different from the one which the two Forums have taken in the case.

Even otherwise, findings of fact recorded by the Forums, cannot be questioned by the petitioner by invoking Extra Ordinary Writ jurisdiction of the court, particularly when those are supported by sustainable reasons.

Petitioner's plea that the vehicle was overloaded at the time of the accident and the Company was not liable to indemnify the respondent-owner of the loss caused to his vehicle thus fails and is, accordingly, rejected.

This petition, found to be without merit, is, accordingly, dismissed.

(J.P.Singh)
Judge

JAMMU
29.06.2009
Vinod