

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case No: Condl (C) no. 483/2004
CIMA no. 43/2007
CMP No. 61/2007

Date of Decision:04.06.2009

Jagdish Singh v. New India Assurance Co. Ltd. Ors.

CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For Appellants : Mr. K. S. Johal, Advocate.
For Respondents : Mr. Baldev Singh, 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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Mousa, a milk vendor and religious preacher succumbed to the injuries he received on 11.6.1997 when a Public Service Vehicle Bus no. JK02-5955 driven rashly and negligently by its driver hit him near a Gurdawara situated at Gangyal, Jammu. His wife Fakra Bibi and son Master Shah Din filed a claim petition before the Motor Accidents Claims Tribunal, Jammu seeking compensation for his death, against New India Assurance Company Limited, and the appellant, the owner of the offending vehicle.

Setting the appellant owner ex-parte, the Tribunal passed an award of Rs. 2, 55,800 directing the Insurance company to satisfy

the award with liberty to recover it later from the appellant, whose driver had been found driving the vehicle against the terms and conditions of the Insurance Policy because his licence did not have PSV endorsement on it as required by Rule 4 (1) (a) of the State Motor Vehicle Rules.

Aggrieved by the Award dated 31st July, 2002 of the Tribunal, the appellant has preferred Civil Miscellaneous Appeal No. 43/2007 with an application seeking condonation of delay in its filing.

Appellant seeks condonation of delay in filing appeal against the award of the Tribunal on the ground that he was not served with any summons by the Tribunal and that the registered letter sent to him in this behalf was not received by him, as the address furnished by the claimants for his service was insufficient. He came to know about the passing of award only when he was served in the execution proceedings. He was, however, not properly advised by the counsel he had engaged earlier, And that it was because of the wrong advice of the counsel that he could not file appeal immediately after appearing in the Execution proceedings which he mistook as a Claim Petition against him.

This appeal along with the condonation application was filed by him on being told by the counsel who was engaged later that he was required to file appeal to question the award.

Seeking condonation of delay in filing appeal, he says that the delay was neither intentional nor deliberate but was because of the circumstances referred to hereinabove.

The Insurance Company has opposed the appellant's prayer for condonation of delay on the ground that after having known about passing of the award during the currency of the execution proceedings, the appellant had failed to file appeal within the prescribed period of limitation from the date of his acquiring knowledge about the award, and the delay in filing the appeal, being intentional cannot thus be condoned in the absence of any sufficient explanation for not filing the appeal within the prescribed period of limitation. Appellant's plea that he was not served with summons during the currency of the claim petition before the Tribunal, has not been adverted to by the Insurance Company in its objections.

I have considered the submissions of learned counsel for the parties.

In view of the issue raised in the appeal that the Tribunal had erred in permitting the Insurance Company to recover the awarded amount from the appellant on the ground that the Driving license of the driver who was plying the vehicle did not have any PSV endorsement on the date of the accident, relying on the judgment of a Division Bench of this Court in **National Insurance Co. Ltd. v. Irfan Sidiq Bhat**, reported as 2004 (II) SLJ 623, and that the appellant had not been served with any notice by the Tribunal during

the currency of the claim petition, I am inclined to condone the delay in filing the appeal accepting appellant's explanation that he could not file the appeal within the prescribed period of limitation because of the wrong advice of his counsel who had been initially engaged by him in the Execution proceedings.

Condonation application no. 483/2004 is, accordingly, allowed.

As learned counsel for the parties had been heard on merits of the appeal too at the time of consideration of the condonation application so I propose to decide the appellant's appeal also by this judgment.

The Insurance Company has been given liberty by the Tribunal vide its award impugned in the appeal to recover the awarded amount from the appellant in view of its finding on issue no. 3 that the driver of the vehicle did not hold valid Driving licence because it did not have requisite PSV endorsement on it on the day of the accident.

Issue no. 3 and the finding of the Tribunal on it are reproduced hereunder for reference.

Issue no. 3.

"Whether the driver of the offending vehicle did not possess a valid Driving licence so respondent no. 1 was not liable to indemnify the owner.OPR-1"

Finding on Issue no, 3.

"Rule 4 of the Jammu and Kashmir Motor Vehicles rules 1991 provides that no person

shall drive the public service vehicle unless an authorization in the form prescribed by the Central Government has been granted and counter signed by licensing authority in the State.

In view of what has been said above it is clear that the driver must have license to drive a particular vehicle. Since the offending vehicle is a public service vehicle, its driver was not authorized to drive it and therefore, no valid driving license and the insured had violated the terms and conditions of the insurance policy. The insurance company is not liable to indemnified."

The aforementioned finding has been returned by the Tribunal on finding that Kuldeep Singh, the driver of the offending vehicle, though possessed a Driving license to drive Heavy Transport Vehicle, had obtained requisite PSV endorsement thereon much after the date of the accident.

The finding returned by the Tribunal on issue no. 3 that as the driver of the vehicle did not have PSV endorsement on his Driving license so the vehicle had been driven by a person not possessing valid license, runs contrary to the law laid down by this Court in Irfan Sadiq Bhat's case (*supra*) wherein it has been held that in view of the provisions of the Motor Vehicles Act 1988, a person possessing a Driving license as defined in Section 2 (10) of the Act, may not require further authorization on his license in terms of Rule 4 (1) (a) of the State Motor Vehicle Rules to drive a Public Service Vehicle including the Passenger Bus because license granted to him

under Section 2 (10) for driving Heavy Transport Vehicle would authorize and permit him to drive any Public Service Vehicle including a Motor Vehicle used for carriage of passengers for hire or reward.

I, therefore, find appellant's counsel's submission that the finding of the Tribunal on issue no.3 was illegal, sustainable.

For all what has been said above, the finding of the Tribunal on Issue no. 3 cannot thus be sustained, which is, accordingly, reversed and the Insurance Company held liable to indemnify the appellant.

Resultantly, this appeal succeeds and is, accordingly, allowed setting aside the Tribunal's award insofar as it permits the Insurance Company to recover the awarded amount from the appellant.

The amount deposited by the appellant in this Court shall be paid back to him along with interest accrued thereon.

(J. P. Singh)
Judge

JAMMU
04.06.2008.
Tilak, Secy.