

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

**CIMA no. 165/2008**

**Date of Order: 23.04.2010**

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New India Assurance Co.

v.

Bachno Devi and others

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**Mr. Justice Sunil Hali, Judge**

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Appearing Counsel:

For Appellant(s) : Mr. R. K. Gupta, Advocate.

For respondent(s) : Mr. K. S. Johal, Advocate.

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While riding Scooter bearing registration no. JK02H-9658 as a pillion rider, Roshan Lal was hit by the offending vehicle bearing registration no. JK02Q-826, which resulted in his death. The offending vehicle was being driven in rash and negligent manner which hit the scooter on which the deceased was traveling as a pillion rider. Claim petition was filed before the Motor Accident Claims Tribunal Jammu. The Tribunal, on the basis of the pleadings of the parties framed four issues and after recording its findings, awarded compensation of Rs. 3,91,000 with 7.5% simple interest from the date of filing of the claim petition. The award also apportioned the compensation to be paid to the three claimants who had filed the claim petition.

Feeling aggrieved of the award the present appeal has been filed.

I have heard the learned counsel for the parties.

Appellant has questioned the award on the ground that no opportunity was given to it to prove its case before the Tribunal. It is stated that a specific plea raised by them was that the driver of the offending vehicle did not possess a valid driving

license at the time of the accident, as such, it had no liability to indemnify the insured. It is contended that even issue in this regard was framed by the Tribunal and appellant had placed on record original verification report issued by the licensing authority Hyderabad. The witnesses, who were in possession of the record, were summoned but they refused to appear despite summons having been issued to them. An application was filed for examination of these witnesses on interrogatories but after obtaining objections from the otherside no order was passed on the said application. This, in nut shell, is the controversy raised in this appeal.

The first contention raised by the appellant regarding non-serving of interrogatories on the concerned clerk of the Licensing Authority Hyderabad for verification of the driving license, has to be examined in the context as to whether such an application was filed in accordance with the provisions of Order 26 Rule 5 of the Code of Civil Procedure.

There is no dispute that Court has the power to issue summons or letter of request for examining a witness who resides beyond the jurisdiction of the Court, of course after recording its satisfaction that evidence of such witness is necessary. Even though plain reading of the provision does not contemplate that under what circumstances the summons could be issued, but what is necessary implication which has to be read in this rule is that certain reasons would have to be disclosed in the application for seeking to summon the witness. The application must indicate the reasons as to why the witness even though residing outside the jurisdiction of the Court, cannot be examined in the ordinary course. The only reason given in the application filed before the Tribunal is that despite summons having been issued by the Tribunal the witness did

not appear. This, in my opinion, would not be a ground for issuing interrogatories if the witness has failed to appear despite summons. Recourse under Order 16 Rule 7 of the Code of Civil Procedure should have been taken.

There is nothing on record to suggest that the summons were received at Hyderabad and the witness declined to appear. In nut shell, I do not find that there were circumstances which existed for seeking the examination of the witness by interrogatories. The onus to prove that the driver of the offending vehicle was not holding a valid driving license was on the appellant, which it has failed to discharge.

Reliance placed on the report obtained from the Licensing Authority Hyderabad, which forms part of the report of the investigating officer of the appellant, was put in service by the appellant before the Tribunal. The finding of the tribunal that report cannot be termed as a public document as it makes no reference to the record of the license, is justified. I do not find any reason to interfere on this count.

Coming to the question of quantum, the Tribunal has very rightly assessed the compensation and has applied appropriate multiplier.

For above reasons, I find no merit in this appeal, which is, accordingly, dismissed.

Amount deposited in this Court by the appellant, shall be released in favour of the claimants, in terms of the award, on their proper identification by their counsel.

**( Sunil Hali )**  
**Judge**

**JAMMU**  
**23.04.2010**  
Anil Raina, Secy.