

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

CIMA. no. 40/2003

Date of Decision: 23.04.2010

Oriental Insurance Company

Vs. Ishri Devi & Ors

Coram:

HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.

Appearing Counsel:

For the Petitioner(s): Mr. Baldev Singh, Advocate.

For the Respondent(s) : Mr. Sudershan Sharma, 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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While traveling in a Bus bearing registration No. JKU-4571 from Jammu to Udhampur on 02.04.2000, the claimant suffered injuries on account of rash and negligent driving of the said vehicle. Claim petition came to be filed before the Motor Accidents Claims Tribunal Kishtwar, seeking compensation on account of disability of the claimant to the extent of 50%, which had resulted because of rash and negligent driving of the driver of the aforesaid vehicle. The Tribunal framed five issues, which for facility of reference are reproduced as under:-

1. Whether the petitioner has received the injuries due to the rash and negligent act of respondent no.2? OPP.
2. What was the monthly income and age³ of the petitioner at the time of accident? OPP

3. To what extent the petitioner has suffered disability in the said accident? OPP
4. Whether the petitioner is entitled to the compensation mentioned in the petition? OPP
5. Relief.

After recording the evidence and hearing the parties, the Tribunal passed the award for an amount of Rs. 3,40,000 on account of the disability suffered by the claimant along with interest of 9% from the date of filing of the claim petition till its realization and the appellant was directed to pay compensation. Feeling aggrieved the present appeal has been filed.

The award has been questioned on the ground that the negligence of the driver of the offending vehicle has not been proved. It is contended that reliance placed on the copy of the FIR was not sufficient to prove the act of negligence unless some witnesses also depose in favour of the same.

I have heard the learned counsel for the parties.

It is no doubt before fastening the liability the negligence is required to be proved. In the present case the only witness who has proved the accident is the claimant himself. The other witnesses have merely stated that they saw the Bus in which the claimant was traveling which skid off the road at Jaggar Kotli as a result of which claimant suffered multiple injuries and was shifted to Hospital at Jammu. The statement of the claimant cannot be brushed aside merely on the fact that it

does not have corroboration. What is important to note is that the witnesses, who have deposed in favour of the claimant, have stated that claimant had suffered injuries on the account of the accident which had taken place and they had accompanied the claimant to the Hospital at Jammu.

The statement of the claimant regarding the accident, which resulted in injuries, could not have been brushed aside by the Tribunal. The other contention raised is that filing of copy of the FIR alone itself was not sufficient to prove the act of negligence. It is stated that it is not only the copy of the FIR but a copy of the challan has also been produced before the Tribunal, as is reflected from the order of the Tribunal. The allegations in the Police report clearly indicates that accident was caused due to rash and negligent driving of the driver of the offending vehicle, resulting in causing injuries not only to the claimant but other persons also who were traveling in the said vehicle. Report under Section 173 Cr.P.C is a public document and reliance can be placed on it by the Tribunal. Respondents have not produced any evidence to rebut this contention.

Even if it is assumed that FIR has not been proved, this Court cannot brush aside the statement of the claimant and also the fact that claimant was taken from the place of the

accident to the hospital by other witnesses. The statement of these witnesses have remained un-controverted as neither the driver nor the owner have come in the witness box to rebut the contentions of the said witnesses.

Regarding the quantum, the appellant is debarred from raising the question of quantum in this appeal as no application under Section 170 of the Motor Vehicles Act has been filed.

For above reasons, this appeal has no merit and it is, accordingly, dismissed. The award amount deposited be released in favour of the claimants on their proper identification.

(SUNIL HALI)
Judge

JAMMU:
23.04.2010
Anil Raina, Secy.