

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

**CIMA No.144/2009
CMA No.204/2009**

Date of Order:20/05/2013

National Insurance Co.Ltd. VS Kirtan Singh and ors.

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For Appellant(s) : Mr.Baldev Singh, Advocate.

For Respondent(s) : Mr.K.S.Puri, Advocate.

Whether approved for reporting
in law journals? : **Yes/No**

Whether approved for publishing
in Press/Media ? : **Yes/No/Optional**

1. Through the medium of this appeal, the National Insurance Company Limited through its Senior Divisional Manager, Divisional Office-I, Shalimar Road, Jammu (hereinafter referred to as “Insurer”), has assailed the award dated 31st December, 2008 passed by learned Motor Accident Claims Tribunal, Jammu in terms whereof respondent no.1 herein, (for short, “the claimant”) has been held entitled to compensation of Rs.5,76,545/-(Rupees five lac seventy six thousand five hundred and forty five only) on account of 20% permanent disability suffered by the claimant in a road traffic accident involving the offending vehicle. The award has been assailed as being inflated overlooking the structured formula embodied in Section 163-A, Motor Vehicles Act, 1988. Apart from this, learned

Tribunal is said to have saddled the Insurer with liability to pay the awarded amount to claimant and recover the same from the insured/owner without considering the import of order dated 22nd February, 2008, in terms whereof the report/certificate issued by the licensing authority qua non issuance of driving license in favour of respondent no.4 was held admissible in evidence in terms of Section 74 of Evidence Act and proof thereof was dispensed with.

2. Heard the rival sides and perused the Record.
3. Learned Tribunal has assessed loss of future income at Rs.1,80,000/- (Rupees One lac and eighty thousand only), which in wake of claimant having sustained 20% permanent disability at an admitted age of thirty years cannot be termed excessive. The compensation awarded for medical/transportation expenses is based on assessment made on consideration of medical bills procured from Ludhiana, where the claimant had got treatment in CMC, Hospital. In absence of any cogent reasons, there appears to be no justification for interfering with the same. However, finding on Issue No.3 cannot be supported. Issue No.3 reads as under;

Issue No.3

“The onus of this issue was on respondent insurer. The respondent insurer has examined RW R.K.Uppal Sr. Asstt. National Insurance Company Ltd; who has narrated that policy No.42080/31/02/670590 has been issued in the name of insured/owner Sudhir Gupta S/o Romesh Chander C/o Kuldip Kumar R/o 36A, Janipur, Jammu. As per this police vehicle No.JKU 4880 was insured w.e.f. 26.03.2003 to 25.03.2004. The DL should be valid and effective to drive a vehicle. Copy of insurance policy has been attested by the Branch Manager which is marked I. If the driver is not having valid DL, the company is not liable. In cross examination stated that on 14.02.2003 the insurance policy was valid and effective.

The insurer has not examined the owner and driver of offending vehicle who could have explained the circumstances how the accident has occurred and whether driver was holding valid and effective DL or not? As such adverse inference is to be drawn against the insurer. The issue No.3 is accordingly decided against the respondent insurer.”

4. It appears that the finding on the above stated issue, the onus of proof resting upon the insured has been returned solely on the basis of testimony of RW-R.K.Uppal, Senior Assistant, National Insurance Company Limited, who deposed about factum of policy No. 42080/31/02/670590 having been issued in the name of insured/owner Sudhir Gupta which pertains to vehicle No.JKU-4880 for the period commencing 26.03.2003 to 25.03.2004. The witness has proved the issuance and subsistence of policy on the date, when the alleged occurrence resulting in non-fatal injuries to petitioner took place. *However, learned Tribunal was not right in holding that since the insurer had not examined the owner and driver of offending vehicle in*

regard to status of driving license, adverse inference was to be drawn against the insurer. Learned Tribunal has ignored and overlooked the order dated 22.02.2008 in terms whereof certificate regarding non existence/non issuance of driving license of respondent no.4 has been held admissible in evidence in terms of provisions of Section 74 of Evidence Act and proof of the same has been dispensed with. Had learned Tribunal examined the record meticulously and appreciated the evidence on record in light of aforesaid order, it would not have drawn adverse inference against the insurer for non examination of owner and driver of offending vehicle. Non consideration of the material/record including the certificate issued by licensing authority and factum of the same being held admissible in evidence has resulted in recording of finding on issue No.3 adverse to the insurer which cannot be supported. Finding on issue No.3 is, accordingly, set aside.

5. In view of reversal of finding on issue No.3, indemnification of insured by the insurer has to be reconsidered and the learned Tribunal has also to address the issue of “pay and recover”. The impugned award is, accordingly, set aside and the claim petition is

reminded to learned Motor Accident Claims Tribunal, Jammu with a direction to hear the parties afresh and dispose of the claim petition by recording a fresh finding on Issue No.3 in light of observations made hereinabove. Learned Tribunal shall make endeavors in disposing of the petition within two months from the date, record is received by the Tribunal. Parties are directed to appear before the learned Tribunal on 28th June, 2013. Record be remitted back to the Tribunal without any delay.

6. Appeal is accordingly **disposed of** along with connected CMA(s).

(Bansi Lal Bhat)
Judge

Jammu
20.05.2013
Varun Bedi