

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

CIMA No.07/2012

c/w

CIMA No.08/2012, MP No.545/2012

Date of Order: 28.12.2015

Oriental Insurance Co. Ltd.	vs	Pawan Kumar and ors.
Oriental Insurance Co. Ltd.	vs	Harsh Kumar and ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the petitioner(s)	:	Mr. Vishnu Gutpa, Advocate.
For the Respondent(s):	:	Mr. P S Chandel, Advocate for R-1.

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| (i) | Whether to be reported in Press/Media | : | Yes/No |
| (ii) | Whether to be reported in Law Journal/Digest | : | Yes/No |

1. These two appeals are directed against the award passed by Motor Accident Claims Tribunal, Jammu dated 21.11.2011.
2. In an accident as occurred on 11.10.2007 at Uttarbani, respondent No.1 and his brother while boarding Bus bearing No.JKO2D/7821 due to rash driving of the driver fell down, so were injured. They filed two separate claim petitions i.e. Claim Petition Nos.634 and 635, both were allowed. In the case of Pawan Kumar, the ld. Tribunal had awarded Rs.2,00,000/- (Rupees Two lac only) as compensation with interest @ 7.5 per cent from the date of filing of claim petition till its realization. In the case of Harsh Kumar, Claim Petition No.635, ld. Tribunal has awarded Rs.50,000/- as compensation with interest @

7.5 per cent from the date of filing of claim petition till its realization.

3. While recording finding on Issue No.3, ld. Tribunal has concluded that the driver was holding the driving license authorizing him to drive a light motor vehicle and heavy goods vehicle but there was no endorsement for public service vehicle on the said driving license. When at the time of accident, the driver was driving passenger vehicle which he was not authorized to drive, as such driver was not holding valid and effective driving license on the date of accident and it is on the basis of this finding, ld. Tribunal while awarding compensation and after relying on various judgments as referred to therein has directed the appellant Insurance Company to satisfy the award with a right to the Insurance Company to recover the said amount from the Respondent-Gopal Dass, owner of the vehicle.
4. Learned counsel for the appellant tried to project that the disability suffered by the claimant-Pawan Kumar was not such which would warrant compensation of Rs.2,00,000/-(Rupees Two Lac only). It is during the trial, the position of the sufferings of the claimant have been established. Same has remained to be controverted. Therefore such findings are not open to interference.

5. The contention of the learned counsel for the appellant that the amount should have been directed to be recovered from the owner of the vehicle. Why should Insurance Company be asked to satisfy the award. Such contention pales into insignificance in view of law laid down by Hon'ble the Apex Court in the case of *Kusum Lata Vs Satbir* reported in *AIR 2011 SC 1234* and in view of the principles laid down by Hon'ble the Apex Court in the case of *National Insurance Co. Ltd. v. Swaran Singh and ors*, reported in *AIR 2004 SC 1531*.
6. Learned Tribunal has rightly relied on said judgments while directing the Insurance Company to satisfy the award with a right to recover the same from the owner of the offending vehicle.
7. No ground whatsoever is made out which would warrant interference with the award as impugned in these appeals. Same is upheld. The deposited awarded amount shall after proper calculation be released in favour of the claimants strictly in terms of the award.
8. Copy of the order alongwith record of the Tribunal be sent back to the Tribunal forthwith.
9. Dismissed as above.

(Mohammad Yaqoob Mir)
Judge

Jammu
28.12.2015
Raj Kumar