

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

CIMA No. 311/2009
MP No. 173/2010

Date of Order: 30.06.2016

National Ins. Co. Ltd. vs. Mohd. Misri & ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge.

Appearing Counsel:

For the Appellant(s): Mr. Ajay Kr. Gandotra, Advocate.

For the Respondent(s): Mr. Vishal Sharma, Advocate.

i/ Whether to be reported in Press/Media : Yes/No

ii/ Whether to be reported in : Yes/No
Digest/Journal

1. Application has been filed seeking extension of time to file cross objections to the appeal filed by the Insurance Company. Non-applicant –Insurance Company has no serious objection for entertaining the cross objections. Delay is condoned. Cross objections be numbered accordingly.
2. The question of law arising out in the appeal for consideration is as to whether the Assistant Commissioner under Workmen's Compensation Act (ALC) Jammu misdirected himself while rendering the finding that deceased Ashraf Ali S/o Mohd. Missri is not holding a valid driving License and that it was fake.
3. Insurance Company has filed the appeal challenging that the portion of order whereby it was directed to settle the claim

of the parents of the deceased on the basis of the valid Insurance Policy issued under Workmen's Compensation Act despite the finding given by the Assistant Labour Commissioner that the driving license of deceased Ashraf Ali was held to be fake and got reviewed fraudulently.

4. Death of Ashraf Ali in accident which happened on 28.03.2006 while driving L. P. Truck No. JK02K-8179 is not in dispute and that valid Insurance Policy covering the claim for Workmen's compensation is also not in dispute. The quantum of compensation awarded by the competent authority is not in dispute.

5. As stated earlier the only issue is whether the Insurance Company could be absolved of its liability to compensate the claims of parents of the deceased on the premise that the license of deceased Ashraf Ali was fake as per the finding of the competent authority.

6. The counsel for the respondents-claimants has also filed cross objections which has been admitted. It is the pleading that the finding of the Assistant Commissioner under Workmen's Compensation Act is perverse inasmuch as there is no material on record to come to the finding that the Driving License said to be held by deceased Ashraf Ali was fake. It is based on no evidence nor is it borne out by the record.

7. Both the counsel argued the matter on this legal plea based on the factual dispute as raised.

8. Learned counsel for the appellant-Insurance Company drew the attention of this Court to the statement of Mr. Kalu Ram Senior Assistant in the Office of ARTO Udhampur who stated that License No. 12368/MVD/J issued by Licensing

Authority Jammu has been renewed by Licensing Authority Udhampur Under No. 7627/ARTO U up to 24.08.2007 in the name of Ashraf Ali S/o Mohd. Nazir. The certificate issued in this respect is marked as EXPKR. He also holds that the said certificate is signed by the Licensing Authority and is genuine and correct. Insurance company has also produced another witness namely Pawan Kumar S/o Dina Nath who stated that license No. 12368/MVD/RTO/J dated 21.02.2008 has been issued in his favour for driving Motor Cycle and Light Motor Vehicle and this is valid upto 20.02.2018. Photocopy of the same is marked as PK. One Jagdish Raj Khajuria, Statistical Officer RTO, another witness of the Insurance Company who stated that the license issued in the name of Pawan Kumar is a genuine one and that the renewed license in the name Ashraf Ali S/o Mohd. Nazr is wrong and that original license is issued in the name of Pawan Kumar issued by the Licensing Authority, Jammu. The claimants vehemently opposed this plea before the authority, nevertheless a specific finding was given by Assistant Commissioner as detailed below:

“The respondents Nos. 2 have challenged the validity of the driving license allegedly shown to have been issued in favour of deceased Ashraf Ali. Sh. Jagdish Raj Khajuria Statistical Officer, RTO’s Office Jammu, witness of the respondent NO. 2 has proved during his examination which was based on Official record that driving license NO. 12368/MVD/J dt. 21.02.1998 has not been issued in favour of Ashraf Ali S/o Mohd. Nazir, but it has actually been issued in favour of Pawan Kumar S/o Sh. Dina Nath R/o Ghomanhasan tehsil & Distt. Jammu for LMVs only. Copy of driving license No. 12368/MVD/RTOJ dated 21.02.1998 placed on record marked as P.K. also authenticates this. Moreover, Pawan Kumar S/o Sh. Dina Nath R/o Gho Manahasan, examined by respondent No. 2 as their witness has categorically stated that the driving license No. 12368/MVD/RTOJ dt. 21.02.2008 has been issued in his

favour. It is, therefore, proved that the driving license placed on record by the petitioners in the name of deceased Asraf Ali is fake one got renewed fraudulently.”

After holding that the deceased Ashraf Ali’s License was fake and was renewed fraudulently, the authority, however, proceeded to hold that the Insurance Company is liable to compensate the claim on the basis that the deceased is a workmen. This according to the Insurance Company is an error apparent on record.

9. Learned counsel for the respondents- claimants has also filed cross objections and it is pointed out that absolutely there is no document to prove that the Driving License was produced and it is fake. Evidence of the RTO authority before the Assistant Commissioner (Labour) would only show that it was one allotted to Ashraf Ali S/o Mohd. Nazir whereas the father of the deceased in this case is Mohd. Missri. It is also further plea of the counsel for the claimants that in order to prove that the document is false and such document has been fraudulently renewed, the Insurance Company should have proved it by filing a copy of the fake document which they alleged as fake. He pointed out to this Court that there is absolutely no material to show any License showing the photograph of the deceased and reference to his father as Mohd. Missri is filed. In the absence of such document the entire basis of the Insurance plea of fake License and fraudulent renewal is a fallacy.

10. Records were in fact perused by the Court, the counsel for the appellant-Insurance Company and it is found that there is nothing on record to show that a particular License was issued in favour of Ashraf Ali S/o Mohd. Missri. All that the witness refers to is to a License issued in favour of Ashraf Ali,

S/o Mohd. Nazir. There is no correlation between the document referred to by the witness to that of the deceased. In absence of any specific material to point out that there is a Driving License in the name of the deceased and it is a fake, which has to be established by producing such document to prove that it is false or fake. The plea has no substance. That exercise has not been done. Mere reference to the statement of the witness of Driving License No. 12368/MVD/J stating that it refers to Ashraf Ali would not be of any use. Further more cloud of suspicion has been raised by the claimants' counsel pointing out that even as per the statement of the witnesses, the Driving License referred to is Asraf Ali S/o Mohd. Nazir where admittedly the parents of deceased Ashraf Ali is Mohd. Missri. He is the father of deceased Ashraf Ali. In the face of such glaring irregularity in the evidence, the Authority was not justified in coming to the conclusion that the License of deceased Ashraf Ali was fake and was renewed fraudulently. When no such License is on record the question whether it is fake or genuine or renewed fraudulently or otherwise does not arise. Irrelevant document has been referred to for purpose of rendering this finding. Thus, the first question stands answered in favour of respondents-claimants and against the appellant-Insurance Company.

11. The second question of law has to be answered in terms of provisions of section 4 A for grant of interest which provides as follows:

“4 A. Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the

extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (c) without giving a reasonable opportunity to the employer to show cause why it should not be passed.”

Therefore, there can be no serious objection on this by the Insurance Company. Same is also answered in favour of claimants.

12. Reliance is also placed on case titled *Oriental Insurance Co. Ltd. versus Siby George & ors. reported in 2012 Legal Eagle (SC) 358* in which para 12 it is held as follows:

“12. In light of the decisions in Pratap Narain Singh Deo and Valsala, it is not open to contend that the payment of compensation would fall due only after the Commissioner’s order or with reference to the date on which the claim application is made. The decisions in Mubasir ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala do

not express the correct view and do not make binding precedents.”

13. Assistant Commissioner shall recompute the interest component on the award amount. The amount already received by the claimants in terms of order dated 29.03.2010 shall be deducted. The balance amount shall be computed and deposited in this Court within eight weeks and parties will be at liberty to withdraw the same as per the procedure.

14. Appeal is dismissed. Cross objections are allowed. No order as to costs.

**(Ramalingam Sudhakar)
Judge**

Jammu:

Sunita.

30.06.2016

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