

**HIGH COURT OF JAMMU & KASHMIR**  
**AT JAMMU**

**CIMA No. 230/2008**

Date of order: 28.04.2016

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**National Insurance Co. ltd.            vs.            Lajo Devi and ors.**

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**Coram:**

**Hon'ble Mr. Justice Ramalingam Sudhakar,  
Judge**

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**Appearing counsel:**

For the appellant	:	Mr. C. S. Gupta, Advocate
For the respondent(s)	:	Mr. A. S. Azad, Advocate

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Appellant, Insurance Company has filed the instant appeal challenging the award order dated 15.04.2008. It is a case of fatal accident which happened on 20.04.2005 at about 9.A.M. when the deceased Tarsem Lal S/o Late Hans Raj employed as labourer by Swarn Singh, respondent No. 3, was working on the land trying to even the mound of heaped sand. Avtar Singh, driver of the Tractor owned by Swarn Singh drove the Tractor Sonalika bearing registration No. JK02R-1257 in rash

and negligent manner and approached the mound of heaped sand. At that time, the tractor lost balance and turned turtle and Tarsem Lal was crushed. Tarsem Lal suffered grievous injuries. The injuries were so severe to the heart and spleen that he died.

An FIR was registered at Arnia Police Station on 20-06-2015. On the death of Tarsem Lal S/o Late Hans Raj, his mother Lajo Devi and brother Bhagwan Dass filed claim petition claiming compensation of Rs.8.00 lac before the Commission under Workmen's Compensation Act stating that he was earning Rs.7,000/- per month and was of the age of 26 years old at that time and a bachelor. The attempt on the part of the claimants to seek compensation from Respondent No.3, Swarn Singh, had not evoked any response, therefore, they filed the claim in terms of Workmen's Compensation Act. In support of the claim, they relied upon the FIR, copy of the certificate of registration of vehicle No. JKO2R-1257,

Driving Licence of Avtar Singh, driver, Insurance Policy as well as the report of the Insurance Company.

Notice to Insurance Company as well as owner of the vehicle was issued by the Commissioner of the Workmen's Compensation Act. Primarily, it was objected that the claim was exaggerated and the income of the deceased was actually Rs.5,000/- p.m. Swarn Singh, non-applicant, stated that the claim is exaggerated and that deceased was earning Rs.5,000/- as salary only. He, however, admitted the factum of death in the course of employment. In para No.2 at page 2 of the Award, it has been wrongly recorded the objections of the Insurance Company as that of non-applicant No.2. On the contrary, the objection of the Insurance Company is that the Insurance Policy does not cover the claim in respect of the labourer/employee and, therefore, Insurance Company is under no statutory obligation by the contract of insurance to indemnify the

owner of the vehicle for the accidental death of the deceased employee. Insurance Policy was marked as Annexure R-1. The Commissioner under Workmen's Compensation Act raised four issues, which are as follows:

- 1. Whether the deceased falls under the definition of Workman as prescribed under Workmen Compensation Act, 1923 (OPP) if so**
- 2. Whether he met with an accident during and in the course of his employment with respondent No. 2 (OPP) if so.**
- 3. What was age and wages of the deceased at the time of his accidental death. (OPP) If so**
- 4. Whether respondent No.1 is liable to indemnify the respondent No.2 and paying compensation to the petitioners (OPR)**
- 5. Relief**

The claimants examined one Surinder Kumar as witness, besides Lajo Devi, mother of the deceased who stated that her son was employed with Swarn Singh and

died in an accident and he was 26 years old bachelor. She further stated that the deceased was earning Rs.4,000/- per month and was giving her Rs.3,000/- per month for running the household and they were totally dependent upon him. She was cross-examined, where she categorically stated that the deceased studied upto 7<sup>th</sup> standard and he was working in agriculture fields of Swarn Singh. Evidence of Surinder Kumar, who is the eye-witness has not been repudiated. The evidence of Surinder Kumar eye-witness is that on 20-04-2005 , he was coming from Sai and waiting at Sai Bus Stop; a tractor bearing No. JK02R-1257 (Sonalika Make) was coming from Sai Nullah; and that Tarsem Lal (deceased) was levelling a raised heap of soil. The tractor driven by Avtar Singh in rash and negligent manner ran over the raised heap of soil and turned turtle. The deceased Tarsem Lal was crushed under the Tractor and he died. It is his clear evidence that Tarsem Lal was working in

the land and by the rash and negligent driving by Avtar Singh the tractor turned turtle and crushed Tarsem Lal to death. It is a case of death due to rash and negligent driving.

Surinder Kumar was cross-examined and he has stated that he was not related to the deceased and confirmed the accident in manner as above. He also stated that nobody else was present at the time of accident. He could not recall the name of the persons, who gathered after the accident.

On behalf of the Insurance Company, one Krishan Lal was examined and he stated that Annexure-R-1 (Insurance Policy) is issued in the name of Swarn Singh, owner of the tractor for agricultural purposes. The Insurance Company did not receive premium separately for the labourer and, therefore, they are not liable to pay compensation in terms of the Workmen's Compensation Act. However, in cross-examination, it is clearly stated

that the total amount of premium received by the Insurance Company is Rs. 3,046/-, which break-up is follows:

Owned Damage Premium	:	Rs.2,745/-
Less Bonus	:	Rs.1,276/-
Third Party Premium	:	Rs.1,469/-

The Commissioner proceeded under the Workmen's Compensation Act and adjudicated the case on the following factual backgrounds and came to the conclusion that the deceased Tarsem Lal was an employee of respondent, Swarn Singh as a labourer/Cleaner/Conductor of Tractor (Sonalika Make No. JK02R-1257) and also working in the Agricultural fields. The Commission held the deceased Tarsem Lal is a workman under the provisions of Workmen's Compensation Act. He died due to the accident as above during the course of employment. He also held that the deceased was 26 years old, which is admitted by Swarn

Singh and proved to be so as per the opinion of the doctor. He arrived at a figure of Rs. 2000/- as the earning of the deceased per month at the time of accident. This was determined stating that the wages drawn by an unskilled worker would be as above generally. The authority further held that in view of the 3<sup>rd</sup> party Insurance Policy, the liability is fixed on the owner of the tractor who should be indemnified by the Insurance Company. The award was passed determining the compensation. The insurance company is aggrieved.

Primary plea taken by the insurance company is that there is no valid Insurance Policy in respect of the workman and, therefore, the claim under Workmen's Compensation Act cannot be discharged by the Insurance Company. The learned counsel for the Insurance Company also pleaded that the deceased was a conductor of the tractor and, therefore, unless and until premium is paid to cover such an employee, claim for



compensation cannot be passed on to the Insurance Company. The liability at best can be fixed only on the owner of the tractor (respondent No. 3). The Insurance Company should be exonerated.

Per contra, Mr. A. S. Azad, learned counsel for the claimants, pleaded that the aged mother of the deceased (a widow) submits that from the date of accident, they have received Rs. 1.07 lac as compensation that has been deposited by the Insurance Company as condition precedent for admitting this petition. He pleads that the claimant-1 (mother) is suffering from serious health ailment (malignancy/cancer). They are in penury due to the death of Tarsem Lal. It is pleaded that even if the claim under Workmen's Compensation Act is doubted, the insurance policy covers the claim if the death of Tarsem Lal is as a third party in the peculiar facts of the case.

Having considered rival contentions, the following

facts emerged remain undisputed:

1) The owner appeared before the Commissioner under Workmen's Compensation Act, but before this Court he is ex-parte. The accident which happened on 20.04.2005, Tarsem Lal who was working in the field levelling the heap of soil. The tractor owned by Swarn Singh driven by Avtar Singh Driver in a rash and negligent manner lost its balance on the heap of soil. It turned turtle and caused serious injuries to Tarsem Lal, who was working in the field. He died thereafter. It is clear that the death was caused due to rash and negligent driving by Avtar Singh. Hence the driver and the owner of the vehicle are liable to compensate the dependents of deceased Tarsem Lal for the tortuous Act.

The question that has arisen is whether Insurance Company is right in pleading that it would not be liable to pay the compensation under the Workmen's Compensation Act. The Insurance Company-Appellant

strongly refutes the claim. The Policy of Insurance (Anneure R-1) does not cover the labourer/workman or an employee. That plea of Insurance appeared to be correct.

The Commissioner of Workmen's compensation Act proceeded on the basis that Tarsem Lal has to be treated as a victim and is covered by 3<sup>rd</sup> party insurance cover. Therefore, claimants will be entitled to seek compensation under the said policy.

The problem that arises in the present case is that the claimants have moved Commissioner under Workmen's Compensation Act. On this factual background, the Court at this stage considering the age of claimant and the long number of year that has gone by, has to consider as to whether amendment of the claim for compensation under the Motor Vehicles Act in terms of Section 167, will meeting the ends of justice.

**Section 167. Option regarding claims for compensation in certain cases-**

**Notwithstanding anything contained in the Workmen's compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Act but not under both.**

The respondents/claimants seek indulgence of the Court to put an end to this litigation, which started in the year 2005 on account of death of Tarsem Lal which happened in April, 2005. Now more than 11 years has passed. The deceased was 26 years old, a bachelor, an agricultural labourer, studied up to 7<sup>th</sup> standard. The mother is an ailing widow and, therefore, in this factual background, I am not inclined to remand the matter for re-adjudication in terms of Motor Vehicles Act. Even though the Appellant's plea that the liability will not fall under the Workmen's Compensation Act can be

accepted. The claimants in the present case cannot be denied of just compensation. The Policy otherwise covers a claim for compensation under third party risk clause. It will be travesty of justice to deny the claimants their rightful due. The Insurance Company liability under third party claim is not ousted. The reasons for taking such a view are as follows:

Krishan Lal, witness on behalf of the Insurance Company stated that in the objections filed by the Insurance Company that Annexure R-1 is the Insurance Policy. He clearly states in his cross-examination that the Insurance Company received total amount of insurance of Rs.3,046/-, which included owned damaged premium of Rs.2,745, less bonus Rs. 1,276 and there is a third party premium of Rs.1,469/- paid. (***Emphasis supplied***)

On facts, the evidence on record is that one Surinder Kumar, an eye witness, stated that he was

coming from Sai and waiting for a bus at Sai Bus stop. He saw a tractor coming from Sai Nallah and suffered an accident due to rash and negligent driving of the driver of the tractor Sonalika bearing No. JK02R-1257. The deceased Tarsem Lal was not on the tractor but he was working in the field levelling the heap of soil at the time of accident. On the basis of above evidence of the eye witness, it is clear that the death was due to the rash and negligent driving of the tractor driver. The deceased is a third party in so far the offending vehicle is concerned. This evidence of Surinder Kumar is not denied or contradicted. Even in the cross-examination, the fact that the tractor was driven in rash and negligent manner and was the cause for the accident, crushing the deceased Tarsem Lal is evident from the record. Therefore, even if there is no liability in terms of Women's Compensation Act, as contended, the Insurance Company is, however, liable in terms of 3<sup>rd</sup> party premium paid and liable to

settle the claims of third party.

On this admitted fact, drawing inference from Section 167 of the Motor Vehicles Act, 1988 and the judgment rendered by Hon'ble the High Court of Madras in case titled **The Oriental Insurance Company Ltd. Vs. Kaliya Pillai, Thanbgam and N. Velu, Civil Misc. Appeal No.1603 of 2001 decided on 30-10-2002**, wherein the Court took upon itself the adjudication of the compensation to do substantial justice.

In the case of Kaliya Pillai referred to above, the claim was made under the provisions of Motor Vehicles Act, where the driver of the tractor died on his own by driving the vehicle in rash and negligent manner. The Tribunal passed an award under the provisions of the Motor Vehicles Act. That was challenged by the Insurance Company, however, the Division Bench of the Madras High Court took a view that in terms of Section

167 of the Motor Vehicles Act, option is available to treat the claim either under Workmen's Compensation Act or under the provisions of Motor Vehicles Act. The only bar is that they cannot claim compensation under both the Acts. The Court, holding so came to the conclusion that there was a specific endorsement in the Insurance Policy with regard to the claim under Workmen's Compensation Act. It, therefore, moulded the relief and granted compensation.

The decision goes as follows:

**“6.....However, the insurer's liability is to be determined not only with reference to the provisions under the Motor Vehicles Act, but also with reference to the contract of insurance which would extend to the liability of the insured under the Workmen's Compensation Act. There is a specific finding by the Tribunal that the deceased tractor driver died in the course of his employment. Further, it is not disputed that there was a valid insurance on the date of the accident, and accordingly the**



insurer was liable to the extent of liability under the Workmen's Compensation Act. In other words, we hold that even though the insurance company was not liable under the provisions of the Motor Vehicles Act, it would be proper to assess the compensation under the Workmen's Compensation Act and award the same in favour of the claimants. On this ground, instead of directing the respondents/claimants to go before the Commissioner for Workmen's Compensation Act, in order to shorten the litigation and also in the interest of justice, we decided to dispose of the appeal by determining the appropriate compensation in favour of the claimants.

7. As per Section 3 of the Workmen's Compensation Act, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in the course of his employment in accordance with the provisions of Chapter II. Section 4 provides how the amount of compensation is to be determined. As per sub-section (1) of Section 4A, compensation under section 4 shall be paid as soon as it falls due. It is not disputed that for arriving at a just compensation in case of

permanent disablement and death the factors that are provided under Schedule IV of the Workmen's Compensation Act have to be taken note of. Though the claimants have produced salary certificate-Ex.P-4, the owner of the tractor who issued the said certificate though he is a party (first respondent in O.P.No.171/98) has not chosen to examine himself to substantiate the contents of Ex.P-4. However, in the light of Ex.P-6 Driving licence to drive tractor and trailer and considering the fact that the deceased died while driving the tractor, it would be proper to hold that he would have earned Rs.2000/- per month as a driver of a tractor. By applying the formula prescribed under Schedule IV, we fix the compensation of Rs.2,16,000/-. The procedure and method adopted above has not been disputed.”

(emphasis supplied)

In the present case, the insurance policy is reverse. There is no liability under the Workmen's Compensation Act. But the insurance policy covers Motor Accident Claim based on third party claim premium. Therefore,

the said decision will enure to the benefit of the claimants.

I am inclined to invoke the provisions of Section 167 of the Motor Vehicles Act and dispose of the claim on the basis of the material available on record. I am inclined to take the same course as in the case of Kaliya Pillai, referred supra, in the present case primarily on the ground that the Insurance Policy Covers the third party claim even though it does not cover a claim under the Workmen's Compensation Act. This will ensure substantial justice to the dependants/claimants.

In order to arrive at the just compensation, invoking the provisions of Order XLI Rule 33 of the Code of Civil Procedure, as in the case of *National Insurance Company Ltd. v. Rani and others*, 2006 ACJ 1224: (2004) 1 MadLJ 131, the Court is inclined to pass the following order for grant of just compensation.

The Tribunal has fixed the income of the deceased a bachelor as Rs.2,000/- per month. There are two dependents. A sum equivalent to 50% has to be deducted as the personal expenses of the deceased. Therefore, the annual pecuniary loss to the dependent will be Rs.1,000 x 12 = Rs.12,000/-. The deceased at the time of his death was of 26 years old. The multiplier to be applied for such age group is 17. Therefore, the compensation will be as follows:

Pecuniary loss to the dependents will be  

$$\text{Rs.12,000} \times 17 \quad : \quad = \text{Rs.2,04,000/-}$$

The claimants are also entitled to compensation on other heads as follows:

Loss of love and affection to mother	:	=	Rs. 30,000/-
Loss love and affection to brother	:	=	Rs. 20,000/-
Funeral and transport expenses	:	=	<u>Rs. 10,000/-</u>
<b>Total amount comes to</b>	<b>:</b>	<b>=</b>	<b>Rs.2,64,000/-</b>

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An objection is raised by the Insurance Company that they did not have the opportunity to verify the driving licence of Avatar Singh so as to make defence for recovery from owner.

In the course of adjudication, the records were produced and perused by either side. Those records were summoned by this Court and returned to the Commissioner under Workmen's Compensation Act after the Appeal was dismissed for non-prosecution on 15-04-2013. The case was, however, restored on 22.07.2013. However, the records were not returned. Appellant does not dispute the third party insurance premium. Since the case is of the year 2005 and one of the claimants is aged and an ailing widow, I am not inclined to adjourn the case any further to verify the driving licence. No plea on validity of driving licence was raised earlier. At best, it could be a case to pay and recover from the owner of vehicle later on, in case there is no valid driving licence.

Even in the adjudication, there is no reference that the driver Avtar Singh did not hold a valid driving licence. In the contrary what has been found on record is that he drove the vehicle in a rash and negligent manner.

On this premise, I am not inclined to remand the matter. The plea for remanding the case to the Motor Accidents Claims Tribunal for adjudication at this stage would be a travesty of justice to the innocent claimants. Besides all relevant documents were marked, evidence recorded; and the adjudication order has been passed on the basis of oral and documentary evidence. The issue before me is the legal implication on admitted fact, i.e., payment of premium for third party claim. I hold in favour of the claimants and against the appellant – insurance company.

In the result, the Insurance Company shall pay the enhanced amount with interest @ 6% per annum. Time for deposit as pleaded eight weeks.

The appeal stands disposed of in the above terms.

**(Ramalingam Sudhakar)  
Judge**

**Jammu**  
28.04.2016  
\*Secretary\*