

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 276/2015

Date of Order: 20.03.2017

Bajaj Allianz General Ins. Co. Ltd. vs. Ahmad Din & ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Chief Justice(A)

Appearing Counsel:

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

For the Respondent(s): None.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal-Net	:	Yes/No

1. Appeal by the appellant-Insurance Company challenging the award passed by the MACT Jammu.

2. It is a case of injury. Accident in this case happened on 03.02.2009 near police Post Belicharna Jammu. The tipper lorry was proceeding to River Tawi. The injured-claimant was travelling in the said vehicle and due to rashness and negligence of the driver, he suffered grievous injuries and filed claim for compensation.

3. The Tribunal awarded Rs. 1, 77,00/- with interest @ 7.5% per annum on various heads on the basis of injuries suffered and disability assessed at 7%, period of treatment etc. there appears no serious error on the quantum of compensation awarded by the Tribunal.

4. The plea raised in the appeal is that there is no premium paid for extra passenger. The vehicle did not have valid permit at the time of accident. Summon were issued to RTO Jammu and the

Tribunal without getting secured the witness proceeded to pass the award. In this view of the matter, on quantum award passed by the Tribunal is confirmed. The Insurance Company will settle the claimants without any demur.

5. Insofar as plea of no liability on the basis of vehicle having no valid permit and failure to summon RTO Jammu and securing his presence for evidence, it has caused prejudice to the Insurance Company.

6. In this view of the matter, the appeal is allowed by way of remand to the limited extent as follows:

- i) The award in favour of claimant is confirmed. He is entitled to withdraw the same and will not be liable to refund the same in any circumstances.
- ii) Appellant-Insurance Company will be entitled to examine the witness before the Tribunal on the short issue whether the vehicle had a valid permit or not and, if it is successful in proving that there was no valid permit at the time of accident, the appellant-Insurance Company is entitled to raise the plea of 'pay and recover'.

7. The appeal is allowed as above and the case is remanded back to the file of Presiding officer Jammu. The claimant is free to withdraw the entire amount with interest.

(Ramalingam Sudhakar)
Chief Justice (A)

Jammu:

Sunita.

20.03.2017

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