

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CIMA No. 295/2006

Date of Order: 20.03.2017

National Insurance Co. Ltd.	vs.	Amar Chand & ors.
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Coram:

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

Appearing Counsel:

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

For the Respondent(s): Mr. M. P. Gupta, Advocate.

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

1. The appeal is of the year 2006.
2. Appellant-Insurance Company has filed the appeal challenging the award passed by the MACT Doda.
3. It is a case of fatal accident. Accident in this case happened on 01.07.1999 at Shahi Bheli. Deceased Ram Raj, 15 years of age travelling in the truck bearing No. JKP/137 with his parents which was driven by respondent No. 3 in a rash and negligent manner. The ill fated vehicle met with an accident and in that accident he died. Parents of the deceased claimed a compensation of Rs. 9.00 lac in their claim petition.
4. It is pleaded by the appellant-Insurance that deceased was a gratuitous passenger which is borne out on record for whom no additional premium was paid. The Tribunal did not, however, accept this plea and awarded Rs. 1, 27, 500/- with interest @ 7.5% per annum. Therefore, the Insurance Company pleads prejudice stating that the Insurance Company is under no liability. On this

premise the appeal is now canvassed by Sh. Baldev Singh placing reliance on decision of Supreme Court in **Oriental Insurance Co. Ltd. vs. Sudhakaran K. V., 2008 ACJ 2045 (SC)** and **National Insurance Co. Ltd. v. Balakrishnan, 2013 ACJ 1999 (SC)**.

5. In view of the above, The Insurance Company should have been given right to recover from the owner after settling the claimants.

6. Appeal is allowed to the extent. The appellant-Insurance Company will first pay the claimants the compensation as ordered by the Tribunal and will be entitled to recover the same from the owner of the vehicle as per law.

7. Appeal filed by the appellant-Insurance Company stands allowed as above.

(Ramalingam Sudhakar)
Chief Justice (A)

Jammu:

Sunita.

20.03.2017

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