

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

C.I.M.A No. D-308/2010

Date of order:-31.01.2017

National Insurance Co. Ltd.

V.

Mohd Saleem and ors.

Coram:

Hon'ble Mr. Justice Ramalingam Sudhakar, Judge

Appearing counsel:

For the Appellant(s) : Mr. D.S.Chauhan, Advocate.
For the respondent(s) : Mr. Ankesh Chandel, Advocate.
Mr. Anil Gupta, Advocate.

i)	Whether approved for reporting in NET.	Yes.
ii)	Whether approved for reporting Digest/Journal.	No.

1. The appeal is of the year 2010.
2. It is a case of fatal accident.
3. The Insurance Company has filed the appeal challenging the award dated 30.09.2009 passed by the Motor Accidents Claims Tribunal, Jammu, primarily stated that it is a case of no liability.
4. Accident in this case has happened on 27.04.2008. Deceased in this case, a lady Baabi Bibi aged about 57 years, was on her way back from her agriculture land, was hit by the offending Motorcycle bearing registration No. JK02U-3496, as a result of which she sustained grievous injuries and was admitted in Government Medical College, Jammu and succumbed to the injuries on 28.04.2008.
5. On her death, claim is made by her husband. The Tribunal granted Rs. 1,98,000/- with interest @ 7.5%

per annum.

6. On quantum, there appears to be no serious dispute. The only dispute is that the driver of the offending vehicle is not having the driving licence or the licence is not valid under law.

7. In support of that, Police Challan has been relied upon. The driver, who is respondent No. 2 herein and respondent No. 2 before the Tribunal was produced as witness on behalf of the Insurance Company and he produced the driving licence which, admittedly, is a photo copy.

8. There is no objection raised by the Insurance Company on the document and the Tribunal had no other option but to hold that the driver had a valid driving licence. The present plea is that the photo copy of the document is not valid and, therefore, the Insurance Company is under no liability.

9. Learned counsel for the respondent-claimant as well as the owner resist the appeal on the above said plea stating that the document, i.e., driving licence of the driver was furnished before the Tribunal when the driver was examined, it was marked without demur. The appellants cannot turn around and dispute it now.

10. Reliance is placed on a judgment rendered by Hon'ble Supreme Court of India in case titled **Rakesh Kumar v. United India Insurance Co. Ltd. and others**, reported as 2016 ACJ 2157, where it has been clearly held that Insurance Company has no right to raise any objection about the admissibility or the manner of proving of the licence at a later stage. It held that the High Court was not right in reversing the finding of the Tribunal. Relevant paras 20 and 21

of the said judgment are reproduced hereunder:-

“20. First, the driver of the offending vehicle (NA-2) proved his driving licence Exh.R1, in his evidence. Second, when the licence was proved, the insurance company did not raise any objection about its admissibility or manner of proving. Third, even if any objection had been raised, it would have had no merit because it has come on record that the original driving licence was filed by the driver in the Court of Judicial Magistrate First Class, Naraingarh in a criminal case arising out of the same accident. Fourth, in any event, once the licence was proved by the driver and marked in evidence and without there being any objection by the insurance company, the insurance company had no right to raise any objection about the admissibility and manner of proving of the licence at a later stage (*See Oriental Insurance Co. Ltd. v. Premlata Shukla, 2007 ACJ 1928 (SC)*) and lastly, the insurance company failed to adduce any evidence to prove that the driving licence, Exh.R1, was either fake or invalid for some reason.

21. In the light of foregoing reasons, we are of the considered opinion that the High Court was not right in reversing the finding of the Tribunal. Indeed, the High Court should have taken note of these reasons which, in our view, were germane for deciding the issue of liability of the insurance company arising out of the accident.”

The facts in the present case is similar.

11. Accordingly, the appeal does not merit acceptance and the same is dismissed.

(Ramalingam Sudhakar)
Judge

Jammu
31.01.2017 :

Tilak, Secy.

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.