

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No. 22/2009

Date of order: 31.05.2018

Oriental Insurance Company

Versus

Rekha Devi and others.

Coram:

Hon'ble Mr Justice Tashi Rabstan, Judge

Appearance:

For the appellant(s) : Mr R.K Jain, Advocate.

For the respondent(s) : None.

i) Whether to be reported in Digest/Journal/Media : Yes / No

ii) Whether to be reported in Press/Media : Yes / No

1. Instant appeal has been preferred by the appellant-Insurer against the award dated 23rd of September, 2008 passed by the Presiding Officer, Motor Accident Claims Tribunal, Kathua in File No. 43/C.P, titled ***“Rekha Devi and ors. Vs. Sher Singh and ors.”***.

2. The facts giving rise to filing of present appeal are that on 24th day of May, 2003, deceased-Mohinder Paul was driving his Truck No. DLIG-A-2797 and was going from Jammu to Delhi. When he reached near Kuthyal G.T Road, District Karnal, a rashly and negligently driven Truck No. HR-58/0045 by respondent No.1 in rash and negligent manner hit his Truck as a result of which, the Truck turned turtle and Mohinder Paul sustained multiple injuries due to that he died on spot. It is contended that the deceased, who was 30 years old at the time of accident, was a driver by profession and earning Rs. 5,500/- per month and his spouse along with other dependents have claimed compensation of Rs. 18,90,0000/- from the respondents. It is

contended that in the said claim petition, the Insurance Company has refused to pay the compensation to the dependants of the deceased. It is projected in the claim petition that the offending vehicle was duly insured with the Insurance Company (appellant herein) and respondents Nos. 1 and 2 in the claim petition (respondents No. 6&7 herein) are jointly liable to pay the compensation to the applicants-claimants. Thereafter on considering the evidence put-forth and record of the file, learned Presiding Officer, MACT, Kathua came to the conclusion and passed an award of an amount of Rs. 5,73,000/- in favour of applicants (respondents herein).

3. The main ground of challenge is that the Insurance Company is not liable to indemnify the insured as the vehicle was plied in contravention of the terms and conditions of the Insurance Policy and the driver was not holding an effective and valid license and the Tribunal has not appreciated this aspect of the matter. It is contention of the learned counsel for the appellant-Insurer that HGV endorsement has not been made in the license of the deceased, meaning thereby, the deceased driver was not having a valid and effective driving license.
4. It is further contended that the petitioner No.1 was directed by the learned Presiding Officer, MACT, Kathua, to lead evidence in support of his claim petition and accordingly, his counsel examined Rishi Kumar (PW-1) and Ashok Sharma (PW-2) as their witnesses. Claimant-petitioner No.1 was also appeared in the witness box as her own witness. In rebuttal the respondents have examined Naveen Kumar (RW-1) and Balwinder Singh (RW-II) as their witnesses.

Witness of the Insurer namely, Naveen Kumar is a clerk in the office of Sub District Magistrate Shimla, stated that the Ashwani Kumar-Surveyor and loss Assessor came to his office for verification of driving license bearing No.2999/89/1996 dated 26.05.1996, which

was issued in the name of Sher Singh on which the endorsement HGV was made on 20.01.1997. He deposed that as per his record the endorsement HGV-73/SS-1997 was not made from his office and as per his record the endorsement No.73/SS-1997 dated 2.8.1991 was not made from his office and the said endorsement for driving heavy goods vehicle was made in the name of Rama Ram S/o Hari Ram R/o Galka Shimla.

In cross examination, he stated that there are number of offices of license issuing authority in District Shimla and he cannot say that as to whether the endorsement for driving heavy goods vehicle has been made from the office of other licensing authority and the authority to issue license in Shimla is the only authority to renew it. He further stated that the license was issued in the name of Sher Singh on 26.12.1996 and it was valid till 25.12.1999 and he cannot say that whether it was renewed thereafter, the endorsement for driving heavy goods vehicle is made on it or not.

5. Mr. R.K Jain, learned counsel for the appellant has vehemently argued that the deceased, namely, Mohinder Paul was not having a valid license and on the basis that there is no PSV endorsement made in the license of the deceased for driving transport vehicle, the Presiding Officer, Motor Accident Claims Tribunal, Kathua, has awarded the compensation in favour of the claimants, is not sustainable, therefore, he prays for setting aside of the same.
6. The Supreme Court has rendered a decision on 3rd of July, 2017 in case title ***“Mukund Dewangan Vs. Oriental Insurance Company Limited”*** reported in ***2017 AIR (SCW) 3668***. It would be appropriate to reproduce the relevant portion of paragraph No. 46 (iv) hereunder:

“46(iv) The effect of amendment of Form 4 by insertion of “transport vehicle” is related only to

the categories which were substituted in the year 1994 and the procedure to obtain driving license for transport vehicle of class of “light motor vehicle” continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding license to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.”

7. In case titled “*Bajaj Allianz General Insurance Co. Ltd.Vs. Anita Kumari and others*”, bearing MA No. 207/2015, vide judgment dated 17.05.2018 has decided a similar issue whereby the appeal of the Insurer was dismissed and directed the Registry of this Court to release the award passed by the Assistant Labour Commissioner, Udhampur forthwith in favour of the claimants-respondents.
8. In view of the above observations and after considering the arguments advanced by learned counsel for the parties as well as the law laid down by the Apex Court as well as this Court, I am of the opinion that the Presiding Officer, Motor Accident Claims Tribunal, Kathua, has not committed any error in deciding the claim petition bearing File No. 43/C.P filed by the claimants (respondents herein) and the findings rendered by him cannot be considered as baseless and perverse. On the contrary, the Presiding Officer, Motor Accident Claims Tribunal, Kathua, has decided the matter on the basis of legal evidence. Therefore, no interference is required by this Court in the award dated 23rd of September, 2008 passed by the Presiding Officer, Motor Accident Claims Tribunal, Kathua. Hence, there is no substance in the present appeal and, as such, the same is, accordingly, **dismissed**.
9. Registry is directed to release the awarded amount deposited before it, strictly in terms of award dated 23rd of September, 2008 passed by the

Presiding Officer, Motor Accident Claims Tribunal, Kathua, in favour of the claimants, after their proper identification and verification.

10. Registry to send down the record attached with this appeal.

(Tashi Rabstan)
Judge

Jammu
31.05.2018
Surinder-II

