

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

Case:- Mac App No. 06/2020

**Oriental Insurance Co. Ltd.,
Dhar Road, Udhampur,
Acting through its Manager Incharge, Oriental
Insurance Co. Ltd. 3rd Party Hub Town Hall,
Jammu
Sh. Duni Singh Motten age 58 years.**

.....Appellant(s)/Petitioner(s)

Through: Mr. Suneel Malhotra, Advocate.

Vs

- 1. Nek Mohd. S/o Abdul Mazid
R/o Dhramni Tehsil Billawar District Kathua
(Claimant)**
- 2. Gulam Abas alias Mohd. Abas
S/o Abdul alias Abdulla,
R/o Lohai at present Dargara Pull
Tehsil Billawar, District Kathua.
(Driver of the offending vehicle No. JK02-H/5789)**
- 3. Mohd Iqbal Wani
SW/o Din Mohd Wani,
R/o Bhadharwah District Doda at present Malik Market Narwal, C/o Sahni
Motors 19, Palace Road Panjtirithi, Jammu.
(Owner of the truck No. JK02H/5789)**

..... Respondent(s)

Through: Mr. Jagpal Singh, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**ORDER
(29.02.2024)**

(ORAL)

- 01.** In the instant appeal, award dated 23.11.2019 (for short ***“the impugned award”***) passed by the Motor Accident Claims Tribunal, Kathua (for short ***“the Tribunal”***) in the claim petition titled as ***“Nek Mohd Vs Gulam Abas alias***

Mohd Abas & Ors.” has been thrown challenge to by the Insurance Company – appellant herein.

- 02.** Facts emanating from the record would reveal that the respondent 1 herein filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for compensation for the injuries sustained by him in a vehicular accident having taken place on 02.09.2011 at Ganeer Bouli near Mahanpur at Dhar Road due to the rash and negligent driving of the driver of the vehicle bearing registration No. JK02H/5789.

In the claim said petition, the claimant/respondent 1 herein besides impleading the driver of the offending vehicle as respondent, also impleaded the owner of the offending vehicle as well as the Insurance Company – appellant herein with whom the offending vehicle was insured on the date of accident.

- 03.** Upon entertaining the claim petition, the Tribunal issued notice to the respondents in response to which the respondents 1 and 2 i.e. the driver and owner of the offending vehicle did neither appear nor contest the claim petition, however, the respondent 3 – Insurance Company appeared and filed its objections to the claim petition whereafter, on the basis of the pleadings of the contesting parties, the Tribunal framed the following issues:-

- (i) **Whether an accident occurred on 02.09.2011 at about 745 PM, at Ganeer Bouli, near Mahanpur, at Dhar Road, due to rash, negligent and careless driving of Gulam Abas alias Mohd Abas thereby causing injuries to the petitioner.? (OPP)**
- (ii) **If issue no. 1 is proved in affirmative, whether petitioner is entitled to the compensation and to what extent? (OPP)**
- (iii) **Whether the offending vehicle was being used in contravention of registration certificate and in violation of terms and conditions of the policy of Insurance? (OPR-3)**
- (iv) **Whether the driver of the alleged vehicle did not possess valid/effective driving license to drive the particular class of vehicle? (OPR-3)**
- (v) **Relief. (OP Parties)**

04. The claimant/respondent 1 herein in order to prove the issues (i) & (ii), onus whereof to prove the same was put upon him by the Tribunal besides appearing himself as a witness also examined witnesses, namely, Gulam Haider, Qamar Din and Dr. Vikas Padha whereas the Insurance Company – appellant herein examined two witnesses in support of the issue, onus whereof was laid upon it, namely, Sanjay Kumar – Junior Assistant in the Office of ARTO, Udhampur and Surinder Kumar Bhat being Administrative Officer of the Insurance Company.

05. The Tribunal upon adjudication of the claim petition passed the impugned award holding the claimant/respondent 1 herein entitled to the compensation amounting to Rs. 3,73,000/- along with interest @ 6.5% per annum from the date of institution of the claim petition till the date of its payment by the respondent 3/appellant

herein while holding the Insurance Company – appellant herein liable to indemnify the insured owner of the offending vehicle.

06. The appellant-Insurance Company has challenged the impugned award on the following grounds urged in the instant appeal:-

“a. That the section 3 of the Motor Vehicle act of 1988 provides that no person shall drive a motor vehicle in any public place unless he holds the effective driving licence issued to him authorising him to drive the vehicle and no person shall so drive a Transport vehicle other than the Motor Cab or Motor Cycle hired for his own use or rented under any scheme made under [2] section 75 unless his driving licence entitled him to do so. The section 10(2) of the Motor Vehicle Act of 1988 provides form and contents of the driving licence to drive section 10 provides the classes of licence as:-

- a. Motor cycle without gear,
- b. Motor cycle with gear,
- c. Invalid carriage,
- d. Light Motor Vehicle
- e. Transport vehicle
- f. Road Roller
- g. Motor vehicle of specific description.

The Section 14 of the Motor Vehicle Act provides as:-

14(2) The driving licence issued or renewed under this act shall

- a. In all cases of licence to drive the transport vehicle, be effective for a period of 3 years {provided}
- b. In case of any other license (i) if the person obtaining the license, either originally or on renewal thereof has not attained the age of 50 years on the date of issue or as the case may be renewal thereof.

[A] Be effective for a period of 20 years from the date of such issue or renewal or

[B] Until the date on which the person attains the age of 50 years whichever is the earlier.....

That herein the present case the driver was holding licence No. 5496/2001 issued by ARTO Udhampur for Light Motor Vehicle (LMV) non transport and Motor Cycle with gear. The said licence was valid for the period 15-05-2001 up to 14-05-2020, the certificate of the authority is annexed and is marked as Annexure-IV with this appeal.

The vehicle/ Truck No. Jk02-H/5789 was a commercial vehicle on the date of alleged accident. A copy of Registration certificate (R. C) of the said vehicle is enclosed herewith and is marked as Annexure-1/'with this appeal. Therefore, the vehicle/ Truck bearing registration No. JK02-H/5789 is a commercial vehicle and the driver respondent No.2 was not holding valid and effective driving licence to drive the same i.e to drive the transport/commercial vehicle.

"Therefore, even if the name and address of the driver is disclosed, it is absolutely impossible for the person to find out and lead evidence whether he holds a valid driving licence or not unless complete details viz the date of issuance and number of the licence is given, the section 106 of the evidence act lays down that if any fact is especially within the knowledge of any person, the burden of proving that fact is upon him illustration (b) of this section is—'A' is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him. There cannot be even a slightest doubt that holding of a driving licence is especially within the knowledge of the person concerned as no one also can have the knowledge of the said fact. This will be more so in situations covered by section 149 of the act as the insurance company cannot have any knowledge regarding the driving licence of the driver of the vehicle which is involved in an accident. Therefore the burden to prove that the driver of the vehicle had a valid driving licence is upon the owner of the vehicle and not upon the insurance company".

That applying the above said principle, the Learned Presiding Officer MACT, Kathua, ought to have drawn the adverse inference against the respondent driver and owner i.e respondent No.2 and 3 who have failed to produce the driving licence. The onus of the issue in the given circumstances was on the owner and driver who have failed to discharge the same. Hence by drawing the adverse inference against the said respondent, the Learned Presiding Officer ought to have granted the recovery rights to the appellant/ insurer by applying the principle as laid down in case titled NIC V/s Swaran singh. That since the learned Tribunal has not followed the law as laid down. Therefore the impugned award is illegal and bad in the eye of law, therefore may kindly be set a side and the liability if The learned Presiding Officer MACT, Kathua has wrongly applied the judgement as reported in AIR 2017 SC 3668 titled Mukund Dewangan V/s Oriental insurance co.

The section 14 specifically provides that the transport /commercial vehicle's validity period is 03 years. Hence the finding as being returned by the learned presiding Officer, MACT, Kathua to this extent is not in accordance with law therefore, is illegal and bad in the eye of law. The driver as per the law was not holding the valid and effective driving licence to drive the commercial vehicle/ transport vehicle, therefore the learned Presiding Officer, MACT, Kathua ought to have exonerated the appellant from the liability and the liability under

Motor Vehicle Act ought to have been fixed on the respondent No.2 and 3 herein. Therefore the impugned award is not in accordance with law, therefore may kindly be set a side and the liability may kindly be fixed on the respondent No.2 and 3 herein.

b. That the appellant herein had issued a notice under section 149 of Motor Vehicle Act of 1988 to the respondent No.2 and herein to produce the vehicular documents, the respondent No.2 and 3 failed to submit the same. A copy of the notice under section 149 of Motor vehicle Act dated 07- 03-2014 is annexed herewith and is marked as Annexure-(VI) with this appeal. That in such an event when the respondent owner and driver failed to produce the vehicular documents despite notice, the Learned Presiding Officer MACT, Kathua ought to have drawn the adverse inference against the said respondents in accordance with section 106 of the Evidence Act as the vehicular documents are in the control and possession of respondent No.2 and 3 herein, the Hon'ble Division Bench of Allahabad High Court in a case titled NIC V/s Brij Pal Singh reported as 2007 ACJ 1274 in para No.17 has held as under:- the last lines of the para 17 are as:-

any may kindly be fixed on the respondent owner and driver i.e respondent No.2 and 3 herein and the appellant company may kindly be exonerated from the liability.

c. That as admitted by the respondent No.1/ claimant that the claimant by profession is having Dairy Unit however was travelling in the said truck alleged to be as a labourer. The occupation of the claimant/ respondent No.1 herein whatsoever maybe but while travelling in the vehicle, the status of the respondent No.1 is that of a gratuitous passenger. That since the petitioner was travelling in the goods vehicle as a gratuitous passenger hence the appellant company is not liable to indemnify the insured owner. That the Hon'ble Supreme Court of India in a case reported as ACJ 2008 SC page 6 and 2018 SCCR 841 [SC] has held that he insurance company is not liable to indemnify the insured owner of the vehicle in case the insured owners goods vehicle carry a gratuitous passenger. The Learned Presiding Officer has failed to appreciate the facts and that of the status of the claimant/ respondent No.1 while travelling in the goods vehicle as that of a gratuitous passenger, therefore ought to have exonerated the Insurance Company/ appellant herein from the liability. Hence the impugned award is illegal and bad in the eye of law and the liability if any may kindly be fixed on the insured owner of the vehicle as the objections in this regard was taken before the Learned Tribunal.

d. That the respondent No.1 claimant has contributed in the alleged accident. The claimant when the vehicle was moving, open the window and because of the sudden jerk fell down. The respondent No.1 ought not to have opened the window when the vehicle was moving. That this act of the respondent No.1 of opening the window all of a sudden became the cause of the

accident. The Learned Tribunal has failed to take the note of the same. Therefore the impugned award is illegal and bad hence may kindly be slashed down for the reasons of contributory negligence on the part of the respondent No.1 in the alleged accident.

e. That the Learned Presiding Officer MACT, Kathua while awarding the amount of compensation under the head of loss of earning during the period the petitioner could not work has further awarded the amount of Rs. 30,000/- and while awarding the compensation on account of loss of income has applied the multiplier system and thus awarded an amount of Rs. 1, 68,000/-, therefore the amount as awarded separately under the head amounts to duplicity (awarding twice for the same case). The Learned presiding Officer ought not to have awarded Rs. 30,000/- as compensation separately for loss of earning during the period the petitioner could not work. The Learned Presiding Officer has awarded the compensation on account of pain and suffering as well as for the loss of amenities of life @ Rs. 70,000/- for both heads i.e. under the head G & H. Whileas there is no evidence on record to support the same, therefore the compensation as awarded under these heads i.e G & H is again on higher side and needs to be slashed down. The amount as awarded by the learned Tribunal, along with interest @ 7.5 % is not in accordance with law and needs to be slashed down.

f. That the other detailed grounds shall be made at the time of hearing to substantiate the fact that the impugned award is illegal and bad in the eye of law.

Heard learned counsel for the parties and perused the record.

07. Perusal of the record would reveal that the claimant/respondent 1 herein in order to prove issues (i) & (ii) *qua* the happening of the accident on 02.09.2011 resulting into serious injuries to him caused by the rash and negligent driving of the offending vehicle as also the quantum of compensation he became entitled thereto for the said injuries sustained by him, appeared as his own witness, besides examining three more above named witnesses.

Perusal of the statements of claimant/respondent 1 herein as also the other witnesses produced by him in the witness box tend to show that the claimant/respondent 1 herein proved that the accident took place on 02.09.2011 at Ganeer Bouli near Mahanpur at Dhar Road caused by the offending vehicle having been driven by its driver rashly and negligently resulting into serious injuries to him and in this regard besides producing the aforesaid witnesses had also relied upon the charge-sheet filed under Section 173 Cr.P.C pertaining to the accident in question being FIR No. 06/2012 for offence under Sections 279, 337 and 338 RPC with Police Station Basohli, and in order to prove the nature of injuries suffered by him as also the degree of disability sustained by him on account of the said injuries, has produced the above named Doctor as witness besides producing the Disability Certificate issued by Chief Medical Officer, Health and Family Welfare, Kathua which certificate reveals that the petitioner had been diagnosed as that of non-united fracture of neck of femur left side with shortening of left lower limb and wasting of left thigh and leg with post-traumatic stiffness of left hip and left knee with pain constituting 35% permanent disability.

The claimant/respondent 1 herein has also proved the income he was earning and also the loss of income on account of the disability suffered in the accident in

question besides the expenses incurred by him for receiving the treatment for the injuries.

- 08.** On the contrary the Insurance Company – appellant herein as has been noticed in the preceding paras produced the above named two witnesses in order to prove issues (iii) & (iv) that the offending vehicle was being driven in contravention of the registration certificate and in violation of the terms and conditions of the policy of insurance besides that the driver of the offending vehicle was not possessed with valid and effective driving license on the date of accident.

Perusal of the record would reveal that the Insurance Company during the course of leading of its evidence showed that the driver of the offending vehicle was competent to drive Light Motor Vehicle (LMV) and not a transport vehicle, thus, not making it liable to pay any compensation, however, the Tribunal while considering the aforesaid position discarded this plea and relied upon Section 2(21) of the Motor Vehicles Act, 1988 which provides that a Light Motor Vehicle (LMV) would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48) taking further cognizance of the amendment carried out in the Motor Vehicles Act, 1988 by virtue of Act of 54 of 1994 whereby

“medium goods vehicle” also came to be substituted in clause (e to h) of Section 10(2) substituting the expression “transport vehicle” therein the said clauses, thus, not excluding the transport vehicle.

- 09.** The Tribunal has also considered the evidence led by the Insurance Company – appellant herein in support of issues (iii) & (iv), that the vehicle was used in contravention of the registration certificate and in violation of terms and conditions of the policy, to be precise that the claimant/respondent 1 herein was travelling in a transport vehicle, thus, not covered by the policy of the insurance. The Tribunal though has not returned any specific finding on the said issue, yet a bare perusal of the insurance policy produced by the appearing counsel for the appellant would tend to show that the policy pertaining to the offending vehicle besides covering the driver, conductor and cleaner of the vehicle also covers coolie and it emerges from the claim petition that the claimant/respondent 1 herein had specifically pleaded in the claim petition that he was working as a labourer with a vehicle and that while working, as such, met with an accident in the offending vehicle suggesting that the claimant/respondent 1 herein at the time of the accident was attached as a labourer with the offending vehicle, thus, plea of the Insurance Company – appellant herein that the terms and conditions of the

Insurance Policy or the fitness and registration certificate of the offending vehicle were violated is held to be grossly misconceived.

10. A further perusal of the impugned award would reveal that the Tribunal has been alive to the fact and circumstances of the case, the evidence on record led by the parties inasmuch as the legal position *qua* the assessment and computation of the amount of compensation the claimant/respondent 1 herein was entitled to and consequently, has passed a just and fair to the sum of Rs. 3,73,000/- along with interest @ 6.5% per annum in favour of the claimant.
11. Viewed thus, the Tribunal cannot be said to have faulted in the matter. Resultantly, appeal fails and is, accordingly, **dismissed**.
12. The Registry is directed to release the award amount deposited by the appellant-Insurance Company in favour of the claimant along with interest, if any, accrued thereon subject to his proper verification and identification by his counsel.

(JAVED IQBAL WANI)
JUDGE

JAMMU
29.02.2024

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**