

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

...  
CMAM no. 182/2014

*Reserved on: 20.04.2021*

*Pronounced on: 22.06.2021*

United India Insurance Company Limited

.....Appellant(s)

Through: Mr. N. H. Khuroo, Advocate

**Versus**

Mst. Shameema and others

.....Respondent(s)

Through: Mr. M. Amin Tibetbaqal, Adv. for 1  
None for respondent 2 and 3.

**CORAM:**

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

**JUDGEMENT**

1. Impugned in this Appeal is Award dated 10.06.2014, passed by Motor Accident Claims Tribunal, Srinagar (*for short "Tribunal"*) on a Claim petition bearing File no. 120/2004 titled *Mst. Shameema v. United India Insurance Co. Ltd. and others*, directing appellant Insurance Company to pay compensation in the amount of Rs. 1,50,000/- along with 6% interest per annum from the date of institution of claim till realization, on the grounds made mention of therein.
2. A claim petition, as is discernible from perusal of the file, was filed by respondent- Mst. Shameema before the Tribunal on 12.06.2004, averring therein that the petitioner, Mst. Shameema, aged 32 years, injured in an accident, which took place on 11.09.2003 at Hyderbeigh, Pattan, National Highway, due to rash and negligent driving of driver of offending vehicle, bearing Registration no. JK01/G-0911 (Tata Sumo) which was insured

with appellant Insurance Company. Claimant/ respondent sought compensation to the tune of Rs.19,96,000/-

3. Appellant Insurance Company resisted the claim petition. It was stand of appellant before the Tribunal that driver of offending vehicle was not having valid driving licence.

4. The Tribunal, in view of pleadings of parties, framed following Issues for determination, which are:

- a) Whether on 11-09-2003 the petitioner while waiting on the road at Hyderbeigh on Srinagar Baramulla NHW was hit by Sumo bearing JK)1/G-0911 while being driven rashly and negligently by respondent no. 2 whereas, the vehicle belonged to respondent no. 3 and was insured with respondent no.1? OPP
- b) If the issue no. 1 is proved in affirmative, whether the petitioner is entitled to compensation on account of the injury suffered and if so to what extent and from whom? OPP

5. Claimant/respondent produced and examined one witness before the Tribunal. Appellant Insurance Company also produced one witness.

6. By impugned Award, the Tribunal found claimants/respondents entitled to receive compensation of Rs. 1,50,000/- along with 6% interest per annum.

7. Heard and considered.

8. Learned counsel for appellant Insurance Company has stated that the Tribunal erred in passing impugned Award as it has been specifically pleaded and proved by appellant Insurance Company by sufficient evidence that owner/respondent No.3 has violated terms and conditions of insurance policy wilfully and knowingly by allowing respondent no.2 to drive offending vehicle without any valid and effective driving licence. Respondent no. 2, who had been driving the vehicle on the date of occurrence, is stated to have been holding a learner's licence to drive only light motor vehicle and the two-wheeler, but offending vehicle was a

passenger carrying vehicle and the driver/respondent no. 2 could not have plied the said vehicle as he was not authorised under the licence to do so especially when he was holding only a learner's licence. According to learned counsel, under the common and settled law, learner's licence is being issued only in favour of a person who is in the process of learning the art of driving and under no imagination can be permitted to drive the vehicle carrying the passengers. It is contended that owner of offending vehicle, respondent no.3, who seems to be the father of driver, respondent no.2, has consciously and willingly and knowingly permitted respondent no. 2 to drive offending vehicle which is a passenger carrying vehicle, knowing that respondent no. 2 is only holding a learner's licence to drive the LMV and motor cycle and not the passenger service vehicle. Under such circumstances, it can be easily found that respondent no.3 has wilfully and knowingly committed the breach of the policy condition by authorising respondent no. 2 to drive the offending vehicle without having any valid and effective licence for driving the vehicle of the nature which has caused the accident in the case in hand. The learned Tribunal has erred in exonerating respondents 2&3 and instead has held appellant Insurance Company liable under impugned award in violation of provisions of law and that of terms and conditions of the Insurance contract and, accordingly, the impugned award is liable to be set aside.

9. As regards above submission, the Tribunal had discussed validity and effectiveness of driving licence of driver of offending vehicle while deciding Issue no.1, albeit there ought to have been a separate Issue with respect thereof framed and decided by Tribunal. Nevertheless, it would be

apt to go through contents of impugned Award. The Tribunal, after deciding Issue no.2, made some discussion as about driving licence of driver of offending vehicle. According to Tribunal, driver of offending vehicle was having driving licence, though learners, and he could have plied offending vehicle. While saying so, the Tribunal has made reliance to *New India Assurance Co. Ltd v. Latha Jayraj (II) 1999 ACC 303*. This judgement, however, has been incorrectly applied by the Tribunal to pass impugned Award. In the present case, driver of offending vehicle, possessing learner's licence, was not plying a light motor vehicle (LMV), but a passenger carrying vehicle. So, impugned Award to this extent is liable to be set-aside and owner of offending vehicle is liable to be fastened with liability of making payment of compensation. At the first instance appellant Insurance Company shall pay amount of compensation with a right to recover the same from owner of offending vehicle.

10. The question, whether Insurance Company can be and ought to be directed to pay claim amount, with liberty to recover the same from the owner/driver of the vehicle, has been answered by the Supreme Court in *National Insurance Company Ltd v. Swaran Singh and others (2004) 3 SCC 297*, and reiterated in *Pappu and others v. Vinod Kumar Lamba and others, (2018) 3 SCC 208*. On the contention of Insurance Company that once the defence taken by insurer is accepted by Tribunal, it is bound to discharge insurer and fix liability only on owner and/or driver of vehicle, the Supreme Court held that even if insurer succeeded in establishing its defence, the Tribunal or the Court could direct insurance Company to pay the award amount to claimant and, in turn, recover the same from owner of vehicle. The three-Judge Bench

of the Supreme Court in *Swaran Singh* (supra), after analysing earlier decisions on the point, held that there was no reason to deviate from the said well-settled principle.

11.As regards computation of compensation, the Tribunal has elaborately discussed Issue no.2 and has rightly given compensation in the amount of Rs.1,50,000/- along with 6% interest. To this extent impugned Award need not be interfered with.

12.For the foregoing reasons, the Appeal on hand is partly *allowed* and the Award dated 10.06.2014, passed by Motor Accident Claims Tribunal, Srinagar, on a Claim Petition, bearing File no.120/2004 titled *Mst. Shameema v. United India Insurance Co. Ltd. and others*, to the extent it holds that driver of offending vehicle was having valid driving licence to drive offending vehicle at the time of accident, is *set-aside*. Appellant Insurance Company shall pay, if not already paid, award amount along with interest as given by the Tribunal, to claimants/respondents. However, appellant Insurance Company shall have a right to recover the same from owner of offending vehicle.

13.**Disposed of** in terms of above.

14.Record of the Tribunal be sent down along with copy of this judgement.

(Vinod Chatterji Koul)  
Judge

Srinagar  
22.06.2021  
Imtiyaz

*Whether the order is reportable: Yes/No.*