

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
ATJAMMU**

Reserved on: 02.03.2023  
Pronounced on 10.03.2023

MA No. 64/2007  
c/w  
MA No. 67/2007  
MA No. 131/2007  
MA No. 132/2007  
MA No. 174/2008  
MA No. 207/2008

National Insurance Co. Ltd.

.....Appellant/Petitioner(s)

Through :- Mr. Dinesh Singh Chouhan, Adv. &  
Ms. Damini Singh Chouhan, Adv.

v/s

Mursa Begum and ors.  
Ghulam Ali and ors.  
Abdul Majid and ors.  
Ghulam Mohd and ors.  
Ahmdoo and anr.  
Mangta Rather and ors.

.....Respondent(s)

Through :- Mr. Sheikh Altaf Hussain, Advocate

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**1)** By this common judgment, all the afore titled six connected appeals, are proposed to be disposed of.

**2)** **CIMA No. 64/2007** arises out of award dated 30.09.2006 passed by the Motor Accidents Claims Tribunal, Doda (hereinafter to be referred as the Tribunal), whereby the learned Tribunal has awarded a sum of Rs. 4,73,300/- alongwith interest @ 7.5% per annum as compensation in favour of the claimant/respondent, Mursa Begum, whose husband, Mohd Sharief is stated

to have died while he was travelling in a Truck bearing No. JKP 137 on 01.07.1999 due to the accident, which occurred on account of rash and negligent driving of the Truck by its driver.

**3)** **CIMA No. 67/2007** arises out of award dated 30.09.2006 passed by the Tribunal, whereby the learned Tribunal has awarded a sum of Rs. 1,17,000/- alongwith interest @ 7.5% per annum as compensation in favour claimant/respondent, on account of death of his son, namely, Mudasir Hussain, who is stated to have died while he was travelling in a Truck bearing No. 137/JKP on 01.07.1999 due to the accident, which occurred on account of rash and negligent driving of the Truck by its driver.

**4)** **CIMA No. 174/2007** arises out of award dated 03.10.2006 passed by the Tribunal, whereby the learned Tribunal has awarded a compensation of Rs. 3,72,500 alongwith interest @ 7.5% in favour claimant/respondent, Ahmadoo on account of death of his son, Mohd Shafi, who was travelling in a Truck bearing registration No. JKP-137 on 01.07.1999 due to the accident, which occurred on account of rash and negligent driving of the Truck by its driver.

**5)** **CIMA No. 131/2007** arises out of award dated 30.06.2006 passed by the Tribunal, whereby the learned Tribunal has awarded a sum of Rs. 2,09,100/- alongwith interest @ 7.5% per annum as compensation in favour claimant/respondent, Abdul Majid, whose son, Farooq Ahmad is stated to have died while he was travelling in a Truck bearing registration No. JKP 137 on 01.07.1999 due to the accident, which occurred on account of rash and negligent driving of the Truck by its driver.

**6)** **CIMA No. 207/2008** arises out of the award dated 15.07.2006, passed by the Tribunal, whereby claimant/respondent was held entitled to compensation of Rs. 35,000/- alongwith interest @ 7.5% per annum on account of the injuries suffered by him on 01.07.1999 while he was travelling in the Truck bearing No. JKP 137, which suffered an accident on account of rash and negligent driving of its driver.

**7)** **CIMA No. 132/2007** arises out of the award dated 12.06.2006 passed by the Tribunal, whereby a compensation of Rs. 1,51,500/- alongwith interest @ 7.5% per annum has been awarded in favour Ghulam Mohd claimant/respondent, whose son, Shafqatullah is stated to have died on 01.07.1999 while he was travelling in a Truck bearing registration No. JKP-137 that met with an accident on account of rash and negligent driving of the Truck by its driver.

**8)** The only ground on which the appellant-Insurance Company has challenged all the aforesaid awards is that the deceased/injured in all these cases were travelling as gratuitous passengers in the offending load carrier (Truck) and as such, risk to their lives was not covered under the policy of insurance. On this basis, it is contended that the learned Tribunal has fallen into an error in saddling the liability to satisfy the award upon the appellant-Insurance Company.

**9)** I have heard learned counsel for the appellant and perused record of the Tribunal.

**10)** Learned counsel for the appellant has reiterated the contentions raised in the memo of appeal. On the other hand, learned counsel appearing the respondents/claimants has submitted that the deceased/injured were initially travelling in a bus, but in the midway they were made to de-board the bus by the Army personnel, as they needed the bus for their own purpose. It has been submitted that the deceased/injured were forcibly made to board the Truck and as such, there was no fault on their part. On this ground, it is urged that the Insurance Company is liable to pay compensation to the claimants or at least the appellant-Insurance Company should be asked to satisfy the award with a right to recover the same from owner of the offending Truck.

**11)** Before determining the contentions raised by the rival parties, it would be pertinent to note here that case of the claimant in CIMA No. 174/2008 stands on a different footing, inasmuch as, in the said case, it has come in the evidence on record that the deceased, Mohd Sharief was working as a labourer with the said Truck for loading and unloading. The said case would be discussed separately hereafter.

**12)** So far as the other appeals are concerned, it is not in dispute that the deceased/injured were travelling in the offending truck as un-authorised passengers and that the Truck in question was insured with the appellant-Insurance Company at the relevant time. The question arises as to whether the appellant-Insurance Company can be saddled with the liability to satisfy an award on account of death or bodily injuries of an unauthorised passenger or in the alternative whether order of “pay and recover” can be made against the

insurer in such a case. The learned Tribunal has in fact framed an issue on this aspect of the matter, which reads as under:

“Whether the claim petition is not maintainable as the offending vehicle was load carrier not authorised to carry the passenger? OPR-1”

**13)** The learned Tribunal has, after relying upon the judgment of the Karnataka High Court passed in **Madras Motor and General Insurance Co. Ltd. and anr. Vs. Nagamma and others, AIR 1977 Karnataka 46**, judgments of the Supreme Court in **Keesavan Nair vs. State Insurance Officer, 1972 ACJ 219** and **B. V. Nagaraju vs. Oriental Insurance Co. Ltd., 1996, ACJ 1178**, come to the conclusion that the appellant-Insurance Company is liable to pay the compensation to claimants.

**14)** It appears that reliance placed upon the ratio laid down in the aforesaid cases is misplaced because **Nagama's** case (supra) involved over loading of a Taxi, whereas in **Keesavan Nair's** case (supra), there was violation of conditions of permit. In **B. V. Nagaraju's** case (supra), it appears that the offending vehicle was carrying more passengers than what was permitted under the policy of the insurance. In the present appeals, the situation is quite different. Although the offending vehicle was insured with the appellant-Insurance Company, yet risk to the lives of passengers in the offending vehicle, which is a load carrier, was not covered. This is clear from the terms of the insurance policy, a copy whereof has been placed on record by the claimants themselves before the trial court.

15) Learned counsel for the claimants has contended that unless terms of the policy of insurance are proved by the insurer, violation thereof cannot be established. The argument is without any merit for the reason that the claimants have themselves placed on record a copy of policy of insurance and they have relied upon the same. They cannot be now heard to contend that the terms of the policy are not proved. A perusal of the terms of the policy of insurance clearly show that risk to the life of the passengers travelling in the offending truck was not covered.

16) So far as the contention of the learned counsel for the claimants/respondents that the deceased/injured had boarded the truck not because of their choice but because they were made to do so forcibly by the Army personnel is concerned, the same does not make any difference, especially to the liability of the Insurance Company. If at all the deceased/injured were forcibly made to board the offending vehicle, they may have the grievance against the Army personnel but they cannot have a cause of action against the appellant-Insurance Company, as it had nothing to do with the alleged forcible boarding of the deceased/injured in the truck in question.

17) So far as contention regarding order of “pay and recover” is concerned, the same, in respect of an unauthorised passenger, has been a matter discussion in a number of cases. This Court in the case of **United India Company Ltd. Vs. Kalyan Singh and ors. ( MA No. 220/2008, decided on 16.02.2023)** while analysing this aspect of the matter has taken note of various judgments of Supreme Court on the issue and observed as under:

“8. The concept of pay and recover has been discussed by the Supreme Court in the cases of **National Insurance Co. Ltd. Vs. Swaran Singh, (2004) 3 SCC 297**, **Mangla Ram vs. Oriental Insurance Co. Ltd., (2018) 5 SCC 656**, **Rani vs. National Insurance Co. Ltd., (2018) 8 SCC 492** and **Manuara Khatun vs. Rajesh Kumar Singh, (2017) 4 SCC 796**. The Supreme Court in all these cases has recognized the power of the Tribunal to direct that the award in the first instance be satisfied by the insurer with a right to recover the same from the insured. However, in all these cases, the question regarding liability of the Insurance Company to pay the compensation in respect of an unauthorised passenger travelling in a goods carriage vehicle did not arise for consideration. Therefore, position of law on the subject in the cases of unauthorised passengers needs to be noticed.

9. In **New India Assurance Co. Ltd. Vs. Asha Rani and others, 2003 (2) SCC 223**, the Supreme Court, while explaining the difference between the definition of “goods vehicle” under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988, held that under the Motor Vehicles Act, 1939, goods vehicle would mean even a carriage of goods solely or in addition to passengers, whereas under the Act of 1988, good vehicle means a carriage solely used for carriage of goods. It was observed that in 1939 Act, the requirement of policies and limits of liability have been provided in Section 95, which unequivocally stated that the policy shall not be required in case of a goods vehicle for the passengers being carried in the said vehicle. The Court went on to notice that after the amendment of 1994, it is necessary for the insurer to insure the owner of the goods or his authorised representatives being carried in a goods vehicle. It was held by the Supreme Court that provisions of 1988 Act do not enjoin any statutory liability on the owner of the vehicle to get his vehicle insured for any passenger travelling in a goods vehicle and as such, insurer would not be liable there for.

10. In **National Insurance Co. Ltd. Vs. Baljit Kour and other, 2004(2) SCC 1**, a three Judge Bench of the Supreme Court has taken a similar view and has held that although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, after the amendment of 1994 in the Motor Vehicles Act, yet it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers. The Court went on to hold that in such cases instead of the insurer, the owner of the vehicle shall be liable for the decree. The Court further clarified that the said legal position would have prospective effect.

11. From the foregoing enunciation of law on the subject, it is clear that after declaration of law by the Supreme Court in **Baljit Kour’s case** (supra), in the cases of claims awarded in favour of gratuitous passengers travelling in goods vehicles, the Insurance Company is not liable to satisfy the award but it is the owner only, who has to satisfy the award. Thus, no direction can be issued by any Tribunal to the Insurance Company to pay and

recover the award in respect of the passengers travelling in a goods vehicle after the decision in Baljit Kour's case (supra).

12. The legal position that emerges is that in the case of liability in respect of a passenger travelling in a goods vehicle, which is not required to be covered under section 147 of the Act, the Insurance Company cannot be asked to satisfy the award and then recover the same from the owner. However, where insurance policy covers the wider risks, the situation would be different.

13. It is only in the circumstances envisaged and enumerated in Sections 149(4) and 149(5) of the Motor Vehicle Act that even after being successful in its defence, the Insurance company can be asked to pay the amount to the claimant and thereafter recover the same from the owner. Thus, the principle of "pay and recover" as statutorily recognized in Sections 149(4) and Section 149(5) of the Act, is not applicable *ipso facto* to the cases of gratuitous passengers travelling in a goods carriage vehicle. "

**18)** In view of the aforesaid legal position, once it is shown that deceased/injured in afore noted five appeals were travelling as unauthorised passengers in the offending truck, their risk was not covered under the terms of policy of insurance. Thus, the direction for pay and recover can also not be passed against the appellant-Insurance Company in these cases.

**19)** That takes us to the appeal, CIMA No. 174/2008. It has been established in the evidence led before the Tribunal that deceased Mohd Shafi was working as a labourer with the offending truck. As per the terms of the policy of the insurance, legal liability of the labourer is covered and in fact, Section 147 of the Motor Vehicle Act prescribes compulsory coverage on death/bodily injury sustained by an employee. Therefore, risk to the life of deceased Mohd Shafi was covered under the policy of insurance. To that extent, the award impugned in CIMA No. 174/2008 does not call for any interference by this Court.



**20)** For what has been discussed herein before, all the afore-titled appeals except CIMA No. 174/2008, are allowed and the appellant-Insurance Company is exonerated from its liability to satisfy the awards impugned in all cases except in the case which is subject matter of CIMA No. 174/2008. In these cases, the amount of award shall be payable by the owner of the offending truck and the claimants shall be at liberty to execute the award against the owner of the offending truck. So far as CIMA No. 174/2008 is concerned, the same is dismissed.

**(Sanjay Dhar)**  
**Judge**

JAMMU  
10.03.2023  
Karam Chand/Secy.

