

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

MA No. 99/2008
IA No. 128/2008
c/w
CCROS No. 13/2008

United India Insurance Co. Ltd.Petitioner(s)/Appellant(s)

Through: Mr. Vishnu Gupta, Advocate
Ms. Damini Singh Chauhan, Advocate

Vs

Ashok Kumari and ors.Respondent(s)

Through: Mr. P.S. Parmar, Advocate for R-1 to 3

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

JUDGMENT

23.05.2023

(ORAL)

By this common judgment/order, the appeal being MA No. 99/2008 and cross objections/appeal being CCROS appeal No. 13/2008 are proposed to be disposed of.

MA No. 99/2008

1. The instant appeal is directed against the award dated 27.02.2008 passed by the Motor Accident Claims Tribunal, Jammu (*hereinafter referred to as the "Tribunal"*) in a claim petition titled as "**Ashok Kumari and others V/s Munish Ram and another.**"

2. The facts emerging from the appeal would reveal that the respondent 1 to 5 herein filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (*hereinafter referred to as 'the Act'*) against the respondent 6 herein and the appellant herein claiming compensation therein

on account of death of one namely Lal Chand S/o Amar Chand, R/o Village Sarot, Jammu in a motor vehicle accident on 14.05.2004 caused by vehicle bearing No. JK02S-1531 alleged to have been driven rashly and negligently by its driver.

3. The Tribunal upon entertaining the claim petition summoned respondents therein being respondent 1 herein and the present appellant. The respondents in the claim petition in a response to the summon issued to them entered appearance before the Tribunal and while respondent 1 outrightly denied involvement of the offending vehicle in the accident, yet admitted its ownership as also the same being insured with respondent 2 in the claim petition. The respondent 2 before the Tribunal while opposing the claim petition in its reply, stated that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident.

4. On the basis of the pleadings of the parties, the Tribunal framed following four issues:-

“ i. Whether an accident took place on 14.05.2004 at village Sarote tehsil Jammu due to rash and negligent driving of offending vehicle No. JK02S-1531 in the hands of erring driver in which deceased Lal Chand sustained fatal injuries?

OPP

ii. If issue No. 1 is proved in affirmative whether petitioners are entitled to the compensation: if so to what amount and from whom?

OPP

iii. Whether driver of offending vehicle at the time of accident was not holding a valid and effective driving license to the knowledge of owner of vehicle?

OPR-2

iv. Relief.

O.P. parties”

5. The Tribunal upon conclusion of the adjudication of the claim petition passed the impugned award, observing and holding that the issue No. 1, onus whereof had been put on the claimants was proved by them and, accordingly, decided in their favour, observing further that no evidence in rebuttal in respect of the issue had been led by the respondents. The Tribunal further observed and held in the award, insofar as the issue No. 3 is concerned that the driver of the offending vehicle was holding a valid and effective driving license upon considering the evidence led by the appellant herein while of examining the Statistical Assistant of the office of Regional Transport Office, Jammu namely Jagdish Raj. The Tribunal while passing the award under challenge further observed and held the claimants to be entitled to the compensation amounting to Rs. 7,05,880/-.

6. The award is being questioned by the appellant Insurance Company on the grounds urged in the memo of appeal.

Heard learned counsel for the appellant and perused the record.

7. Mr. Vishnu Gupta, appearing counsel for the appellant, while reiterating the grounds urged in the memo of appeal would insist that the Tribunal did not consider two applications filed by the appellant/Insurance Company herein during the course of the adjudication of claim petition, one filed under Section 170 of the Act, wherein the Insurance Company/appellant had contended that it has strong reason to believe that the driver and owner of the offending vehicle are in collusion with each other and, as such, do not want to contest the claim petition and, therefore, in absence of the contest by the driver and owner of the offending vehicle, serious prejudice is likely to be caused to the interest of the Insurance Company/appellant herein and second being an application filed on 27.03.2006, seeking permission to deposit diet expenses of summoning of three witnesses namely, Gouri Shankar S/o Sh. Sangu Ram R/o Orak Jammu, Munshi Ram S/o Sh. Ambo R/o Village Sarot, Jammu and Record Keeper, Regional Transport Officer alongwith the original record of Driving License No. 9270 issued on 09.01.2002 in favour of Gouri Shankar S/o

Sangu Ram R/o Orak, Jammu. Mr. Gupta, would further contend that the said applications were not adverted to by the Tribunal and were kept undecided, resulting into serious prejudice to the rights and interests of the appellant/Insurance Company.

8. On the contrary, Mr. P S Parmar, appearing counsel for the respondent 1 to 3 would oppose the contentions and submissions made by Mr. Vishnu Gupta, Advocate.

9. The perusal of the record of the Tribunal would reveal that the Tribunal upon framing the issues (supra) on 11.04.2005 directed the counsel for the parties to file list of witnesses, whereafter the claimants led their evidence and consequently their evidence came to be closed on 23.02.2006, directing the respondents in the claim petition to lead evidence while fixing the case for further proceedings on 27.03.2006.

Perusal of the record would further reveal that an application came to be filed by the counsel for the respondent-Insurance Company/appellant herein on 26.03.2006, seeking therein permission of the Court to deposit diet expenses for summoning the above referred three witnesses. Perusal of the record would further show that the Tribunal issued a notice to the witness-Record Keeper of the Regional Transport Office, Jammu on 20.04.2006, who appeared in the witness box and came to be examined on 17.03.2007. The record of the Tribunal reveals that no notice had been issued to the other two witnesses by the Tribunal. Once the Tribunal have had summoned one witness named in the application filed by the respondent-Insurance Company/appellant herein being the Record Keeper of the office of Regional Transport Office, Jammu, there was no reason for the Tribunal not to summon the other two witnesses mentioned in the application. The record of the proceedings of the Tribunal reflect that the Tribunal did not ever summon the said two witnesses and instead closed the evidence of respondent-Insurance Company/appellant herein on 07.09.2007. Record of the proceedings of the Tribunal also demonstrates that the Tribunal did not advert to the application filed by the respondent-Insurance

Company/appellant herein filed under Section 170 of the Act despite the fact that even the said application is on record of the file of the Tribunal.

10. It would be pertinent to mention here that the Tribunal constituted under the provisions of the Motor Vehicle Act, 1988 has been consistently held by the Courts to be a Judicial Authority created by the Act with an inherent judicial power to determine the disputes between the parties fairly and objectively while possessing the powers to summon and examine the witnesses, cross examine them as also to order discovery, admission or denial of documents. The Tribunal under the Act has been held to have trappings of a Court and though it is not enjoined by law to observe all rules and the procedure contained in the Civil Procedure Code and in the Evidence Act, yet it has to decide the matters before it fairly and objectively.

11. Having regard to legal character of the Tribunal and in view of the aforesaid factual position, the Tribunal ought not have closed the evidence of the respondent/Insurance Company, once it had allowed the application of the respondent-Insurance Company/appellant herein for summoning of three witnesses partly upon summoning the Record Keeper of the office of Regional Transport Office, Jammu. The Tribunal, seemingly, has proceeded in the matter, in so far as the said application is concerned illegally and with material irregularity. The Tribunal further appears to have grossly erred while not considering the application filed by the respondent Insurance Company appellant herein filed under Section 170 of the Act. The aforesaid failure on the part of the Tribunal patently also is not legally tenable.

12. Viewed thus, the award impugned in the instant appeal passed by the Tribunal is not sustainable. Resultantly, the appeal succeeds and the impugned award is set aside. The matter is remanded back to the Tribunal while reviving the claim petition filed by the respondent 1 to 5 herein with the direction to the Tribunal to advert to the applications filed by the respondent-Insurance Company/appellant herein being application filed under Section 170 of the Act, as also the summoning of two remaining witnesses referred in the application filed by the respondent-Insurance

Company/appellant herein on 27.03.2006 and proceed in the matter in accordance with law.

13. In view of the aforesaid decision rendered in the instant appeal, the cross objections/appeal filed by the claimants being CCROS appeal No. 13/2008 pales into insignificance. Accordingly, the said appeal/cross objections in the light of the decision (supra) in the appeal shall stand **disposed of.**

14. The Tribunal shall proceed in the matter expeditiously and preferably decide the same within six months from the date a copy of this order is produced by the appearing counsel for the parties before the Tribunal. The parties shall appear before the Tribunal on **05.06.2023**. Further, Registry is directed to return the amount of award if any, deposited by the appellant. Further the amount of award received by the claimants during the pendency of the appeal before this Court shall remain subject to the final outcome of the claim petition.

(JAVED IQBAL WANI)
JUDGE

Jammu
23.05.2023
Avish Kohli