

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

MA No. 140/2009

New India Assurance Co. Ltd. ....Appellant(s)/Petitioner(s)

Through: Mr. Udhay Bhaskar, Adv.

**Vs**

Jagjeet Singh and others .... Respondent(s)

Through: Mr. Jatinder Choudhary, Adv. for No. 6

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

**ORDER**

1. The appellant/Insurance Company has challenged award dated 18.11.2008 passed by the learned Motor Accidents Claims Tribunal, Kathua (hereinafter to be referred as "the Tribunal"), whereby respondent Nos. 1 to 4 (claimants) have been awarded compensation in the amount of Rs. 2,62,896/- alongwith interest at the rate of 7.5% per annum from the date of filing the claim petition till the payment is made.
2. It appears that respondent Nos. 1 to 4/claimants had filed a claim petition before the Tribunal pleading therein that on 27.06.2002 while deceased Tejinder Singh, who happened to be the son of respondent Nos. 1 and 2 and brother of respondent Nos. 3 and 4, was travelling on his motor cycle, the said motor cycle on reaching near Jarai Morh, was hit by a bus bearing registration No. JK02E-8421 that was being driven rashly and negligently by its driver, respondent No. 6 herein. The Bus in question belonged to respondent No. 5 and the same was insured with the appellant/insurance company at the relevant time. As a result of the accident, the deceased had died. It was pleaded by the claimants that the

deceased was running a business of electric goods and earning an amount of Rs. 8,000/- per month. His age was stated to be 20 years at the time of death. The claim petition was contested by the appellant/insurance company, whereas owner and driver of the offending vehicle did not contest the claim petition.

3. In the reply to the claim petition, the appellant/Insurance Company pleaded that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident but at the same time, it admitted the currency of the policy of insurance of the offending vehicle with it at the time of the accident. On the basis of the pleadings of the parties, the following issues were framed by the learned Tribunal:

i) "Whether on 27.06.2002 vehicle bearing No. JK02E-8421 driven by its driver non-applicant No. 1 under the employment of non-applicant no. 2 rashly and negligently dashed against the deceased Tejinder Singh (Shanty) who was coming on his motor cycle near Jarai More, Kathua resulting into his death on spot? OPP.

ii) Whether the monthly income of the deceased was Rs. 8000/- at the time of accident, if so, what is its effect on the claim petition? OPP.

iii) Whether the petitioners, heirs of the deceased are entitled to total amount of compensation of Rs. 17.34 lacs if so on what ground from whom? OPP.

iv) Whether the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident, as such non-applicant No. 3 is not liable to pay any compensation to the petitioners? OPR-3

v) Whether the offending vehicle was being plied in violation of terms and conditions of Registration Certificate, Route Permit and Insurance Certificate as such non-applicant No. 3 is not liable to indemnify by the owner? OPR-3.

vi) Whether the compensation claimed to highly excessive and inflated, as such petitioners are not entitled to such a huge amount of compensation? OPR-3.

vii) Relief.”

4. After recording the statements of the witnesses produced by the claimants and the Insurance Company, the learned Tribunal came to the conclusion that the accident was caused due to rash and negligent driving of the offending vehicle by its driver-respondent No. 6 herein, which resulted in death of deceased-Tejinder Singh. The learned Tribunal also held that there was no violation of the policy conditions on the part of the insured and that the driver of the offending vehicle was holding a valid and effective driving license at the time of the accident.
5. While assessing the compensation, the learned Tribunal concluded that the income of the deceased was Rs. 5,000/- per month and on that basis, loss of dependency has been calculated at Rs. 2,59,896/-. After adding the conventional heads, the total compensation of Rs. 2,62,896/- has been awarded in favour of the claimants.
6. The appellant/insurance company has challenged the impugned award primarily on the ground that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident and as such, there was violation of the conditions of the policy of insurance and entitling the Insurance Company to be exonerated from indemnifying the insured. It has been submitted that the offending vehicle was a passenger carrying bus, whereas its driver, respondent No. 6 herein, was holding a driving license which authorized him to drive a heavy goods vehicle only. Since there was no endorsement on the driving license authorising him to drive a public service vehicle in terms of Rules

4 of the Jammu and Kashmir Motor Vehicle Rules, as such, respondent No. 6 herein was not holding a valid and effective driving license.

7. I have heard learned counsel for the appellant as also the learned counsel appearing for respondent No. 6 (driver) and perused the material on record including the grounds of appeal and record of the Tribunal.
8. There is no dispute to the fact that the offending vehicle was a passenger carrying vehicle and it is also not in dispute that respondent No. 6 was holding a driving license that authorized him to drive a heavy goods vehicle only as it did not bear any endorsement authorizing its holder to driver a public service vehicle.
9. The question that falls for determination is whether a driver holding a license to drive a heavy goods vehicle is eligible to drive a passenger carrying vehicle. In order to find an answer of this question, we need to notice the definitions of goods carriage, heavy goods vehicle, transport vehicle and public service vehicle as given in Section 2 of the Motor Vehicles Act, 1988.
10. Section 2(14) of the Motor Vehicles Act, 1988 defines 'goods carriage' as any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted while being used for the carriage of goods.
11. Section 2(16) of Motor Vehicles Act, 1988 defines 'heavy goods carriage' as any goods carriage the gross vehicle weight of which or a tractor or a road-roller the unladen weight of either of which exceeds 12,000 kilograms.
12. Section 2(35) of the Act defines 'public service vehicle' as any motor vehicle used or adapted to be used for the carriage of passengers for hire

or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

13. The transport vehicle has been defined under Section 2(47) of the Motor Vehicles Act, 1988 as a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.
14. What is deduced from the analysis of the definitions of the various classes of vehicles given hereinbefore, is that every heavy goods vehicle is a goods carriage, whereas a transport vehicle includes within its definition a public service vehicle as well as a goods carriage. Thus a passenger carrying vehicle i.e. a public service vehicle as also a heavy goods vehicle, i.e. a goods carriage fall within the definition of a 'transport vehicle' as contained in Section 2(47) of the Motor Vehicles Act, 1988.
15. In the instant case, respondent No. 6, the driver, was holding a driving license which authorized him to drive a heavy goods vehicle. As already noted, heavy goods vehicle falls in the category of transport vehicle and the public service vehicle also falls in the same category. The driver in the instant case was, therefore, authorized to drive a class of vehicle which falls under the category of transport vehicle. Therefore, it can be safely stated that the driver was authorized to drive even a public service vehicle, which also falls in the same class i.e. the class of 'transport vehicle.'
16. Looking from another angle, as per the amended provisions of Section 10 of the Motor Vehicle Act, 1988, a driving license is to be issued for following classes of vehicles:
  - (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 a specified description.

17. In clause (e) of Section 10(2) of the Motor Vehicles Act, expression “transport vehicle” has replaced all types of commercial vehicles, which includes goods vehicles as well as passenger carrying vehicles. This has been done vide the amendment that came into effect on 14.11.1994. Therefore, with effect from 14.11.1994 driving licenses in respect of commercial vehicles are issued under the head “transport vehicle” and no sub-classification of these types of licenses is envisaged under Section 10(2) of the Act.
18. The accident, which is subject matter of the instant case, has taken place in the year, 2002 i.e. well after the coming into the effect of aforesaid amendment, therefore, any person who was holding a driving license authorizes him to drive a particular type of commercial vehicle would automatically be eligible to drive any other type of commercial vehicle, meaning thereby that a driver holding a driving license to drive a heavy goods vehicle would be competent to drive a passenger carrying vehicle. On this ground also, the driving license that was held by respondent No. 6, driver was valid and effective license authorising him to drive the offending vehicle.
19. Learned counsel for the appellant has, while arguing in support of the grounds urged in the appeal, relied upon the judgment of this Court in

**National Insurance Company Ltd vs Bashir Ahmed Chopan and others, 2012 (1) JKJ [HC] 222**, wherein this Court has held that a driver holding a driving license entitling him to drive a heavy goods vehicle is not competent to drive a passenger carrying vehicle unless there is a PSV endorsement. The ratio laid down in the said case is *per-incuriam* and not a binding precedent because it seems that the provisions referred to hereinbefore were not brought to the notice of the Court at the time of the passing of the aforesaid judgment. Even otherwise also, the said judgment has been passed without taking note of the binding precedent delivered by the Division Bench of this Court in **National Insurance Co. Ltd vs Mohd Sadiq Kuchay and others 2008(1) SLJ 23**, wherein it has been held that PSV endorsement in accordance with Jammu and Kashmir Motor Vehicle Rules is not necessary and that if a driver is competent to drive a particular class of transport vehicle, he is competent to drive any other class of transport vehicle.

20. For the foregoing reason, I do not find any merit in this appeal, the same is dismissed. The amount, if any deposited, by the appellant/insurance company with the Registry of this Court be released in favour of the claimants in accordance with the directions of the learned Tribunal.

**(SANJAY DHAR)**  
**JUDGE**

**Jammu**  
04.05.2023  
Rakesh

Whether the order is speaking: Yes/No  
Whether the order is reportable: Yes/No