

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

MA No. 92/2018

Reserved On: 19th of December, 2024

Pronounced On: 3rd of January, 2025.

National Insurance Company Limited

... Appellant(s)

Through: -

Mr Aatir Javed Kawoosa, Advocate.

V/s

Gulshana Begum & Ors.

... Respondent(s)

Through: -

Mr Sheikh Abdul Hai, Advocate for R-1 to 4; and

None for R-5 & 6.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

(JUDGMENT)

01. The Appellant-National Insurance Company Limited, through the medium of the instant appeal filed under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'), has challenged the Award dated 29th of September, 2018 passed by the Motor Accident Claims Tribunal, Shopian in Claim Petition No. 40/Claim titled '**Gulshana Begum & Ors. v. National Insurance Co. Ltd. & Ors.**', whereby an amount of Rs. 12,65,000/-, inclusive of the interim already granted, on "No Fault Basis Liability" was awarded in favour of the Claimants/ Respondent Nos. 1 to 4 herein, along with interest @ 6 percent per annum from the date of filing of the Claim Petition till final realization of the awarded amount.

02. The facts leading to the filing of the present appeal, as emanate from the perusal of the pleadings on record, are that one Abdul Rashid Reshi, husband of Claimant/ Respondent No.1 herein and father of

Claimant/ Respondent Nos. 2 to 4 herein, was travelling in a vehicle LP Truck bearing registration No. JK01A-0272 on 9th of August, 2011, being driven by its driver, Mohd. Iqbal Reshi/ Respondent No.5 herein, rashly and negligently; that, on reaching Zaznar, Heerpora, the driver of the aforesaid vehicle lost control of the vehicle, as a result whereof, the vehicle skidded off the road and fell down about 150/200 feet deep gorge, thereby completely damaging the vehicle and inflicting serious injuries upon the said Abdul Rashid Reshi, who was taken to District Hospital, Shopian, wherefrom he was referred to SKIMS, Srinagar, where he died on 26th of August, 2011; that an FIR bearing No. 264/2011 came to be registered with regard to the aforesaid accident in Police Station, Heerpora under Sections 279, 337 and 427 RPC.

03. Thereafter, the Claimants/ Respondent Nos. 1 to 4 herein appear to have approached the Tribunal with a Claim Petition seeking compensation to the tune of Rs. 45.00 lacs for the death of the deceased. Pursuant to notice having been issued by the Tribunal, the Respondent Insurance-Company/ Appellant herein appeared and filed its Objections to the Claim Petition, while as, the Respondent Nos. 2 and 3, Driver and Owner of the offending vehicle, did not file any Objections and were, accordingly, proceeded *ex-parte* before the Tribunal.

04. In its Objections before the Tribunal, the Respondent-Insurance Company/ Appellant herein, stated that the Claim Petition was not maintainable against the Company, inasmuch as, the deceased was not a Labourer of the Truck employed by the insured and was not covered under the policy of insurance. It was further pleaded by the Insurance Company that the driver of the offending vehicle was not having a valid and effective driving license as on the date of accident, which amounts to breach of policy conditions, thereby exonerating the Company from the liability.

05. The Tribunal, vide Order dated 17th of March, 2016, on the basis of the pleadings of the parties, had framed the following issues:

- i. Whether on 9/8/2011, the deceased was a labourer of Hindustan Construction Corporation (HCC) died in an

accident due to the rash and negligent driving of the driver (respondent No.2) of the offending vehicle bearing registration No. JK01A/027? (OPP);

- ii. In case issue No.1 is proved in affirmative, whether the Petitioners are entitled to compensation to what extent and from whom? (OPP);
- iii. Whether the deceased was not labourer of the insured truck on the date of occurrence? (OPR1);
- iv. Whether the claim is not maintainable against Respondent No.1 as the insured of the offending vehicle has not been arrayed as party in the claim Petition? (OPR1);
- v. Whether the offending vehicle was being driven by the respondent No.2, driver on the date of accident without valid and effective D/L and valid vehicular documents. If so, what will be its effect on the claim petition? (OPR1); and
- vi. Relief?

06. After conclusion of the proceedings and hearing the contesting parties, the learned Tribunal, in terms of the impugned Award dated 29th of September, 2018, allowed the Claim Petition, thereby holding the Claimants/ Respondent Nos.1 to 4 herein entitled to compensation to the tune of Rs. 12,65,000/-, inclusive of the interim already granted, on “No Fault basis Liability”, along with interest @ 6 % per annum from the date of filing of the Claim Petition till final realization of the awarded amount. The Tribunal, however, directed the Respondent-Insurer/ Appellant Insurance Company herein to make payment of the awarded amount.

07. The impugned Award has been assailed by the Appellant-Insurance Company before this Court through the medium of the appeal on hand, on various grounds, including that the deceased was travelling by the offending Insured vehicle gratuitously, as such, the Claimants, though entitled to receive compensation, but the Insurer is not liable to indemnify the Insured of his liability.

08. Learned Counsel, appearing on behalf of the Appellant-Insurance Company, in line with the grounds urged in the memo of appeal

to challenge the impugned Award, argued that the offending vehicle, though admittedly was insured with the Appellant-Insurance Company as on the date of accident, wherein the deceased-Abdul Rashid Reshi, husband of Respondent No.1 and father of Respondent Nos. 2 to 4 had died, however, the Appellant, as Respondent before the Tribunal, had raised two important points for determination: first, that the registered owner of the offending vehicle, who was insured with the Appellant-Insurance Company, had not been arrayed as a party Respondent in the Claim Petition, though he was a necessary and proper party in the matter; and, secondly, that the deceased was working with a Construction Company-HCC and not with the offending vehicle as a labourer, which has been projected to be believed.

09. He has argued that the Tribunal, on the basis of the aforesaid contentions made by the Appellant-Insurance Company, as Respondent-Insurer, had raised two issues on these facts as Issue Nos. 3 and 4, onus to prove the same had been placed on the Appellant-Insurance Company, as the Respondent-Insurer. He further argued that the Company/ Respondent-Insurer, while discharging the burden placed on it, had examined the investigator of the Company, namely, Imtiyaz Ahmad Dar, and an official of the Respondent-Insurance Company, namely, Gulzar Ahmad Wani, both of whom had stated that the deceased was travelling by the offending vehicle as a gratuitous passenger and not as a labourer with the offending truck, but he was working with a Construction Company-HCC for the last six months on a monthly wages of Rs. 6,000/-, however, the Tribunal, while returning a finding on issue No.3, had turned down the said plea on the basis of the statement of the witnesses examined by the Claimants that the deceased was working as a labourer while being engaged with the offending vehicle for loading and unloading of the stones. Learned Counsel argued that the aforesaid issue was wrongly decided by the Tribunal, ignoring the fact that the deceased was not working with the offending vehicle, but was a gratuitous passenger travelling by it.

10. Learned Counsel for the Appellant-Insurance Company has also argued that the Insurance Company, as Respondent-Insurer, had raised a plea before the Tribunal during the course of trial of the Claim Petition that the registered owner of the offending vehicle, who was insured with the Insurance Company as on the date of accident of the vehicle, had not been arrayed as a party, though he was a necessary and proper party to be impleaded in the proceedings before the Tribunal. He argued that, in fact, it was Abdul Rehman Matta, who was the registered owner and insured of the offending vehicle, but he was neither arrayed as a party by the Claimants in the Claim Petition nor was he summoned by the Tribunal on a plea raised by the Insurance Company. He further argued that the Claimants had arrayed one Abdul Rehman Malik as the owner of the offending vehicle, however, the Insurance Company had no contract of insurance with the said Abdul Rehman Malik, even if the offending vehicle may have been transferred by the registered owner in his vehicle, thus, the Tribunal had committed an error, while deciding issue No.4 as well, holding that it does not matter that the registered owner of the offending vehicle, who was the insured, was arrayed as a party or not, though an observation was made by the Tribunal in the finding that not arraying the registered owner/ insured as party could be, at the most, an issue of mis-joinder and non-joinder of necessary party which could be an irregularity and set at right at any point of time, but, at the same time held that not arraying the registered owner in the case does not appear to be a good ground, as argued on behalf of the Insurance Company.

11. He finally submitted that the Appellant-Insurance Company was not aggrieved of the quantum of compensation, but only aggrieved of the findings of the Tribunal with regard to having made the Appellant liable to make payment of the awarded compensation to the Claimants, so as to indemnify the liability of the registered owner of the offending vehicle/ insured and prayed that the impugned Award be set aside to the limited extent of the liability of the Appellant Insurance Company, so that the

Claimants may recover the awarded compensation from the registered owner of the vehicle.

12. Learned Counsel appearing for the Claimants/ Respondent Nos. 1 to 4 herein, on the other hand, argued that the Claimants had filed this Claim Petition before the Tribunal in the year 2011 and are still waiting for receiving the amount of compensation awarded in their favour by the Tribunal. He prayed that the Appellant-Insurance Company be directed to make payment of the awarded compensation to the Claimants/ Respondent Nos. 1 to 4 herein and then recover the same, if found entitled to, from the registered owner and driver of the offending vehicle.

13. Heard learned Counsel for the contesting parties, perused the pleadings on record and considered the matter.

14. Since, the quantum of compensation granted in favour of the Claimants/ Respondent Nos. 1 to 4 herein to the tune of Rs. 12,65,000/- granted by the Tribunal, along with interest @ 6% per annum, throughout, has not been challenged, the same is maintained, accordingly. However, as the Appellant-Insurance Company has raised two important contentions in this appeal relating to issue Nos. 3 and 4, as framed by the Tribunal and decided by it against the Appellant-Insurance Company, by stating that the same have been wrongly appreciated and decided by the Tribunal, therefore, this Court proceeds to analyze the said contentions in the light of the arguments made by the contesting parties and the pleadings available on record.

15. The first and primary contention raised by the Appellant-Insurance Company, in this appeal, is that the Claimants/ Respondent Nos. 1 to 4 were entitled to receive compensation from the registered owner of the offending vehicle/ insured, inasmuch as, the deceased had been found working with the truck as their labourer. This contention of the Appellant-Insurance Company has been decided by the Tribunal against the Company, as Insurer, while returning its findings with respect to issue No.3 framed by it. In the considered opinion of this Court, this plea raised by the Appellant-

Insurance Company as to whether the deceased was, in fact, working with a Construction Company-HCC on a monthly remuneration should have been inquired into by the Tribunal and an official from the said Construction Company should have been examined with regard to that fact or, in the alternative, the driver or owner of the offending vehicle should have been examined by the Tribunal, so as to state whether the deceased was working with the truck owned by the registered owner and driven by the Respondent-driver, as on the date of accident. This, given the facts and circumstances of the case before the Tribunal, was required, so as to rule out the fact that the deceased was not a gratuitous passenger. Needless to say here that it is settled position of law that in a case where it is proved that a person travelling by the offending vehicle as a gratuitous passenger, not covered under the policy of insurance, in such eventuality, the Insurance Company is not liable to pay compensation to the Claimants concerned, even under the statutory provision of pay and recover. That being so, this Court is of the considered opinion that the Tribunal has wrongly decided the issue No.3, while passing the impugned Award.

16. The second plea raised by the Appellant-Insurance Company in this appeal is that the registered owner of the offending vehicle, who was insured with the Insurance Company, was neither arrayed as party Respondent by the Claimants nor was he impleaded as Respondent by the Tribunal itself, despite raising an objection by the Insurance Company, as Respondent-Insurer before the Tribunal, stating that the offending vehicle was registered and insured in the name of one Abdul Rehman Matta, therefore, the registered owner/ insured was a necessary and proper party in the matter. This issue, too, appears to have been wrongly decided by the Tribunal, inasmuch as, without the registered owner of the offending vehicle having been arrayed as a party Respondent in the Claim proceedings, it was fallacious on the part of the Tribunal to decide the matter under presumptions. This is so because the matter with regard to the liability of payment of compensation to the Claimants is essentially a

dispute to be decided between the Insurer/ Insurance Company and the Insured/ registered owner of the offending vehicle.

17. Having regard to the aforesaid discussion and reasons stated hereinabove, the present appeal is partly **allowed** and the findings returned on issue Nos. 3 and 4 by the Tribunal, vide the impugned Award, are set aside, accordingly. The case is remanded back to the Tribunal, maintaining the quantum of compensation, with a direction to the learned Tribunal to, first, array the registered owner of the offending vehicle, namely, Abdul Rehman Matta, as party Respondent, being the registered owner/ insured of the offending vehicle and then decide the issue with regard to liability of the registered owner of the offending vehicle, as Insured, or of the Insurance Company, as Insurer, to pay compensation to the Claimants for the death of the deceased, particularly in view of the assertion of the Appellant-Insurance Company that the deceased was travelling by the offending vehicle as a gratuitous passenger. The amount of compensation which may have been deposited before this Court during the pendency of this appeal is ordered to be remitted to the account of the Motor Accident Claims Tribunal, Shopian, with a direction to secure the same in a Fixed Deposit Receipt (FDR), till the case is decided by the Tribunal, as aforesaid, one way or the other.

18. **Disposed** of on the above terms, along with the connected CM(s).

19. Registry to send a copy of this Judgment to the Tribunal for information and compliance.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR
January 3rd, 2025
"TAHIR"

i. Whether the Judgment is approved for reporting? Yes/ No.