

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

(Through Video Conferencing)

Reserved on: 22.06.2020

Pronounced on: 24.06.2020.

CMAM No. 51/2008

National Insurance Co. Ltd.

.....Petitioner (s)

Through :- Mr. J.A. Kawoosa, Advocate.

V/s

Javaid Ahmad Dar and others.

.....Respondent(s)

Through :- Mr. M. Ayoub, Advocate.

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

ORDER

1. The instant appeal has been filed by the National Insurance Company Limited against the award dated 14.06.2007 passed by the Commissioner, Workman's Compensation Act, Pulwama. Before coming to the instant appeal, let me give a brief background of the facts that have led to the filing of this appeal.

2. Respondent No. 1 herein filed a claim petition before the Commissioner, Workman's Compensation Act Pulwama, alleging therein that he was engaged by the respondent No. 2 as a second driver with vehicle bearing Registration No. JK13-2618 and when the said vehicle, while on its way from Wathoo, was fired upon by un-identified gun-men, he suffered bullet injuries.

3. The claim petition was contested by the appellant insurance company by filing objections wherein, *inter-alia* it was pleaded that the second driver is not covered under the terms and conditions of the policy of the insurance. During the pendency of the claim petition, the claimant moved an application for amendment of the petition to incorporate the plea that he was travelling in the vehicle in question not as a second driver but as a labourer. The application was contested by the insurer by pleading that it was an afterthought to overcome the objection raised by the insurance company.

4. After recording evidence of the parties, the Commissioner concluded that the injured was engaged as a labourer and not as second driver of the vehicle in question. It was also found by the Commissioner that the injured was aged about 23 years old at the time of the incident and that he had suffered 40% permanent physical disability. After taking monthly earning of the injured as Rs. 4000/-, the Commissioner, vide the impugned order, awarded a sum of Rs. 2,11,152/- in favour of the injured with a direction to the appellant insurance company to satisfy the award.

5. Aggrieved of the aforesaid award, the appellant insurance company has challenged the same primarily on the ground that the injured, as per material on record, was travelling as a second driver in the vehicle in question and not as a labourer and that second driver of the vehicle was not covered under the terms and conditions of the policy of the insurance of the vehicle in question. It has been contended that the learned Commissioner has committed a grave error by holding that respondent No. 1 (injured) was travelling as a labourer and not as second driver in the vehicle in question and this has given rise to a substantial

question of law for determination by this Court. It is further contended that as per the terms and conditions of the policy of insurance, the second driver is not covered as such, the appellant insurance company is not liable to pay any compensation to the injured.

6. I have heard the learned counsel for the parties. I have also gone through the impugned award, the grounds of the appeal and the record of the Commissioner, Workman's Compensation Act, Pulwama.

7. The short question involved in this appeal is whether, on the basis of the evidence on record, the Commissioner was justified in recording the finding that respondent No. 1 (injured) was travelling as a labourer in the vehicle in question at the time of the incident. If, it is shown that he was travelling as a labourer, then the insurance company as per its own admission, is liable to pay the compensation to the injured. This is so because the appellant company has admitted the currency of policy of insurance in respect of the vehicle in question and it has not disputed the quantum of compensation .

8. In order to support its contention that the injured was second driver and not a labourer, the appellant company has relied upon the statements of Constable Manzoor Ahmed, Investigator Mushtaq Ahmed Bhat and Legal Assistant of appellant company Sh. Mushtaq Ahmed Sadoo. The knowledge of Sh. Manzoor Ahmed, Constable about the occupation of the injured is based upon the contents of the F.I.R. relating to the incident in which the injured is shown to be second driver of the vehicle. The witness has no personal knowledge about the capacity in which the injured was travelling in the vehicle. The same

is the case with Investigator Mushtaq Ahmed Bhat and Legal Assistant, Mushtaq Ahmed Sadoo. None of these witnesses have personal knowledge about the capacity in which the injured was travelling in the vehicle in question and they are deposing on the basis of what is either written in the F.I.R or what they have heard from others. As against this, we have on record the statements of witnesses examined by the claimant namely Azeez Dar, Mohd. Ashraf Mir, Mustaq Ahmed, Ghulam Rasool Mir, Ali Mohd. Sofi, Abdul Hamid Mir and Ghulam Qadir Mir, all of whom have stated in one voice that the injured was travelling in the vehicle in question as a labourer for the purpose of loading and unloading. There is nothing in their cross-examination to even remotely suggest that the injured was travelling in any other capacity in the vehicle. Not even a suggestion to the effect that the injured was travelling as second driver in the vehicle in question has been put to these witnesses by the counsel for the insurance company during their cross examination.

9. In the face of aforesaid evidence on record, the Commissioner was well within its jurisdiction to accept the assertion of the injured that he was travelling as a labourer in the vehicle in question at the relevant time. Such a finding by the Commissioner cannot be termed as either perverse or without any basis, as has been contended by the learned counsel for the appellant.

10. The injured may have been holding a driving license but only this circumstance does not establish that he was travelling as a driver in the vehicle. The question arises whether he was travelling in the vehicle in question in the capacity of a driver or any other capacity at the relevant time. The evidence on

record clearly shows that the injured was travelling as a labourer in the vehicle in question at the relevant time.

11. Assuming for a moment that the injured was travelling as second driver in the vehicle in question at the relevant time, even in that eventuality the appellant insurance company cannot escape its liability from paying the compensation to the injured because admittedly one driver is covered under the terms and conditions of the policy of insurance and no other person has, in the capacity of driver, made claim for compensation against the appellant company. It is not the case of the insurance company that a particular driver alone was covered under the terms of the policy of insurance. Therefore, in any case, the insurance company is obliged to indemnify the insured in respect of injuries or death that may have occurred to any one of the drivers of the vehicle in question. On this ground also the claim of the injured against the insurance company cannot be declined by it.

12. For the aforesaid reasons, I do not find any ground to interfere with the impugned award passed by the Commissioner, Workman's Compensation Act, Pulwama. There is no merit in the appeal; the same is dismissed, as such.

(SANJAY DHAR)
JUDGE

Srinagar
24.06.2020
(Neha)

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