

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

(Through Virtual Mode)

Reserved on:-24.06.2020
Pronounced on:-03.07.2020

CMAM No. 170/2009,
IA No. 07/2009 [556/2009]

United India Insurance Company Ltd.Appellant(s)

Through :- Mr. N.A.Beigh, Advocate.
(on Video conferencing from Srinagar)

V/s

Mst. Hanifa and others.Respondent(s)

Through :- None.

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

ORDER

1. The instant appeal is directed against the Award dated 23.04.2009 passed by the Motor Accidents Claims Tribunal, Srinagar (*hereinafter referred to as 'the Tribunal'*), whereby the Tribunal has awarded a sum of ₹5,03,000/- (Rupees Five Lacs and Three Thousand) in favour of the claimants and against the respondents. Out of the awarded sum, an amount of ₹10,000/- (Rupees Ten Thousand) each has been made payable by the driver and conductor of the offending vehicle, whereas the balance amount has been made payable by the insurance company. It is also provided that the awarded sum shall carry interest @ 6% per annum from the date of institution of the claim petition till realization of the awarded sum and if the awarded sum is not

paid within two months, the interest has been made recoverable @ 9% per annum from the date of the default.

2. The facts that have led to the filing of the claim petition are that on 28.04.2014, the deceased namely, Riyaz Ahmed Dar, a driver by profession, had parked his vehicle (Tata Sumo) bearing Registration No. JK019-3255 near a workshop at Rawalpura, Srinagar and was standing by the side of his vehicle. In the meanwhile, a truck bearing Registration No. JK01E-5552 that was being driven rashly and negligently by its driver knocked the deceased down, resulting in his death. The claimants happen to be the mother and siblings of the deceased. In the claim petition, compensation in the amount of ₹36.00 Lacs (Rupees Thirty Six Lacs) was sought.

3. Respondent No. 1 in the claim petition happens to be the insurer, respondent No. 2 happens to be the owner, respondent No.3 happens to be driver, whereas respondent No. 4 happens to be the conductor of the offending vehicle. Only respondent No. 1 (insurer) contested the claim petition by filing its objections, whereas other respondents were set ex-parte. In its reply before the Tribunal, the insurance company contended that the vehicle in question, at the time of the accident, was being driven by its conductor (respondent No. 4 before the Tribunal), who was not authorized to do so and as such, the insurance company is not liable to pay any compensation to the claimants.

4. On the basis of pleading of the parties, the Tribunal in terms of order dated 19.05.2006, framed the following issues:-

- (i) Whether on 28.4.2004, Riyaz Ahmad Dar while standing by his parked sumo bearing No.JK0IG-3255 at mechanical shop near Govt. High School, Bye Pass, Rawalpora was hit by a truck bearing No. JKOIE-5552 being driven rashly and negligently by respondent No.3, Ab. Latief Khan and causing his death on spot, whereas, the vehicle belonged to respondent No.3 as its prospective owner?
- (ii) In case the issue No. I is proved in affirmative whether the petitioners as the legal heirs of the deceased are entitled to compensation and if so to what extent and from whom?(OPP)
- (iii) Whether the respondent No.1 is not liable to pay the compensation for the reason that the offending vehicle was actually driven by Showkat Ahmad Wani, respondent No.4, who not having a driving license?(OPR- 1)
- (iv) Relief.

5. On the basis of the evidence led before the Tribunal, the impugned award dated 23.04.2009 came to be passed by the Tribunal, whereby compensation in sum of the ₹5,03,000/- (Rupees Five Lacs and Three Thousand) was awarded in favour of the claimants and the insurer was held liable to pay awarded sum minus ₹20,000/- (Rupees Twenty Thousand) which was made payable by respondents No. 3 and 4-the driver and conductor of the vehicle in equal proportions.

6. Aggrieved of this award, the insurance company has come up by way of instant appeal, mainly on the ground that the offending vehicle, at the time of accident, was being driven by its conductor-respondent No. 6 herein, who was not authorized to drive the vehicle and further he did not possess a driving licence. On account of this, it is urged that there has been breach of policy conditions on the part of the insured and as such, the appellant-insurance company is not liable to indemnify the insured.

7. I have heard learned counsel for the appellant and the claimants. I have also gone through the grounds of the appeal, the impugned award and the record of the Tribunal.

8. As already stated, the only ground urged before this Court is that the vehicle in question, at the time of the accident, was being driven by an unauthorized person, who was not holding a driving licence and as such, the insurance company is not liable to indemnify the insured. The quantum of compensation awarded by the Tribunal in favour of the claimants is not in dispute and the policy of the insurance is also not in dispute. The finding of the Tribunal that Showkat Ahmad Wani-respondent No. 6 herein (conductor) of the offending vehicle was driving the said vehicle at the time of the accident and that he had been permitted by the driver of the offending vehicle, namely, Abdul Lateef Khan-respondent No. 5 herein to do so, is also not in dispute.

9. In the backdrop of the aforesaid admitted position, the question arises as to whether the insurer in this case is liable to indemnify the insured given the fact that the licensed driver appointed by the insured had permitted an unauthorized person to take charge of the vehicle as a result of which an accident was caused.

10. The Tribunal has relied upon the judgment of the Allahabad High Court rendered in case titled, “Baldeo Raj vs Smt. Deowati And Ors., reported as (1986) (1) ACC 390” to support its conclusion that the owner of the vehicle is vicariously liable for the accident caused by the conductor of the vehicle,

provided the owner had appointed a duly licensed driver to take charge of the vehicle, who in turn allowed the unlicensed conductor to drive the vehicle.

11. The Hon'ble Supreme Court has, in a number of cases, examined the issue at hand. In "*Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan & ors.*, reported as 1987 (2) SCC 654", the Hon'ble Supreme Court held that the owner becomes vicariously liable in a case, where accident is caused by an unauthorized person when the owner had employed a duly licensed driver and the driver had left the vehicle unattended. The Hon'ble Supreme Court further went on to hold that the exclusion clause in the contract of insurance making the owner absolutely liable, irrespective of the circumstances leading to driving by unlicensed driver, must be 'read down' being in conflict with the main statutory provision.

12. In "*Kashiram Yadav & Anr vs Oriental Fire & Gen. Insurance Co.*, reported as 1989 SCC (4) 128", the Hon'ble Supreme Court reiterated the views expressed by it in case of **Skandia Insurance Co. Ltd.'s case** (supra).

While referring to that case, it was stated that:-

".....There the facts found were quite different. The vehicle concerned in that case was undisputedly entrusted to the driver who had a valid licence. In transit the driver stopped the vehicle and went to fetch some snacks from the opposite shop leaving the engine on. The ignition key was at the ignition lock and not in the cabin of the truck. The driver had asked the cleaner to take care of the truck. In fact the driver had left the truck in care of the cleaner. The cleaner meddled with the vehicle and caused the accident. The question arose whether the insured (owner) had committed a breach of the condition incorporated in the certificate of insurance since the cleaner operated the vehicle on the fatal occasion without driving licence. This Court expressed the view that it is only when the insured himself entrusted the vehicle to a person who does not hold a driving licence, he could be said to have committed breach of the condition of the policy. It must be

established by the Insurance Company that the breach is on the part of the insured. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. It was also observed that when the insured has done everything within his power inasmuch as he has engaged the licensed driver and has placed the vehicle in his charge with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.

We affirm and reiterate the statement of law laid down in the above case. We may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance."

13. In "*Sohan Lal Passi vs P. Sesh Reddy & Ors.*, reported as 1996 SCC (5) 21", the Hon'ble Supreme Court reiterated and reaffirmed the views expressed by it in case of **Skandia Insurance Co. Ltd.'s case** (supra).

14. From the aforesaid enunciation of law on the subject, it becomes lucid that in a case, where the owner has given charge of his vehicle to a duly licensed driver and the said driver, without express or implied knowledge/consent of the owner, puts an unauthorized person/conductor incharge of the vehicle resulting in an accident, it would amount to negligence on the part of the licensed driver appointed by the owner and for this act of negligence, the owner will become vicariously liable. The insurer in such a case cannot escape its liability to indemnify the insured because there is no wilful breach of policy condition on the part of the insured inasmuch as the insured himself has not put an unlicensed or unauthorized person incharge of the vehicle.

15. Coming to the facts of the instant case, it has been established on record that respondent No. 4/owner had placed respondent No. 5, a duly

licensed driver as incharge of his vehicle. It has also been established from the evidence on record that the respondent No. 5-driver permitted the conductor of the vehicle-respondent No. 6 to take charge of the vehicle, which resulted in the accident. Thus, respondent No. 4 became vicariously liable for the negligence on the part of his driver (respondent No. 5). No wilful breach of policy conditions by the owner is established in this case. The insurer-appellant herein cannot, therefore, escape its liability to indemnify the insured.

16. For the foregoing reasons, I do not find any reason to interfere with the findings of the Tribunal on the above aspect of the matter. The finding on other issues are not under challenge before this Court. Therefore, the appeal is **dismissed**.



(SANJAY DHAR)
JUDGE

Srinagar
03.07.2020
(Ram Krishan)

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