

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

RP No. 01/2018

IA No. 01/2018

**Pronounced on : 23<sup>rd</sup>.06.2020**

Mohd. Bashir Ullah

.... Petitioner(s)

Through:- Mr. R. Koul &  
Mr. Z. A. Qazi, Advocates.

V/s

Shri Ram General Insurance Company Ltd. &  
ors.

.....Respondent(s)

Through:- Mr. Jugal Kishore Gupta &  
Mr. Ratish Mahajan, Advocates.

**Coram : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**JUDGMENT**

- 01.** The Motor Accident Claims Tribunal, Jammu vide award dated 10.05.2016 awarded Rs.3,48,000/- alongwith pendent lite and future interest @ 10% per annum to the petitioner who was injured in the accident involving vehicle (Tempo Traveller) No. JK12-1865 on 04.05.2011.
- 02.** This award was challenged by the claimant who was injured in the accident in MA No. 136/2016 and also a separate MA No. 145/2016 was filed by the Insurance Company. Both these appeals were heard and decided by Hon'ble Mr. Justice Janak Raj Kotwal as his lordships on 17.04.2018 and allowed the appeal filed (MA No. 145/2016) by the Insurance Company and the award to the extent of holding the Insurance Company liable for paying the compensation was set aside and the appeal (MA No. 136/2016) filed by the claimant was dismissed.
- 03.** The petitioner/claimant has filed this review petition seeking review of the judgment dated 17.04.2018 on the following grounds :

“(i) There is material irregularity and mistake/error on record because;

(a) This Court did not appreciate the plea raised by the applicant that the Insurance Company was required to prove breach on the part of the owner as held by the Supreme Court in **National Insurance Company Ltd. Vs. Swaran Singh & ors., 2004 (3) SCC 297;**

(b) That even otherwise invalidity of license has lost its significance in view of the report obtained by filing an application under Right to Information Act which proved the validity of the driving license held by the driver Liaqat Hussain-respondent No.2 herein;

(ii) That the appeal filed by the petitioner and raised valid grounds for seeking enhancement of the award. The claimant has sought enhancement of the award on the grounds of similar to the law laid down by the Apex Court in **Rekha Jain & anr. Vs. National Insurance Company Ltd. (2013) 8 SCC 389**, in terms of which, the petitioner has claimed enhancement of the amount upto Rs. 17,60,500 instead of Rs.3,48,000/-.”

**04.** The short question involved in this review petition is whether on these grounds, the judgment can be reviewed and the same is maintainable also.

**05.** The contention of the applicant that while deciding the said appeal, the judgment of the Supreme Court for enhancement of the amount awarded was not considered, cannot be a ground for review as held by the

Supreme Court in **Thungabhadra Industries Ltd. vs. Government of Andhra Pradesh, AIR 1964 SC 1372** which is reproduced below:-

“.....A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this different exhaustively or in any great detail but it would suffer for us to say that where without any elaborating argument, one could point to the error and say here is a substantial point of law which starts one in the face and there could reasonable be no opinion be entertained without a clear case of error apparent on the face of the record would be made out .....

06. The Supreme Court again in **Dr. Subramanian Swamy Vs. State of Tamil Nadu & ors., (2014) 5 SCC Pages 75**, the explanation to order-47 Rule-1 held in Para-52 as under:-

“52. The issue can be examined from another angle. The Explanation to Order 47, Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’) provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed.”

So far as the ground that he has furnished insurance certificate is concerned, this was the argument raised before the said Bench, which rejected the same holding that;

Another witness, namely, Amandeep Shanna, Legal Officer of the appellant-Insurance Company has stated before the learned Tribunal that the Policy of the Insurance issued in favour of the owner of the offending vehicle, Parvez Waheed, (respondent No.2 before the learned Tribunal) contained a condition that the Insurance Company shall not be liable to pay compensation in case driver of the vehicle did not possess a valid driving license. Evidence to this extent has not been rebutted nor this aspect is denied.

There was, thus, a clear breach of Policy of Insurance which provided that the Company shall not be liable to indemnify the owner in case the vehicle is driven by a person not possessed of a valid and effective driving license. The Insurance Company, therefore, is not liable to indemnify the owner and the learned Tribunal has fallen in error by foisting the liability on the said Company.

The appellant-Insurance Company having been found not entitled to indemnify the owner, objection in regard to the quantum of compensation raised on behalf of the Company need not be entertained and considered.

**07.** Moreover, Liaqat Hussain appeared before the Tribunal as a witness on 25.03.2015, and made a categorical statement that he was neither possessing driving license nor driving the vehicle on the said date.

**08.** Thus, even if the submission of learned counsel for the petitioner that Liaqat Hussain was possessing driving license is correct, even then Liaqat Hussain was not in possession of driving license on the day of

accident because license was extended upto 23.04.2017 w.e.f 24.04.2014 as per Annexure issued by the Assistant Regional Transport Officer, Rajouri.

**09.** In view of the aforesaid discussion, there is no merit in this petition and the same is according, **dismissed**.

**(Sindhu Sharma)**  
**Judge**

JAMMU  
23<sup>rd</sup>.06.2020  
*Ram Murti*

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

