Regular
S. No. 8

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CMAM 56/2016
IA(1/2016[01/2016]) CM(6325/2021) CM(6659/2019)

United India Insurance Company Limited

… Petitioner/Appellant(s)

Through: Mr. Shabir Ahmad Kanth, Advocate

V/s

Mst. Taja Begum and others

… Respondent(s)

Through: Mr. N. H. Shah, Sr. Adv. with Mr. Suwaiba, Advocate

CORAM: **HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

O R D E R
10-10-2024

ORAL

1. In the instant appeal filed under section 173 of the Motor Vehicles Act, 1988, the United India Insurance Company Limited, appellant herein, has called in question award dated 26.02.2015 (for short the impugned award) passed in claim petition titled as "Mst. Taja Begum versus United India Insurance Company Limited and others" by the Motor Accident Claims Tribunal, Baramulla.
2. The facts giving rise to the filing of the instant petition are that the respondents 1 to 9 filed a claim petition before the Tribunal on 30.11.2004 for compensation contending therein that their predecessor-in-interest namely Ghulam Mohammad Lone died in a vehicular accident on 10.09.2004 caused by a vehicle (bus) bearing registration no. JKE/6144 owned by respondent 11 and driven by respondent 10

herein while impleading the present appellant as respondent 3 in the claim petition.

3. Upon entertaining the claim petition, the Tribunal summoned the respondents in the claim petition, in response to which all the respondents entered appearance and filed their written objections to the claim petition opposing the same. On the basis of pleadings of the parties, the Tribunal framed the following issues:

> Issue 1 & 2
> Whether on 10.09.2004 the respondent No.1 was driving vehicle bearing registration No. JKE/6144 (Bus) owned by the respondent No.2 at Noorkhah Road and while doing so he was negligent in causing the vehicular accident by the offending vehicle in which one Gh. Mohammad Lone died? OPP
> In case Issue No.1 is not proved in affirmative, whether the offending vehicle was not driven by the respondent No.1 at the time of alleged accident and if so, what is its effect on the claim petition? OPR-3

4. The claimants respondents 1 to 9 herein in support of the issue onus whereof was put on them to prove produced four witnesses in addition to the claimant 1 who appeared as his own witness as well. Besides the said oral defence, the claimant has also produced a documentary evidence consisting of police challan, FIR and insurance policy of the offending vehicle.

5. On the other hand, the respondents 1 and 2 in the claim petition being respondents 10 and 11 herein did not produce any evidence. The respondent 3 in the claim petition being present appellant produced two witnesses. The Tribunal after holding an inquiry/adjudication in the

claim petition in terms of the impugned award awarded compensation of Rs. 6,26,000 along with simple interest at the rate of 9% per annum in favour of the claimant from the date of institution of the claim till its final realization. The award amount came to be directed by the Tribunal to be paid to the claimant by the insurance company herein on the terms that the offending vehicle was insured with the insurance company and had to indemnify the insured owner of the vehicle.

6. The appellant herein has questioned the impugned award on multiple grounds urged in the memo of appeal.

Heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant herein while making his submissions would vehemently argue that the Tribunal committed grave error while passing the impugned award, in that, the deceased did not die on account of vehicular accident and that the claimants in the claim petition were as such not entitled to payment of any compensation more so by the insurance company. It is further contended by the counsel for the appellant that the Tribunal also grossly erred while awarding 9% interest in favour of the claimant over the amount of compensation awarded in terms of the impugned award.

8. In so far as the aforesaid first plea raised by the counsel for the appellant is concerned, perusal of the record available on the file in general and the impugned award in particular would tend to show that the tribunal while passing the impugned award against the insurance company appellant herein, has based its findings on the interpretation of the expressions “accident” and “arising out of the use of the motor

vehicles" appearing in section 165 of the Act of 1988 fundamentally on the basis of the interpretation of the expression "accident" made by the apex court in case titled as **"Regional Director, E.S.I. Corporation v. Francis De Costa reported in (1993) Supp 4 SCC 100"** wherein risking repetition, the apex court has opined that the popular and ordinary sense of the word 'accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident, while further placing reliance on case titled as **"Union of India v. Sunil Kumar Ghosh reported in (1984) 4 SCC 246"** wherein the apex court while interpreting the expression accident has held that the accident is an occurrence or an event which is unforeseen and startles one when it takes place, but does not startle one when it does not take place and it is the happening of the unexpected, not the happening of the expected, which is called an accident, placing further reliance on the judgment of the apex court passed in case titled as **"Jyothi Ademma v. Plant Engineer, Nellore, reported in AIR 2006 SC 2830".** The tribunal has also in regard to the expression "arising out of the use of motor vehicle" placed reliance on a Division Bench of Kerela High Court passed in case titled as **"Sharlet Augustine v. K.K. Raveendran, reported in AIR 1992 Ker. 346"** and a judgment passed in case titled as **Babu v. Remesan reported in AIR 1996 Ker. 95"** wherein the Kerela High Court has held that in order to determine as to whether the vehicular accident has arisen out of the use of the motor vehicle, **the test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor**

vehicle was in motion then, holding further that any restrictive interpretation for the word "use" would be defeating the scheme and object of the Act of 1998 being a beneficiary piece of legislation.

9. The counsel for the appellant has vehemently argued that there was sufficient credible evidence before the tribunal suggesting that the deceased did not die in the vehicular accident but had in fact died while being on the top of the offending vehicle and which vehicle at that relevant point of time was not in motion, but the said plea of the counsel for the appellant pales into insignificance in view of the aforesaid interpretation made by the apex court qua the expression “accident” and the High Court of Kerala insofar as the interpretation of expression “arising out of the use of the motor vehicle” is concerned.

10. In view of the aforesaid principles/interpretations of the apex court and the Kerala High Court, having been heavily relied upon by the tribunal in the impugned award, it cannot by any stretch of imagination be said that the tribunal erred or least grossly erred while adjudicating/ inquiring the claim petition and saddling the insurance company with the liability, in that, it had not been in dispute whether the offending vehicle was on the date of occurrence insured with the insurance company appellant herein. Insofar as the plea raised by the counsel for the appellant for the award of 9% interest awarded by the tribunal in favour of the claimant herein is concerned, same seemingly is on higher side in view of the law laid down by the Apex Court in a series of judgments including one passed in Civil Appeal no. 2611 of 2020 arising out of SLKP (Civil) no. 9689 of 2018, decided on 16.6.2020,

thus warranting slashing of the rate of interest awarded by the tribunal and fixing it at the rate of 6% per annum having regard to the aforesaid judgment of the Apex Court. The award thus is interfered with only to the said extent of the slashing down of the rate of interest.

11. Viewed thus, what has been observed, considered and analysed hereinabove, the appeal is disposed of in the above terms, and the Registry is accordingly directed to release the award amount claimed to have been deposited by the insurance company appellant herein before the Registry of this court, in favour of the claimants respondents 1 to 10 if not already released. The rest of the amount, if any lying with the Registry, in view of the aforesaid modification made to the award, shall be released in favour of the insurance company appellant herein along with interest, if any after following due procedure.

12. Disposed of.

(JAVED IQBAL WANI)
JUDGE

Srinagar
10-10-2024
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes