

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

**CIMA No. 140/2012 c/w
CIMA No. 57/2011**

Abdul Rashid Kuboo.

...Appellant(s)

Through:-Mr. Imtiyaz Ahmad Sofi, Advocate.

Vs.

Gh. Hassan Khan & Ors.

...Respondent(s)

Through:-Mr. Shabir Ahmad, Advocate.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

- 1) On account of death of one Mst. Taja Bano in a motor vehicle accident taking place on 05.12.1998 involving a vehicle (Tipper) bearing registration No. 923-JK0C, and resulting in registration of FIR No.366 of 1998 in the Police Station, Pattan, a claim petition on file No. 27/2000 came to be filed on 07.02.2000 before the Motor Accident Claims Tribunal (MACT), Baramulla by three claimants namely Ghulam Hassan Khan, Bilal Ahmad Khan and Mst. Saleema Bano, as being husband and two minor children of deceased Mst. Taja Bano.
- 2) By virtue of an award dated 24.03.2011, MACT, Baramulla came to award an amount of Rs. 3,29,200/- as compensation in favour of said three claimants.
- 3) The registered ownership of the offending vehicle at the time of accident was obtaining in the name of Abdul Rashid Kuboo who was named as respondent No. 3 in the claim petition which the offending vehicle was being driven by the Khursheed Ahmad Qureshi named as the respondent No. 1 in the claim petition and whereas the United India Insurance Company Ltd., as being the insurer of the offending vehicle, came to be named as the respondent No. 2 in the claim petition.

- 4) In terms of award dated 24.03.2011, MACT Baramulla rested the liability for payment of compensation unto the insurer, i.e United India Insurance Company Ltd., thereby giving the benefit of insurance indemnification in favour of the owner and driver of the offending vehicle.
- 5) Aggrieved of the said award dated 24.03.2011, the United India Insurance Company Ltd., came forward with a civil misc. appeal under section 173 of Motor Vehicles Act, 1988 diarized as CIMA No. 57/2011 instituted on 13.06.2011.
- 6) Following the institution of the aforesaid appeal by the United India Insurance Company Ltd., the registered owner of the offending vehicle, Abdul Rashid Kuboo also came forward with an appeal under section 173 of Motor Vehicles Act, 1983 diarized as CIMA No. 140/2012 against the very said award.
- 7) Thus, the two appeals came to be before this Court.
- 8) In terms of an order dated 07.04.2014, condonation of delay with respect to the CIMA No. 140/2012 filed by the owner-Abdul Rashid Kaboo was allowed.
- 9) In terms of an order dated 08.05.2014, both the appeals, i.e, CIMA No. 57/2011 and CIMA No. 140/2012 came to be admitted for final hearing.
- 10) While the two appeals CIMA No. 57/2011 and CIMA No. 140/2012 came to be jointly admitted for final hearing as being connected matters, however, by virtue of a judgment dated 01.12.2016, CIMA No. 57/2011 filed by the United India Insurance Company Ltd., came to be disposed of whereas CIMA No. 140/2012 filed by the appellant-Abdul Rashid Kuboo came to be delinked for separate adjudication.
- 11) In terms of judgment dated 01.12.2016, this Court came to

modify the award dated 24.03.2011 by reserving in favour of the United India Insurance Company Ltd., right to pay and recover the compensation award against the registered owner of the offending vehicle and that being the appellant-Abdul Rashid Kuboo in CIMA No. 140/2012.

12) The disposal of CIMA No. 57/2011 had taken place in absence of registered owner-Abdul Rashid Kuboo as being the respondent in the said appeal.

13) Accordingly, a review petition No. 106/2021 came to be preferred by the registered owner-Abdul Rashid Kuboo seeking review of on account of the fact that the judgment dated 1.12.2016 in CIMA No. 57/2011, being ex-parte against him, has shifted the final liability of payment of compensation unto him on account of invoking right to pay and recover in favour of insurer.

14) Thus, while CIMA No. 140/2012 filed by the registered owner-Abdul Rashid Kuboo was pending adjudication with respect to the award dated 24.03.2011, review petition filed by him also came to join his said appeal.

15) In terms of an order dated 16.04.2024, the review petition No. 106/2021 came to be allowed by this Court, thereby, recalling the judgment dated 01.12.2016 in CIMA No. 57/2011 and that is how at present the two appeals are before this Court begging for adjudication on account of being more than 12 years old matter.

16) The compensation awarded in the case in terms of award dated 24.03.2011 admits of no dispute and, as such, neither the appellant-United India Insurance Company Ltd., in CIMA No. 57/2011 can be heard to agitate the quantum of compensation nor the appellant-Abdul Rashid Kuboo as being the registered owner of the offending vehicle can be allowed to object to the grant of compensation in favour of the claimants in terms of an award dated 24.03.2011

against which CIMA No. 140/2012 has been preferred solely on the ground that the proceedings in the claim petition by MACT, Baramulla were erroneously taken ex-parte against him when, in fact, no service of the appellant Abdul Rashid Kuboo in CIMA No. 140/2012 had taken place.

17) The bonafide of the appellant-Abdul Rashid Kuboo, as being the registered owner of the offending vehicle, in coming up with CIMA No. 140/2012 at which point of time the award dated 24.03.2011 rested the liability of payment of compensation fully and exclusively on the insurer-the United India Insurance Company Ltd., is exhibited from the fact that the appellant-Abdul Rashid Kuboo genuinely felt aggrieved of the fact that MACT Baramulla without exercise and adoption of due application of mind and caution with respect to conduct of proceedings came to proceed against him ex-parte without any service of notice having taken place upon him in any manner whatsoever.

18) A perusal of the original record of claim petition No. 27/2000 of MACT Baramulla would show that service of the appellant-Abdul Rashid Kuboo of CIMA No. 140/2012 had actually not taken place.

19) It is an error on the part of the MACT Baramulla in recording presence of a lawyer purportedly on behalf of appellant-Abdul Rashid Kuboo, as being respondent No. 3 in the claim petition, that the appellant-Abdul Rashid Kuboo was reckoned to have caused his appearance when neither the said advocate filed any power of attorney on behalf of Abdul Rashid Kuboo nor MACT, Baramulla insisted upon said advocate to file power of attorney on behalf of Abdul Rashid Kuboo-the registered owner of the offending vehicle as being the respondent No. 3 in the claim petition.

20) A perusal of the file further reveals that there is no record of any summon/notice having been issued or dispatched from the MACT Baramulla addressed to the appellant-Abdul Rashid Kuboo as

being respondent No.3 in the claim petition.

21) Thus, MACT, Baramulla had no factual basis to assume that the service of the claim petition referred respondent No. 3 had taken place with appearance of counsel as named in the interim order dated 09.03.2000.

22) Order dated 09.03.2000 reflects that one Advocate-Farooq-uddin Bhat was recorded to have caused appearance on behalf of the claim petition referred respondent No.3 without corresponding presentation of vakalatnama on behalf of said respondent No.3, i.e, appellant-Abdul Rashid Kuboo being the registered owner of the offending vehicle and it is at this stage that the error crept in the proceedings which remained unattended and unamended by MACT, Baramulla, all along resulting in a procedural illegality of the nature of proceeding against a person in a legal proceedings without first having him served with any notice of institution of legal proceedings against him calling for his appearance to defend himself.

23) A procedural casualness on the part of a court/tribunal in conduct of legal proceedings is a matter which impregnates a serious lacuna in the legal proceedings having an instant and constant potential of upsetting the entire course of legal proceedings whatsoever comes to take place even up to the stage of final disposal of a given legal proceedings. There is no scope for excusing such procedural lacuna when a litigant aggrieved of the end effects of the given afflicted legal proceedings comes to agitate against it as is the case of the appellant-Abdul Rashid Kuboo of CIMA No. 140/2012.

24) Thus, there is both a duty as well as a need for the presiding officers of the courts/tribunals to be unblinkingly watchful in date to date conduct of the legal proceedings so as to rule out and eliminate scope of any error, advertent or inadvertent, which may have consequences of reversal of the entire run of legal proceedings at any given point of time.

25) In the light of the aforesaid situation, this Court disposes of the two appeals taking it to be a contest now between the insurer-the United India Insurance Company Ltd., the appellant in CIMA No. 57/2011 and the registered owner of the offending vehicle, namely Abdul Rashid Kuboo-the appellant in CIMA No. 140/2012 to the extent as to whether the liability to pay compensation which stands already paid is to remain unto the purse of appellant-the United India Insurance Company Ltd., or to come to the pocket of the appellant-Abdul Rashid Kuboo as insurer and registered owner of the offending vehicle respectively.

26) Thus the award dated 24.03.2011 passed by the MACT Baramulla on clam petition No. 27/2000 is set-aside to the extent with respect to the determination of issue as to the *inter-se* liability between the registered owner of the offending vehicle, i.e, the appellant-Abdul Rashid Kuboo of CIMA No. 140/2012 and the insurer of the offending vehicle, i.e, the United India Insurance Company Ltd., of CIMA No. 57/2011.

27) The matter is, thus, remanded to the Motor Accident Claims Tribunal Baramulla for adjudication of this aspect by giving due opportunity to the appellant-Abdul Rashid Kuboo to submit his pleadings to said effect and thereupon both sides entitled to lead evidence in support of their respective submissions for adjudication to be carried out by Motor Accident Claims Tribunal, Baramulla.

28) Registrar Judicial, Srinagar to send a copy of this order to Motor Accident Claims Tribunal, Baramulla for notice and compliance and both parties to appear before it on 18.12.2024.

(RAHUL BHARTI)
JUDGE

SRINAGAR :
07 .11.2024

'Abdul Rashid'

Whether the Judgment is reportable: **Yes/No**