



2024:JKLHC-JMU:3011

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

*Reserved on: 15.10.2024  
Pronounced on: 22.10.2024*

**Mac App No. 135/2020**

**Shafqat Wani Age 46 years  
S/O Mohd. Ramzan Wani,  
R/O Ward No. 8 Rajouri  
Tehsil & District Rajouri**

.....Appellant(s)

Through: Mr. S. H. Rather, Advocate.

**Vs**

- 1. Universal Sompo General Insurance Co. Ltd.  
A-313, 2<sup>nd</sup> Floor NMIFD Complex, Karan Market Jammu.**
- 2. Shahzad Ahmed Malik Age 10 years  
S/O Sh. Parvez Ahmed Malik  
R/O Degree College Rajouri  
(Respondent No. 2 being minor through his father  
Sh. Parvez Ahmed Malik)**

..... Respondent(s)

Through: Mr. Baldev Singh, Advocate for R-1.  
Mr. Vishnu Gupta, Advocate for R-2.

**CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

**JUDGMENT**

- 01.** The respondent No. 2 – Shahzad Ahmed Malik (minor) aged ten (10) years (*hereinafter called, 'claimant'*) through his father laid a claim petition in terms of Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the critical injuries suffered by the injured-respondent No. 2 resulting into disability, in a vehicular accident having taken place on 16.09.2012 at Degree College Rajouri due to rash



and negligent driving of Motor Cycle bearing Chasis No. MBLJA05EKC9H11655 by the appellant herein.

- 02.** The claim was preferred against the respondent No. 1 – Shafqat Wani (appellant herein), who was driver and owner of the offending vehicle and against the respondent No. 2 – Universal Sompo General Insurance Co. Ltd. (respondent No. 1 herein) with whom the offending vehicle was claimed to have been insured.
- 03.** The learned Additional District Judge, Rajouri exercising the powers of Motor Accidents Claims Tribunal (*hereinafter referred to as the, “the Tribunal”*) vide award dated 27.02.2020 in the claim petition titled – **“Shahad Ahmed Malik vs Shafqat Wani & Anr.”** granted compensation of Rs. 3,20,000/- along with *pendent lite* and future interest @ 6% per annum till realization except under the head of loss of future income in favour of the claimant.
- 04.** The Tribunal, however, held that since on the date of accident i.e. 16.09.2012, the offending vehicle was not insured with the respondent-insurer, as such, the Insurance Company was not liable to indemnify the insured and the driver-cum-owner of the offending vehicle (*hereinafter called, “insured”*) was directed to make payment of the awarded amount within a period of 45 days from the date of passing of the award.
- 05.** The driver/owner of the offending vehicle, namely, Shafqat Wani (insured) having been aggrieved of the award with



regard to fastening the liability to pay the compensation on him preferred the instant appeal in terms of Section 173 of the Motor Vehicles Act, 1988 against the award dated 27.02.2020 (*hereinafter called, "the impugned award"*).

- 06.** The appellant has assailed the impugned award on the grounds that the award has been passed against the appellant without application of mind and being perverse is not sustainable and is liable to be set-aside; that the finding of the Tribunal was factually incorrect, inasmuch as, the vehicle in question was purchased on 15.09.2012 and it was insured on the same day with the respondent-insurer who issued a Cover Note dated 15.09.2012 itself and a perusal of the Cover Note reveals that the period of insurance started from 15.09.2012 at 10:10 am and that the accident had occurred on 16.09.2012 during the period when it was admittedly insured with the respondent-insurer, as such, the Insurance Company was liable to make payment of the awarded amount; that the contract of insurance between the appellant and the respondent-insurer was completed on 15.09.2012 at 10:10 am when the Insurance Company received and accepted the premium and issued the Cover Note, as such, the accident occurred on 16.09.2012 was fully covered within the period of the insurance and the Insurance Company cannot escape its liability to make the payment of awarded amount on account of some negligence on its own; that the appellant had not been issued any other document



except Cover Note and according to which the period of insurance had started on 15.09.2012, as such, the Tribunal by holding that the vehicle in question was not insured with the respondent-insurer, on the date of accident, committed miscarriage of justice and, as such, the award was liable to be set-aside.

- 07.** Learned counsel for the appellant while arguing in line with the assertions made in the memorandum of appeal, would argue that the finding of the Tribunal was beyond the pleadings and the issues framed and that the insurance of the vehicle in question was completed much before the alleged accident and this vital fact of the matter was not specifically disputed by the respondent-insurer, as such, no issue was framed with respect to the fact that the vehicle in question was not insured with the Insurance Company at the time of accident and in absence of such an issue the finding of the Tribunal was beyond jurisdiction and in violation of the principles of natural justice. He prayed that the award to the extent of fixing liability on the appellant-insured, be set-aside and the liability be fixed on the respondent-insurer for making payment of the compensation to the respondent-claimant.
- 08.** Learned counsel for the respondents, on the other hand, argued that the Tribunal in the impugned award has observed that the offending vehicle was insured with the respondent-



insurer vide Policy No. 2312/52569705/00/000 with period of insurance as 17.09.2012 to 16.09.2013 whereas the alleged accident was stated to have taken place on 16.09.2012, as such, the date of accident was not covered within the period of the policy of insurance and submitted that the Tribunal has not committed any illegality while granting compensation and fastening the liability for payment of compensation on appellant-insured, the owner of the offending vehicle, instead of respondent-insurer.

- 09.** The short controversy that falls for consideration of this Court is that whether the Cover Note issued by the authorized person on behalf of the respondent-Insurance Company insuring the offending vehicle owned by the appellant on 15.09.2012 can be considered as against the policy of insurance which shows the offending vehicle having been insured with effect from 17.09.2012 to 16.09.2013.
- 10.** The Cover Note issued under No. USGIA-0001194887 dated 15.09.2012, shows that a fresh vehicle Splendor Motor Cycle with Chassis No. 11655 and Engine No. 11693 was insured in the name of the insured/appellant-Shafqat Wani as owner of the vehicle with a premium of Rs. 1360.05 at Rajouri on 15.09.2012 at 10:10 am.
- 11.** It is not understandable, as to how pursuant to this Cover Note, the Policy No. 2312/52569705/00/000 was issued by the respondent-insurer w.e.f. 17.09.2012.



- 12.** **Section 145(b)** of the Motor Vehicles Act, 1988 will be relevant to be extracted for convenience as under:-

*“145(b). **“certificate of insurance”** means a certificate issued by an authorised insurer in pursuance of sub-section (3) of section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.”*

A bare perusal of the aforesaid provision, makes it abundantly clear that a ‘Certificate of Insurance’ means a certificate and includes a Cover Note complying with such requirement as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be are included in the ‘Certificate of Insurance’.

- 13.** The respondent-insurer has not clearly denied having issued the Cover Note on 15.09.2012, therefore, the Cover Note for all practical purposes is a contract between the insured and the insurer. In this view of the matter, the insurer is liable to pay compensation having received premium on 15.09.2012, disregard of the fact that the policy of insurance was showing some other dates. The Tribunal without having framed a specific issue on this point had committed an error to decide the matter with regard to fixing the liability of the insured-owner to pay compensation, instead of the insurer and the



impugned award to this extent as, thus, suffers from miscarriage of justice, as the insurer is liable to indemnify the insured's tortious and/or vicarious liability in view of the contract of insurance between them.

14. Viewed thus, the instant appeal is **allowed** and the impugned award is ordered to be modified to the extent that the compensation shall be paid by the insurer/respondent No. 2 – Universal Sompo General Insurance Co. Ltd., instead of the owner-cum-driver of the offending vehicle (insured-appellant herein). The other terms and conditions of the award are directed to be maintained.

15. The appeal is, accordingly, **disposed of** alongwith pending application(s), if any.



(M A CHOWDHARY)  
JUDGE

JAMMU  
22.10.2024

Bunty

**Whether the order is speaking? Yes**  
**Whether the order is reportable? Yes**