

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

Mac App No. 115/2021

Reserved on : 19.10.2022.

Pronounced on : 15.12.2022.

Bajaj Allianz General Insurance Co.
Ltd.

.....Appellant(s)/Petitioner(s)

Through: Mr. Baldev Singh, Advocate.

Vs

Gulshan Kumar and Ors.

..... Respondent(s)

Through: Ms. Rozina Afzal, Advocate.

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

JUDGMENT

01. The respondent nos. 1 to 3 have filed a claim petition on file no. 45/Claim of the Motor Accident Claims Tribunal, Rajouri for seeking compensation with respect to road accident death of Yashpal who came to be hit by the offending vehicle bearing registration no. JK 11A-5748 (Tippar/Minibus 407) driven by the respondent no. 5 on 17.12.2016 resulting in death of the said accident victim Yashpal.

02. The claim petition came to be filed 01.04.2017 in which the offending driver came to be impleaded as respondent no. 1 whereas the owner of the offending vehicle as the respondent no. 2 and the insurer of the offending vehicle as respondent no. 3.

03. Motor Accident Claims Tribunal, Rajouri came to pass an interim award dated 15.02.2018 by reference to section 140 of the Motor Vehicles Act, 1988 thereby granting an award of interim compensation of an amount of Rs.

50,000/- on account of No Fault liability in favour of the respondent nos. 1 to 3 herein and the compliance of the said interim award was to be carried out by the appellant herein as being the insurer of the offending vehicle.

04. It is against this interim award dated 15.02.2018 of the Motor Accident Claims Tribunal, Rajouri that the appellant has come forward with the present appeal on the ground that without considering documents placed on the record of the claim petition, the Motor Accident Claims Tribunal came to pass the impugned award.

05. It is the case set up in appeal that the deceased-Yashpal was, in fact, a gratuitous passenger in the offending vehicle driven by the respondent no. 5 herein and, as such, the dependents of the deceased, the respondent nos. 1 to 3 herein were not entitled to any compensation whatsoever from the appellant's end as being insurer of the offending vehicle.

06. The appellant in its memo of appeal has not disputed the fact of being the insurer of the offending vehicle, the ownership of the offending vehicle with the respondent no. 4 and the driver of the offending vehicle by the respondent no. 5 and of his competence to drive the said vehicle.

07. It is only by factual reference that the deceased was not a road side walker but in fact a gratuitous passenger that the appellant is seeking to avoid its liability. Whether the nature of this defence can be set up by the appellant to avoid the grant of interim compensation on No Fault liability provision by the Motor Accident Claims Tribunal is a very feeble plea as then in every case whenever and wherever an insurer would take up a different factual position qua the motor vehicle accident, then in that eventuality the Motor Accident Claims Tribunal will be rendered disabled to award compensation on No Fault liability

under section 140 of the Motor Vehicle Act, 1988, rendering the very spirit and policy of section 140 as still provision without any operationality therein.

08. Any compensation made under No Fault liability provision is adjustable in the compensation claimed fault liability under section 166 of the Motor Vehicles Act, 1988 and in case the appellant would succeed in proving its defence with respect to the nature of the accident in reference in the present case then the Motor Accident Claims Tribunal, Rajouri will be under a jurisdictional duty to consider as to application of Pay and Recover Principle against the owner and the driver of the offending vehicle and, as such, the present appeal is pre-mature and misconceived, as such, the same is *dismissed* in the light of the observations made herein.

(Rahul Bharti)
Judge

Jammu
15.12.2022
Bunty



Whether the order is speaking : Yes / No

Whether the order is reportable: Yes / No