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

Reserved on : 14.02.2022
Pronounced on: 18.02.2022

MA No. 146/2010(O&M)

Oriental Insurance Co. Ltd.

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

Through: Mr. D. S. Chauhan, Advocate &
Ms. Sheeba Sethi, Advocate

vs

Narinder Kumar and another

..... Respondent(s)

Through: Mr. Sanjay Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. This appeal arises out of award dated 23.11.2009 passed by the Presiding Officer, Motor Accidents Claim Tribunal, Rajouri (hereinafter to be referred as the Tribunal) in file No. 95, titled, Narinder Kumar Vs. Rakesh Kumar and another by virtue of which, a sum of Rs. 2,90,800/- along with the interest at the rate of 7.5% per annum from the date of filing of the claim petition, till its realisation has been awarded as compensation to the respondent No. 1/claimant, who had suffered injuries in a motor vehicular accident on 13.06.2002.
2. The appellant-Insurance Company has impugned the award on the ground that the offending vehicle was being driven by the driver, who was not holding valid driving licence at all and quantum of compensation is excessive.

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3. Mr. D. S. Chauhan, learned counsel appearing on behalf of appellant vehemently argued that the Company has been saddled with the responsibility to satisfy the award despite the fact that the driver of the vehicle was not having a valid driving licence. He has restricted his argument only to the issue with regard to validity of the license of the driver.
4. Mr. Sanjay Sharma, learned counsel appearing on behalf of respondents submitted that the learned Tribunal has rightly passed the award.
5. Heard and perused the record.
6. The facts necessary for the disposal of the present petition are that the claim petition was filed by the respondent No. 1/claimant for grant of compensation on account of the permanent disablement suffered by him due to injuries in a road accident on 13.06.2002.
7. The appellant and respondent No. 2 were put to notice. Respondent No. 1, who was the owner as well as driver of the driven vehicle, did not appear and as such, he was set ex parte by the Tribunal. The appellant-Insurance Company filed its objections. In the objections filed by the appellant-Insurance Company, no plea with regard to validity of the driving licence was taken by the respondent and claim was resisted on the ground that the insurance policy allowed the respondent No. 2 to carry only 20+2 passengers and the vehicle was badly over loaded at the time of alleged accident. Further, it was stated that documents of the vehicle like Registration Certificate, Route Permit, Fitness Certificate were not in order at the time of accident. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

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- (i) Whether because of rash and negligent driving of Matador bearing registration No: 7735/JK02M by respondent No. 1 an accident has taken place on 13.06.2002 at place Sudra near Sunder Bani on a public place? O.P.P
 - (ii) On proof of issue No. 1 whether injuries have been caused to petitioner Narinder Kumar that has resulted in disablement of permanent nature, if so to what extent? O.P.P
 - (iii) To what amount of compensation, the petitioner is entitled to an from whom? O.P.P
 - (iv) Relief.
8. The claimant/respondent besides examining himself, examined Som Nath and Dr. Abdul Ghani as witnesses in support of his case, whereas RW-Muzaffar Hakim was examined by the appellant in support of its case, who deposed that the validity of the learner's licence is only for six months. Licence was issued to Rakesh Kumar, however, the record was torn. He further stated that he was making the statement on the basis of photocopy that the licence has been issued, but the record is not available.
9. From the issues framed by the Tribunal, it is evident that no issue was framed with regard to the validity of licence and rightly so because no such pleading was there in the response filed by the appellant to the claim petition regarding the validity of the driving licence and further from the statement of RW- Muzaffar Hakim, it is evident that he had made the statement on the basis of photocopy and the record was torn.
10. The appellant-Insurance Company did not plead anything with regard to the validity of the licence in its objections before the learned tribunal and

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once the plea was not taken before the tribunal, the same cannot be allowed to be raised in appeal. Further the statement of RW Muzaffar Hakim cannot be of any help to the appellant as the witness made the statement on the basis of incomplete record.

11. Viewed thus, there is no merit in the present appeal. The same is dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
18.02.2022
Sahil Padha

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

