

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

Case:- **MA No. 401/2012**
CM No. 2620/2021
CM No. 2621/2021
CM No. 2713/2021

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Abdul Latief, S/o Ghulam Qadir Wani.
2. Mohd. Saleem.
3. Mohd. Taskeen, Sons of Abdul Latief Wani,
All residents of Chamba Road, Bhaderwah
4. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
5. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 24.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Sara Begum.

Case:- **MA No. 402/2012**
CM No. 1720/2021

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Rehmatullah, S/o Abdul Subhan.
2. Amina Begum, W/o Rehmatullah.
3. Parveena Begum, Wd/o Irshad Ahmed Butt.
4. Rukia Banoo, Minor Daughter.
5. Rabia Bano, Minor Daughter of Irshad Ahmed Butt
All residents of Kahi Trankal,
Tehsil Thathri,
Respondents No. 4 & 5 minors through their mother,
Respondent No. 3.
6. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner).
7. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Drivers).

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate

In the instant appeal, the appellant has thrown challenge to the award dated 28.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Irshad Ahmed.

Case:- **MA No. 403/2012**

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Surat Singh, S/o Chuni Lal.
2. Anara Devi, W/o Surat Singh.
All residents of Jora Kallan, Tehsil Thathri.
3. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
4. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate

Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 29.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Ashok Kumar.

Case:- **MA No. 404/2012**

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... *Appellant*

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Shokat Ali, S/o Ghulam Qadir Bhat.
 2. Mst. Sajan Begum, W/o Shoket Ali.
 3. Ajaz Ahmed, S/o Shoket Ali.
 4. Mubina Bano, minor daughter.
 5. Ghulam Bano, minor daughter.
- Minors 4 & 5 through their mother
Respondent No. 2
All residents of Kakota, Tehsil Thathri.
6. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
 7. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... *Respondents*

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 28.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Parvez Ahmed.

Case:- **MA No. 405/2012**

United India Insurance Co. Ltd.
Divisional Office-II,

Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Madhu Lal, S/o Prem Nath.
2. Krishna Devi, W/o Madhu Lal.
3. Pritam Singh S/o Madhu Lal.
All residents of Piyakal, Tehsil Thathri.
4. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
5. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 28.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Kashmir Singh.

Case:- MA No. 408/2012

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Samina Begum, Wd/o Ghulam Nabi Malik.
2. Altaf Hussain.
3. Zakir Hussain.
4. Ashiq Hussain.
Sons of Ghulam Nabi Malik
Residents of Malanoo,
Tehsil Thathri.

5. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
6. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 26.03.2012 passed by the Motor Accidents Claims Tribunal, Baderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Ghulam Nabi.

Case:- MA No. 409/2012

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.

Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Kifayatullah.
2. Ghulam Nabi.
3. Abdul Hafiz.
Sons of Late Anayatullah
Residents of Kotli,
Tehsil Baderwah.
4. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
5. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 26.03.2012 passed by the Motor Accidents Claims Tribunal, Baderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Tahira Begum.

Case:- MA No. 9900016/2012

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.
Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Sagira Begum, Wd/o Shah Wali.
2. Shaista Banu.
3. Zulifkar Ali.
4. Parvez Ahmed.
5. Shakhawat Hussain.
Sons of ShahWali
Residents of Gugara,
Tehsil Thathri, Minors 2 to 5 through her mother.
6. Liyakat Ali, S/o Alla Ditta, R/o Pyakal, Doda (Owner)
7. Jaffer Hussain, S/o Ghulam Qadir, R/o Bitola, Tehsil Thathri (Driver)

..... Respondents

Through: Mr. Ayjaz Lone, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 26.03.2012 passed by the Motor Accidents Claims Tribunal, Bhaderwah, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the death of one, namely, Shah Wali.

Case:- CCROS NO. 25/2013

Kahir Din

.... Appellant

Through: Mr. Sheikh Aleem, Advocate.

Vs

United India Insurance Co. Ltd.
Divisional Office-II,
Naseeb Bhawan,
Purani Mandi,
Jammu.

Through its' Divisional Manager,
Dr. Raj Pal Sharma, Aged 53 years.

..... Respondent

Through: Mr. Vishnu Gupta, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

Case:- MA No. 157/2013
CM No. 7896/2019
CM No. 2557/2021

United India Insurance Co. Ltd. Divisional Office-II, Purani Mandi, Jammu
through Dr. Rajpal, Sr. Divisional Manager, Jammu.

.... Appellant

Through: Mr. Ravinder Sharma, Advocate

Vs

1. Khair Din, S/o Mohd. Hanief, R/o H. No. 119, Upper Gujjar Nagar, Jammu.
2. Liyaqat Ali, S/o Allah Ditta, R/o Village Donadhi, P/O Mallanoo, Tehsil Thathri, District Doda
(Owner of Mini Bus No. JK02P/9703)
3. Jaffar Hussain, S/o Gh. Qadir Parray, R/o Vill. Bitola, Kahra, Tehsil Thathri, District Doda.
(Driver of Mini Bus Nno. JK02P/9703)

..... Respondents

Through: Mr. Sheikh Aleem, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

In the instant appeal, the appellant has thrown challenge to the award dated 27.12.2012 passed by the Motor Accidents Claims Tribunal, Jammu, wherein the claimants have prayed for grant of compensation under the Motor Vehicles Act, 1988 for the injury sustained by the claimants.

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

ORDER
27.02.2024

(Oral)

In all the aforesaid appeals the issues raised by the appellants are akin and analogous to each other, as such, the appeals are being disposed of by this common judgment.

Facts

01. A Motor Vehicle bearing registration No. JK02P/9709 (for short *“the offending vehicle”*) on its way from Thathri to Gandoh met with an accident on 17.01.2009 resulting into multiple deaths and injuries to the passengers travelling in the said offending vehicle. The offending vehicle was being driven by its driver, namely, Jaffer Hussain and owned by one-Liyakat Ali, being respondents herein.

02. The legal heirs of the dead as well as the injured passengers travelling in the offending vehicle filed claim petitions before the Motor Accident Claims Tribunal, Bhaderwah (for short *“the Tribunal”*) seeking compensation thereof under and in terms of the provisions of Motor Vehicles Act, 1988 (for short *“the Act of 1988”*).

03. In the said claim petitions, besides impleading the above named owner and driver of the offending vehicle as respondents therein, the Insurance Company/appellant herein as well came to be impleaded as party respondents owing to the reason that the offending vehicle was insured with it.

04. The Tribunal after entertaining the said claim petitions issued notice to the respondents therein, whereupon the respondents owner and driver of the offending vehicle did not appear, whereas the respondent-Insurance Company/appellant herein appeared and filed objections to the claim petitions.

05. The Tribunal upon the pleadings of the contesting parties in the said claim petitions framed the following issues :-

1. Whether on 17-01-2009 the deceased namely Sara Begum was travelling in Matador No: JK02P 9709 from Thathri to Kahara and the vehicle met with an accident near Kahara due to rash and negligent driving of respondent No.3, as a result of which deceased died? OPP.
2. If issue No.1 is proved in affirmative, whether petitioners are entitled to any compensation, if so, to what extent and from whom? OPP.
3. Whether the vehicle was being driven by a person without valid driving licence? OPR-1.
4. Whether the vehicle was over loaded at the relevant time? If so, what is its effect on the petition? OPRI,
5. Relief.

06. After framing of the aforesaid issues, the parties came to be directed by the Tribunal to lead their evidence, whereafter the claimants led their evidence in order to prove the issues onus whereof was put on them, whereas the respondent-Insurance Company/appellant herein did not lead any evidence to prove the issue/s onus whereof was put on it and the Tribunal upon adjudication of all the claim petitions, consequently, passed the awards which are impugned in the instant appeals.

07. The Insurance Company/appellant herein has challenged the impugned awards on multiple grounds urged in the instant memo of appeals.

Heard learned counsel for the parties and perused the record.

08. Mr. Ravinder Sharma, appearing counsel for the appellant-Insurance Company herein while making his submission in tune with the grounds urged in the instant appeals would contend that the Tribunal failed to address to the issue of overloading of the offending vehicle which admittedly on the date and time of the accident was carrying more passengers than permitted in terms of documents of the offending vehicle as also the insurance policy pertaining to the offending vehicle and that the offending vehicle was being driven by the driver without a

valid driving licence and that the Tribunal awarded compensation to the claimants on a higher side, wrongly having taken the monthly income of the deceased/injured without there being any credible evidence on record.

On the contrary, appearing counsels for the respondents (being the claimants in the claim petitions as also the owner of the offending vehicle), opposed the submissions of Mr. Sharma, Advocate and would contend that the Tribunal passed the impugned awards validly and legally and that the Insurance Company/appellant herein failed to lead any evidence in support of the case set up by it before the Tribunal and that the Insurance Company/appellant herein, in law, cannot challenge the quantum of compensation awarded to the claimants/respondents herein in view of the provisions of Section 170 of the Act of 1988.

09. Perusal of the record indisputably reveals that out of the aforesaid issued drawn and framed by the Tribunal in the claim petition, the following issues have had to be proved by the Insurance Company/appellant herein:-

“Whether the vehicle was being driven by a person without valid driving licence?”

“Whether the vehicle was over loaded at the relevant time? If so, what is its effect on the petition?”

Perusal of the record of the case/s reveal that the claimants appeared before the Tribunal as witnesses and also produced witnesses to prove the fact of accident caused by the offending vehicle, inasmuch as, the fact that same was caused by the rash and negligent driving of the driver of offending vehicle having resulted into death/injury to the passengers besides proving the fact that the claimants are entitled to compensation thereof.

On the contrary, as has been noticed in the preceding paras, admittedly, the Insurance Company/appellant herein did not lead any evidence in order to prove the case set up by it before the Tribunal and the aforesaid issues onus whereof was put on it. Records also reveal that it did not even contradict or dispute the evidence led by the claimants before the Tribunal *qua* the issues onus whereof was put on them.

In view of the aforesaid admitted facts that the Insurance Company/appellant herein failed to produce any evidence to prove the aforesaid issues, the moot point that would beg consideration of this Court would be as to whether the Insurance Company/appellant herein can throw challenge to the impugned awards on the grounds urged by the counsel for the appellants.

10. Insofar as the grounds urged by the Insurance Company/appellant herein that the offending vehicle was overloaded at the time of the accident and that the same was being driven by the driver without a valid driving licence, as such, there was breach of the terms and conditions of the insurance policy not making the insurance company liable to indemnify the insured/the owner, are concerned, said grounds outright rejection, in that, the issues pertaining to the said ground through struck by the Tribunal on the basis of the defence set up by the Insurance Company/appellant herein were not proved by the Insurance Company/appellant herein before the tribunal. A reference in this regard to the judgment of the Apex Court passed in case titled as, **“Lakhmi Chand Vs Reliance General Insurance”** reported in **(2016)3 SCC 100** would be relevant, wherein at para 16, following has been held:-

“16. It becomes very clear from a perusal of the aforementioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods-carrying vehicle. Further, as has been held in B.V. Nagaraju that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. In the instant case, it is undisputed that the accident was in fact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR No. 66 of 2010 was registered for the offences referred to supra under the provisions of IPC. These facts have not been taken into consideration by either the State Commission or the National Commission while exercising their jurisdiction and setting aside the order of the District Forum. Therefore, the judgment and order of the National Commission dated 26.04.2013 passed in Lakhmi Chand Vs. Reliance General Insurance is liable to be set aside, as the said findings recorded in the judgment are erroneous in law.”

11. Insofar as the last ground urged by the counsel for Insurance Company/appellant herein that the Tribunal compensation awarded to the claimants has been on a higher side without there being any evidence is concerned, such ground as well cannot be entertained in the instant appeals having regard to the provisions of Section 170 of the Act of 1988. The said issue stands settled by the Apex Court in case titled as “**Jagdish Prasad Pandey Vs Darshan Singh and another**” reported in (2002) 9 SCC 527 wherein having taken cognizance of the provisions of Section 170 of the Act of 1988, the Apex Court has held that the Insurance Company when impleaded as a party by the

Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal and unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence.

In this regard, the judgment of this Court relied upon by the counsel for the Insurance Company/appellant herein, titled as **“New India Assurance Company Limited Vs. Rajendra Laxman Pawar and others”** reported in **2018 (1) JKJ 128** while contending that the Insurance Company/appellant herein was not required to obtain leave under Section 170 of the Act of 1988 in the instant case/s is grossly misdirected, as the said judgment is quite distinguishable, in that, in the said judgment an application have had been filed by the Insurance Company under Section 170 of the Act of 1988 before the tribunal, wherein however no order had been passed by the Tribunal, thus suggesting that a leave had been sought by the Insurance Company therein the said case under Section 170 of the Act of 1988, whereas in the instant case, indisputably no application whatsoever have has been filed by the Insurance Company/appellant herein before the Tribunal under Section 170 of the Act of 1988.

12. Having regard to the aforesaid facts and circumstances of the case/s, the material on record, inasmuch as the position of law supra, the only inescapable conclusion that could be drawn is that the impugned award/s does

not call for any interference. Resultantly the appeals fail and are, accordingly, *dismissed*.

CCROS No. 25/2013 & MA No. 157/2013

13. In the instant appeals, award dated 27.12.2012 (for short "*the impugned award*") passed by the Motor Accident Claims Tribunal, Jammu (for short "*the Tribunal*") is under challenge, while **CCROS No. 25/2013** has been filed by the claimant for enhancement of the compensation, **MA No. 157/2013** has been filed by the insurance company, challenging the impugned award.

14. Before proceeding to advert to the instant appeals, a brief background of the facts becomes imperative hereunder:-

On 17.01.2009 the appellant in CCROS No. 25/2013 while travelling in vehicle (matador) bearing registration No. JKO2P/9709 (for short "*the offending vehicle*") from Thathri towards Khara met with an accident and suffered bodily injuries. The said offending vehicle was being driven by one Jaffar Hussain respondent herein and owned by one Liyakat Ali-respondent herein. The claimant/appellant herein for his aforesaid bodily injuries sustained by him in the aforesaid vehicular accident maintained a claim petition under the provisions of the Motor Vehicles Act of 1988 before the Tribunal on 04.04.2009 seeking compensation therein while impleading besides the owner and driver of the offending vehicle, United India Insurance Company as respondents owing to the reason that the offending vehicle was insured with the said Insurance Company.

15. Upon entertaining the claim petition, the Tribunal summoned the respondents, wherein respondents owner and driver of the vehicle did not appear in response to the notice issued by the Tribunal, the respondent-Insurance Company appeared and filed its objections to the claim petition opposing the claim petition *inter-alia* on the ground that the driver of the offending vehicle was not having a valid and effective driving licence at the time of accident and that there has been violation of the terms and conditions of the policy of insurance, while admitting that the offending vehicle was insured with it on the date of accident.

16. The Tribunal on the pleading of the contesting parties being the claimant as also the respondent-Insurance Company framed the following issues:-

- 1. Whether on accident occurred on 17.01.2009, near village Kahra by the rash and negligent driving of offending vehicle bearing No. JK02P-9703 in the hands of erring driver, as a result of which petitioner sustained grievous injuries? OPP**
- 2. If issue No. 1 is proved in affirmative, whether petitioner is entitled to the compensation, if so to what amount and from whom? OPP**
- 3. Whether driver of the offending vehicle at the time of accident was not holding valid and effective driving licence and plied the vehicle in violation of insurance policy? OPR-1**
- 4. Relief? O. P. Parties**

17. It is significant to note here that the Tribunal permitted the respondent-Insurance Company to plead all defences as are available to the owner/driver of the offending vehicle, after the owner and driver of the

offending vehicle did not appear before the Tribunal and came to be set *ex-parte*.

18. The appellant appeared as his own witness before the Tribunal and also produced one Mohd Rafiq as his witness as also one Dr. Rajesh Gupta, whereas the respondent-Insurance Company produced one Baljeet Kour an official of the District Transport Office, Amritsar and Mr. Inderjeet Goja, Deputy Manager working in the Insurance Company as also Liaqat Ali, the owner of the offending vehicle as its witnesses.

19. The Tribunal upon adjudication of the claim petition in terms of the impugned award granted compensation to the claimant to the tune of Rs. 2,20,000/- along with interest @ 7.5% p.a. from the date of filing of the claim petition till its realization to be payable by the respondent-Insurance Company while holding that despite the fact that respondent-Insurance Company though proved that the driver of the offending vehicle was not holding a valid and effective driving licence yet ruled that the owner of the vehicle while hiring the said driver for plying the offending vehicle did not commit breach and violation of the terms and conditions of the insurance policy and had taken a reasonable care to find out that the driver of the offending vehicle was holding a driving licence that fulfilled the requirements of law.

20. The claimant/appellant has challenged the impugned award in CCROS No. 25/2013 (supra), primarily, on the ground that the Tribunal failed to take into account the actual income of the claimant/appellant while assessing and working out the amount of compensation payable to the claimant/appellant

herein to be Rs. 6,500/- as against Rs. 5,000/- considered and relied upon by the Tribunal.

21. In the appeal MA No. 157/2013 the Insurance Company/appellant herein has challenged the impugned award on the grounds urged in the appeal.

Heard learned counsel for the parties and perused the record.

22. Before proceeding to deal with CCROS No. 25/2013 filed by the claimant/appellant for enhancement of amount of compensation, it is deemed appropriate to advert to the MA No. 157/2013 filed by the Insurance Company in the first instance.

23. As has been noticed in the preceding paras on the pleadings of the contesting parties being the claimant and the Insurance Company/appellant herein, the Tribunal framed the aforesaid issues and onus to prove Issue No. 3 was put on the Insurance Company/appellant herein to prove that the driver of the offending vehicle at the time of accident was not holding a valid and effective driving licence and plied the offending vehicle in violation of the insurance policy.

24. Perusal of the record reveals that in order to prove the said issue, the Insurance Company/appellant herein examined one-Baljeet Kour the official of the District Transport Office, Amritsar, who in her statement on the basis of the record had deposed that the driving licence No. 16564 stands issued in the name of one-Harvinder Singh S/o Swaran Singh and not in favour of the driver of the offending vehicle and that on 22.01.2002 no driving licence have had been issued from the office, thus, proving the verification report on record issued by

the District Transport Officer in this regard. Record also tends to show that the Insurance Company/appellant herein also examined one-Injderjeet Goja, the Deputy Manager who had deposed before the Tribunal that as per the terms of the policy of insurance, the insurer is not liable to indemnify the insured in this case, as according to the report of the Investigator the offending vehicle was overloaded as the date of accident and that driving licence of the driver was found to be fake.

25. Record also tends to show that the Insurance Company/appellant herein as well examined the owner of the vehicle as its witness who had admitted before the Tribunal that the offending vehicle was driven by the driver/respondent herein holding a licence issued from Amritsar and that he did not verify the authenticity of the said driving licence and believed the authenticity of the same on the basis of the stamps and endorsements made therein and that before engaging the said driver by him, he had tested the driving skills of the said driver/respondent herein as also before handing over the offending vehicle to him.

Record reveals that the Insurance Company/appellant herein though proved the fact that the driving licence possessed by the driver of the offending vehicle/respondent herein was fake yet failed to prove the fact that the owner of the offending vehicle/respondent herein was willfully neglect while engaging the driver of the offending vehicle and did not comply with the conditions of the insurance policy regarding use of the vehicle by a duly licenced driver. The Insurance Company/appellant herein as well did not prove the fact that the offending vehicle was overloaded at the relevant point of time on the date of

accident despite having referred to a report of its Investigator who was never produced as a witness by the Insurance Company/appellant herein before the Tribunal to prove the said fact.

It is a settled law as has been held by the Apex Court in case titled as **“Lakhmi Chand Vs Reliance General Insurance”** reported in **(2016)3 SCC 100** that in order to avoid liability the Insurance Company must not only establish the defence claimed in the proceeding concerned, but also establish the breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the Insurance Company and that the accident occurred on account of overloading of the passengers fundamentally require the Insurance Company to prove the same and that the said breach has brought the contract to an end.

26. A closer examination of the impugned award tends to show that the Tribunal while holding the driver of the vehicle to be not possessed of a valid and effective driving licence on the date of accident, seemingly, has rightly held that the owner of the offending vehicle/respondent here have had taken all possible steps and measures in engaging the driver of the offending vehicle for plying the said offending vehicle being least expected from an owner to engage a driver for plying his vehicle. A reference herein in this regard to the judgment of the Apex Court passed in case titled as **“Rishi Pal Singh Vs New India Assurance Co. Ltd.”** passed in Civil Appeal No. 4919 of 2022 would be relevant herein, wherein it has been *inter-alia* held that when an owner is hiring a driver he will have to check whether the driver has a driving licence and if the driver produces a driving licence which on the face of it looks genuine, the

owner is not expected to find out whether the licence has in fact been issued by a competent authority or not and the owner would then take the test of the driver and that if the owner finds that the driver is competent to drive the vehicle, then hires the driver and where the owner has been satisfied that the driver has a licence and is driving competently there would be no breach of Section 149(2)(1a)(ii) and the Insurance Company would not be absolved of the liability.

27. It is significant to note here that the Motor Vehicles Act, 1988 is a beneficial legislation which calls for a liberal and broad interpretation so that the real purpose underlying the scheme is achieved and full effect is given to the legislature intendment. It is also pertinent to note here that the proceedings before the Tribunal under the Act of 1988 are summary in nature and strict proof of evidence is not required as has been held by the Apex Court in case titled as **“Anita Sharma and others Vs New India Assurance Co. Ltd and another”** reported in **(2021)1 JKJ [SC] 140** wherein in para 22 following has been held:-

“22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of the preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant’s version is more likely than not true.”

28. In view of the aforesaid facts and circumstances, inasmuch as, evidence on record, the position of law laid down by the Apex Court in the

judgments supra, the grounds urged by the Insurance Company/appellant herein in the memo of appeal against the impugned award are held to be both misconceived on facts as well as law and the judgments relied upon by the counsel for the Insurance Company/appellant herein qua the question of liability wrongly fastened upon it and the quantum of compensation assessed and worked out by the Tribunal and awarded to the claimant cannot be faulted with. The impugned award does not call for any interference. Resultantly, the appeal fails and is accordingly *dismissed*.

29. Insofar as **CCROS No. 25/2013** filed by the claimant/appellant herein is concerned, the fundamental ground urged against the impugned award is qua the grant of lesser amount of compensation by the Tribunal drawn, assessed and worked out by it while taking the monthly income of the claimant/appellant herein at Rs. 5,000/- in disregard to and overlooking the minimum income of a victim of a vehicular accident like that of a claimant/appellant herein at Rs. 6,500/- as also applying of the multiplier of 16 wrongly instead of 18, placing reliance on the judgment titled as “**Syed Sadiq Etc. Vs Divisional Manager, United India Insurance Company**” reported in **2014 AIR(SC) 1052** and the judgment of the Apex Court titled as “**National Insurance Company Limited Vs. Pranay Sethi and others**” reported in **(2017)16 SCC 680**.

30. Perusal of the record in general and the evidence produced by the claimant in particular reveals that in order to prove Issue No. 2, the claimant/appellant herein has produced a witness, namely, Abdul Aziz who had deposed before the Tribunal that the claimant/appellant herein, his neighbor was earning Rs. 200/-per day and also used to perform agriculture activities besides

working as a Mason earning Rs. 300/- per day making the total amount of his monthly income at Rs. 11,000/- to Rs. 12,000/-, having also been deposed by the claimant/appellant herein while appearing as his own witness that he was earning Rs. 6,000/- per month while working as a Labourer and also would earn from agriculture activities making his total income to the tune of Rs.10,000/- to Rs. 12,000/- P.M. The Tribunal having considered the said evidence adduced by the claimant/appellant herein has rightly opined that the claimant/appellant herein essentially has been working as unskilled Labourer having no regular income and rightly evaluated and assessed the monthly income of the claimant/appellant herein at Rs. 5,000/-. Under these circumstances, the Tribunal cannot be said to have faulted and overlooked the aforesaid judgments of the Apex Court relied upon by the counsel for the claimant/appellant herein. The impugned award thus does not call for any interference. Resultantly, the appeal being CCROS No. 25/2013 fails and is, accordingly, **dismissed**.

MA Nos. 423/2013, 187/2016 & 47/2018

Mr. Vishnu Gupta, Appellant.

Mr. K. S. Johal, Sr. Advocate with

Mr. Karman Singh Johal, Advocate.

31. Mr. Vishnu Gupta, learned counsel appearing for the appellant states that in view of the judgment delivered in **MA No. 157/2013** titled “**United India Insurance Co. Ltd. Vs. Khair Din and others**”, he would not press the instant appeals wherein the quantum is under challenge. His statement is taken on record. The instant appeals, thus, shall stand disposed of in light of the judgment passed in **MA No. 157/2013** titled “**United India Insurance Co. Ltd. Vs. Khair Din and others**”.

32. Registry is directed to release of amount of compensation in case deposited by the Insurance Company/appellant before this Court in favour of the claimant/s along with interest, if any, accrued thereon subject to proper verification and identification of the claimant/s.

Whether the order is reportable : Yes

Whether the order is speaking : Yes

MA No. 275/2013, MA No. 93/2015, MA No. 216/2015, MA No. 217/2015, CONC No. 90/2016, MA No. 188/2016, MA No. 189/2016, MA No. 337/2017, MA No. 338/2017, MA No. 48/2018 & Mac App No. 143/2019

Mr. Vishnu Gupta, Advocate for the appellant.

None for the respondents.

33. Registry is directed to list these appeals on 14.03.2024.



(JAVED IQBAL WANI)
JUDGE

JAMMU
27.02.2024
Shivalee