

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

**RP 42/2019 in[CMAM 187/2014]**

**Abdul Hamid Khandey**

... Petitioner/Appellant(s)

Through: Mr. Syed Muhatism, Advocate

V/s

**United India Insurance Company Limited and others**

... Respondent(s)

Through: None

CORAM:

**HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**22-04-2024**

**Oral**

1. Through the medium of instant review petition, the petitioner herein seeks review of order/judgment dated 04.06.2019 passed by this Court in CMAM no. 187/2017 (O&M).
2. The facts giving rise to the filing of the instant petition reveal that a claim petition under and in terms of provisions of the Motor Vehicles Act, 1988 came to be filed before the Motor Accident Claims Tribunal, Anantnag, by legal heirs of one Tariq Ahmad Mir (businessman by profession) who had died at the age of 22 years in a vehicular accident while driving a motorcycle bearing registration no. JK03-397 after being hit by a motor vehicle being Tata Sumo bearing registration no. JK03-3439 (hereinafter the offending vehicle) at Levdoora, Qazigund.

3. In the said claim petition the claimants impleaded the owner/s and the driver of the offending vehicle as respondents besides impleading insurance company being United India Insurance Company as party respondent in view of the offending vehicle being insured with the said insurance company. It is significant to note here that in respect of the offending vehicle, both the erstwhile owner and the owner at the time of the accident came to be impleaded as party respondents.
4. The first owner as also the insurance company in response to the summons issued by the Tribunal appeared before the Tribunal, whereas the driver and the second owner did not appear and came to be set *ex parte*.
5. On the basis of pleadings of the contesting parties to the claim petition the Tribunal framed five issues with issue no. 3 as follows:
- “Whether respondent no. 1 (driver) was not holding valid and effective driving licence at the time of accident, therefore, respondent no. 3 cannot be saddled with the liability?” OPR3*
6. In order to prove the said issue, the insurance company produced two witnesses namely Khurshid Ahmad Shah, Senior Assistant from the office of RTO Office, Srinagar and Syed Hilal Ahmed, Manager of the Insurance Company. The witness Khurshid Ahmad Shah during his examination-in-chief and cross-examination before the Tribunal deposed that the driving licence bearing no. 61730/Khad been issued in favour of one Bashir Ahmad son of Mohammad Abdullah resident of Uri Baramulla

authorizing the licensee to drive LMV and motorcycle and the licence was valid up to 26.4.1997, whereas the witness Syed Hilal Ahmad had admitted that the offending vehicle was insured with the company under third party insurance with effect from 8.10.2004 to 7.10.2005 and as per the terms of the insurance policy the present driver of the offending vehicle at the time of accident must have a valid and effective driving licence.

7. Aggrieved of the award of the Tribunal dated 23.4.2014 passed in the claim petition supra, the claimants were held entitled to compensation to the tune of Rs.6,54,000 and the insurance company came to be directed to pay the said award amount along with interest at the rate of 6% p.a. from the date of filing of the claim petition till the amount is deposited in the Tribunal. The insurance company preferred an appeal before this court whereunder the instant review petition has arisen.
8. This court upon considering the appeal of the insurance company partly allowed the same in terms of judgment under review dated 04.06.2019 while holding that the owners of the offending vehicle did not lead any evidence before the Tribunal and did not discharge their initial onus *qua* the issue of the driving license of the driver and consequently in the light of the judgement of the Apex Court passed in case titled as “**Pappu and others vs. Vinod Kumar Lamba and another**”, reported in **2018 ACJ 690** held that in view of the failure of the owners to discharge the initial onus *qua* the validity of the driving license of the driver of the offending vehicle, the insurance company could not have been saddled with the liability to indemnify the insured and

consequently pay compensation to the claimants, as a consequence whereof this court reversed the finding of the Tribunal *qua* issue no. 3 holding that the insurance company cannot be held liable to pay the compensation, thus directed the insurance company to firstly satisfy the award by paying the amount of compensation to the claimants and thereafter recover it from the owner/driver of the offending vehicle.

9. The petitioner herein being the first owner of the offending vehicle has sought review of the judgement of this court dated 04.06.2019 *qua* the reversing of the findings in respect of issue no. 3 on the ground that the findings of said issue no. 3 could not have the reversed once the Tribunal had on the basis of relevant evidence concluded that the insurance company is liable to indemnify the insured.

**Heard learned counsel for the petitioner and perused the record.**

10. As has been noticed in the preceding paras, this court has indisputably reversed the findings recorded by the Tribunal *qua* issue no. 3 while placing reliance on judgement of the Apex Court *supra*, more so in view of the admitted fact that the owners, both the first and the second, of the offending vehicle did not discharge their initial onus *qua* the issue of validity of the licence of the driver of the offending vehicle and rightly held that in view of the failure of the owners to discharge their initial onus the insurance company could not have been saddled with the liability to indemnify the insured, more so, when the insurance company had

proved with clinching and credible evidence that the driving license possessed by the driver was fake/invalid.

11. In view of the aforesaid factual position, it cannot by any stretch of imagination be said that this court faulted or committed any error in passing of the judgement under review, in that, it has been the consistent view of the Apex Court *qua* the doctrine of review that same cannot be treated as an appeal in disguise nor can the power of review be exercised as an inherent power inasmuch as an order or decision or judgment under review cannot be corrected merely because it is erroneous in law or a different view could have been taken by the court on a point of fact or law.

12. Viewed thus, the Review petition is found to be without any merit and is dismissed.

Srinagar  
22-04-2024  
*N Ahmad*

