
(2005) 09 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : CIMA No. 3-A of 2001

General Manager and Another	Vs	APPELLANT
Tirath Singh		RESPONDENT

Date of Decision : 26-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166
Ranbir Penal Code, 1989 — Section 279, 333, 337, 338

Citation : (2005) 09 J&K CK 0005

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : R. Koul, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Singh, J.—This appeal is directed against the award-dated 30.09.2000 passed by Motor Accident Claims Tribunal, Jammu

(hereinafter referred to as Tribunal) in File No. 24/claim (MACT, Kathua) read with 11/CP (MACT, Jammu) titled Tirath Singh v. Krishan Chand

and Ors. whereby an amount of Rs. 3,03,316, has been awarded in favour of respondent.

2. The relevant facts for disposal of this case are that on 09.05.1993, respondent-Tirath Singh was driving truck bearing No. JK02-3025 which

met with an accident near Chhan Arorian on the National Highway with Bus No. JK02-Y/0024. In the said accident Vishnu Gupta and Subh

Gupta also received injuries who were travelling in the Bus No. JK02Y 0024. They filed claim petition before Motor Accident Claims Tribunal,

Jammu, on 05.11.1993 by impleading Tirath Singh, driver, as party respondent and same was decided on 30.09.1996. In the said petition filed by

Subh Gupta, learned Tribunal framed the following issues;

1. Whether accident-involving injuries to Mrs. Sub Gupta and Vishnu Gupta has occurred due to rash and negligent driving of driver of truck No.

JK02/3025 and driver of Bus No. JK02-Y/0024 or either of them? OPP

2. In case issue No. 1 is proved in the affirmative, what is amount of compensation payable to the each petitioner and by whom? OPP

3. In case the accident is proved to have been caused due to composite negligence of both the vehicles what is ratio of their negligence? OPR-3

4. Relief?

3. Appellant Tirath Singh as well as owner of the Truck were proceeded ex parte and learned Tribunal allowed the claim petition filed by Subh

Gupta.

4. Respondent-Tirath Singh filed claim petition for compensation with respect to injuries sustained by him on 09.05.1993 when he was driving the

truck bearing No. JK02-3025 by pleading that Krishan Chand was driving Bus No. JK02Y-0024 rashly and negligently. Said bus was owned by

respondent No. 2 and due to his negligence the accident has occurred.

5. The appellant in their written statement has taken a specific defence that the accident has occurred due to rash and negligent driving of claimant

Tirath Singh. It was also pleaded that the claimant has admitted his guilt before the Judicial. Magistrate 1st Class, Hiranagar and has been

convicted u/s 279/337/338 RFC.

6. Learned tribunal after recording evidence of the parties accepted the petition of the claimant and passed an award of Rs. 3,03,316, aggrieved

by which the present appeal has been preferred.

7. I have learned Counsel for the parties and perused the record.

The important question of law that has been raised in this appeal for consideration is that whether the driver who has caused accident due to his

rash and negligence and in the said accident he sustained injuries, is entitled to compensation under the Act?

8. It is admitted case of the parties that Subh Gupta filed claim petition against the owner of the Truck bearing No. JK02-3025 whose driver was

the claimant-respondent. In the said claim petition No. 584/Claim, learned Tribunal has given the following findings on issue No. 1:

Petitioner have also annexed certified copy of challan No. 145 filed on 22.09.1993 titled State v. Tirath Singh before the Judicial Magistrate 1st

Class, Hiranagar for offences u/s 279/337/338 RFC against respondent No. 1. There is also a certified copy of the judgment whereunder the

driver accused was convicted. No doubt judgment of concerned court is not binding on civil court and so on the tribunal but nonetheless voluntary

confession and conviction has great bearing on the facts pleaded and proved other wise by petitioners. It is relevant, therefore, and in this behalf

1979 ACJ 282 can be taken for guidance. Issue No. 1 is held determined in favour of the petitioners and against the respondents.

9. In the petition filed by Subh Gupta, it was specifically pleaded that Tirath Singh driver was rash and negligent in driving the Truck No JK02-

3025. Tirath Singh driver was arrayed as party respondent and he was duly served but has not appeared before the learned Tribunal. Therefore,

this accident has occurred due to rash and negligent driving of Tirath Singh claimant and accident has not occurred due to contributory negligence.

Learned Tribunal in this case has taken contrary view by recording following observations: -

At no point this Tribunal, neither expressly nor by implication, did held that the accident was caused due to negligence of the driver of the Truck

only. In face of the nature and phraseology of the issue it cannot be said that the cause of the accident being composite negligence of the proved.

Counsel for the respondents has pointed out that as liability to pay compensation to the petitioners in those cases was imposed upon insurer of the

truck, which, it has been argued means that negligence of the driver of the truck was proved. Opinion of the learned Counsel, I am afraid is not

correct because even in a case of composite negligence liability to pay compensation to the victims can be imposed upon the owner and insurer of

one of the offending vehicles.

10. It has been recorded above that the learned Tribunal has given specific findings in Subh Gupta's case that the accident has occurred due to

rash and negligent driving of the driver of the Truck and those findings have not been challenged by the appellant or the owner, so the same have

become final. The claimant- Tirath Singh has also not put counter claim in the said petition by pleading that the accident has occurred due to rash

and negligent driving of the driver of Bus and he also sustained injuries and is entitled to compensation. Therefore, this petition is barred by

principle of res judicata as the matter between the same parties directly and substantially has been adjudicated in the previous litigation. Those

findings recorded between the parties inter se are binding. The provisions of CPC are applicable under the Act when proceedings are taken before

the Tribunal as Tribunal also performs the function that of civil court. So the findings recorded by the Tribunal which have become final

between the parties inter se in case of Subh Gupta are binding upon the claimant-Tirath Singh.

11. When a person is driving a motor vehicle rashly and negligently and due to his rash and negligent act the accident has occurred and any loss is

caused to the vehicle or driver, he cannot claim compensation under the Act, as it is clear from Sections 165 and 166 of the Act. This proposition

has been considered by this Court in United India Insurance Co. Limited Vs. Bhupinder Singh and Others,

12. For the reasons mentioned above, this appeal is accepted and the award passed by the learned Tribunal is set aside. The amount if already

deposited be released in favour of the claimants under proper receipt and identification.