

(2024) 04 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : CMAM No. 69 Of 2012, Miscellaneous Appeal No. 70 Of 2012

Mehboob Ali Kar

APPELLANT

Vs

Mst. Jumli And Others

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A

Citation : (2024) 04 J&K CK 0016

Hon'ble Judges : MA Chowdhary, J

Bench : Single Bench

Advocate : M. A. Qayoom, Areeb Javed Kawoosa

Final Decision : Allowed/Disposed Of

Judgement

M. A. Chowdhary, J

1. Two Claim Petitions in terms of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the M. V. Act') came to be filed by two Claimants, namely Mst. Jumli W/O Lassi Harray and Mst. Zeba W/O Mohammad Sultan before the learned Motor Accident Claims Tribunal, Kupwara (for short 'the Tribunal'), seeking compensation for the deaths of their husband and son, respectively, in a vehicular road traffic accident on 5th of November, 2003, when the offending vehicle bearing registration No. JK01E 9227 (Tata Sumo) was being driven by its driver Abdul Khaliq Dobi, at Khetian, Mohammad Ramzan Lone, son of Claimant-Mst. Zaiba, had died on spot and Lassi Harray, husband of Claimant-Jumli had got injured and was referred to District Hospital, Kupwara wherefrom he was referred to SKIMS, where he succumbed to his injuries. A case, in this behalf, had been registered at Police Station, Kupwara, for the commission of offences punishable under Sections 279 and 304-A RPC vide FIR No. 274/2003.

2. The learned Tribunal decided both the Claim Petitions, which had been registered as File Nos. 33 and 34 of 2004, by a common Award dated 21st of October, 2011, thereby granting compensation to the tune of Rs.3,27,000/-,

including interim relief, in favour of the Claimant-Mst. Jumli and her sons and daughters for the death of Lassi Harray, whereas an amount of Rs. 2,93,000/-, including interim relief, was granted to Claimant-Mst. Zeba for the death of Mohammad Ramzan Lone. The Tribunal also awarded interest @ 7.5 % per annum over the aforesaid amounts from the date of institution of Claim Petitions till realization of the said amounts. Since, the Award was passed against the Respondent-Insurance Company with a direction to pay the amount to the Claimants with a right to recovery of the same from the insured owner-Respondent No.1/ Appellant herein, he, who was ex-parte before the Tribunal, feeling aggrieved of the Award, has preferred these two Appeals, which have been clubbed and are proposed to be decided by this common Judgment, in as much as, in both the Appeals, the same contentions have been raised.

3. Mr M. A. Qayoom, the learned Counsel appearing on behalf the Appellant, argued that as observed in the impugned Award, the Claimant-Mst Jumli had stated before the Tribunal that she had not filed the Claim Petition/ application before the Tribunal, as such, this fact should have gone to the root of the liability fastened on the insured-owner of the offending vehicle. He has further argued that the Appellant, as Respondent No.1 before the Tribunal, had been proceeded ex-parte vide Order dated 22nd of April, 2004, whereafter he had moved an application for setting aside the ex-parte proceedings on 23rd of May, 2011, but the Tribunal, without deciding the application for setting aside the ex-parte proceedings, proceeded ahead to decide the Petitions as a whole, vide impugned Awards, observing therein that the ex-parte proceedings cannot be set aside as the proceedings in the case have been concluded, however, it was observed that the Respondent No.-1, who had been proceeded ex-parte, shall have a right of hearing.

4. Mr Qayoom further argued that even after making of observation for reserving the right of being heard to the Respondent No.1/ Appellant herein, the Award had been passed on his back and in his absence. It was, accordingly, prayed that in such an eventuality of the matter, the Award to the extent of liability of the insured-owner cannot be fastened on him without hearing him, as he had a valuable right of being heard, even at the time of hearing of final arguments in the matter.

5. Mr Areeb Javed Kawoosa, the learned Counsel appearing for the Respondent No.3-Insurance Company, ex-adverso, argued that the plea raised by the learned Counsel for the Appellants with regard to the statement of one of the Claimants that she had not filed the Claim Petition is not relevant in the case, inasmuch as, she had been paid the compensation after conducting of enquiry by the Tribunal and that there is no requirement of even laying a formal Claim Petition under the scheme of the M. V. Act. He has further argued that the Appellant/ Respondent No.1 had been set ex-parte in the year 2004 and he, after an inordinate and unexplained delay, approached the Tribunal in the year 2011 seeking setting aside of the ex-parte proceedings and the Tribunal, in its wisdom, had rightly

decided that once the proceedings of the Claim Petitions have been concluded, the same cannot be reopened for the convenience of such a litigant who had remained negligent after appearance before the Tribunal and then sleeping over the matter. He has also argued that the liability to pay the compensation has been fixed on the insured-owner of the vehicle for the reason that the offending vehicle was being driven by a person not holding a valid driving licence and that the driver had been heard by the Tribunal at the time of passing of the Award and sufficient evidence had been laid by the Respondent No.3 to conclude that the offending vehicle was being driven by its driver at the time of accident, without having a valid driving license, as on that day the driving license of the driver was not renewed, as such, this aspect of the matter has been thoroughly adjudicated upon by the Tribunal and, in this view of the matter, it does not lie in the mouth of the insured-owner, who had engaged the services of a driver who was not holding a valid driving license, to say that the matter be reopened afresh.

6. Heard learned Counsel for the parties, perused the record and considered the matter.

7. The liability had been fixed on the insured-owner of the offending vehicle by the Tribunal in both the Claim Petitions and especially when he had moved an application for seeking setting aside of the ex-parte proceedings, the same was not decided before taking up of the Claim Petitions for final hearing and in the final Award, the Tribunal had dealt with the matter on ex-parte proceedings against the Appellant as well, holding that he had a right of being heard only at that stage as proceedings have already been concluded in both the Petitions. In the considered opinion of this Court, the application for seeking setting aside of ex-parte proceedings should have been dealt with separately before taking up of both the Claim Petitions for final hearing on merits. The Tribunal, in its Award, has dealt with the application and observed that right of being heard is available to the party who had been proceeded ex-parte, but at the same time, the Award was passed in his absence. As this opinion had been framed by the Tribunal that right of being heard is to be afforded to the Appellant, the same should have been notified and the Appellant should have been heard before passing of the final Award, as the right of being heard could not be denied by the Tribunal to the Appellant.

8. Having regard to the observations made hereinabove, the impugned Award, in my considered opinion, is not sustainable to the extent of fixing the liability of payment of compensation on the insured-owner of the offending vehicle and reserving the right of the insurer-Insurance Company to recover the same from the insured. The rest of the Awards, in the considered opinion of this Court, do not call for any interference, particularly when the quantum is not in issue in both the Appeals. The matter is required to be decided between the insured and the insurer. Accordingly, the Award to the extent of fixing of the liability on the insured-owner/ Appellant herein is set aside. Both the Appeals, to this limited extent, are allowed.

9. Both the Claims are remanded to the Tribunal for fresh disposal, on the issue of deciding the plea with regard to the liability to pay compensation either by the insured or the insurer, after hearing the parties. Parties are directed to appear before the Tribunal on 13th of May, 2024, for further proceedings.

10. Both the Appeals are, thus, disposed of, on the above terms, along with the connected CM(s). A copy of this Judgment be placed on each file.

11. The Record of the Tribunal be returned, along with a copy of this Judgment for further compliance.