
(2009) 10 J&K CK 0016
In the Jammu And Kashmir High Court

Ministry of Defence and Another

APPELLANT

Vs

Janak Raj

RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 161(b)

Citation : (2011) ACJ 145 : (2010) 1 JKJ 276 : (2011) 1 TAC 1020

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—This Civil first miscellaneous Appeal is directed against the judgment/award dated 23rd September, 2002,

passed by Presiding Officer, Motor Accident Claims Tribunal, Jammu in claim petition 569/Claim titled Janak Raj v. Ministry of Defence and Anr.

whereby an amount of Rs. 4,10,000/- with 9% came to be granted in favour of claimant-respondent, hereinafter for short impugned award.

2. In brief the facts are that Claimant-respondent namely Janak Raj, the victim of vehicular accident, filed a claim petition before the Motor

Accidents Claim Tribunal, Jammu on 6th March, 1998 for grant of compensation on the grounds that he was hit by an Army vehicle on 7.03.1973

at Nagbani (Domana), which was being driven by its driver rashly and negligently and sustained grievous injuries, which resulted into amputation of

his right leg above knee. He has claimed compensation of Rs. 5,00,000/- as per the break-up given in the claim petition.

3. During the pendency of the claim petition, claimant-respondent filed an application seeking condonation of delay, which had crept in filing the

claim petition, came to be allowed by the Tribunal vide order dated 7.3.2000. Appellants have not questioned the said order.

4. Following issues came to be framed by the Tribunal:

1. Whether claimant has suffered injuries in a motor accident which occurred on 7.3.1973 due to the negligence of the driver of the offending Army

Vehicle? OPP

2. In case issue No. 1 is proved what compensation the claimant is entitled to? OPP

3. Relief.

5. The claimant-respondent besides himself examined Bishan Dass and Dr. Sham Jurangal as his witnesses. The appellants have failed to examine

witnesses in their defence. After hearing learned Counsel for the parties, the impugned award came to be passed.

6. Learned Counsel for the appellants contested claim petition of the claimant-respondent on three grounds:

(i) That claim petition of the claimant-respondent was barred by time,

(ii) That the identity of the offending vehicle was not known and

(iii) That driver of the offending vehicle has not been arrayed as a party.

7. Admittedly, it is proved that accident has been caused by the vehicle, which belongs to the Army. Thus, identity of the vehicle and owner of the

offending vehicle is known. The case in hand does not fall within the definition of hit and run case as given in Section 161 Clause (b) Motor

Vehicles Act, for short Act. It is apt to reproduce the said provision:

161. Special Provisions as to compensation in case of hit and run motor accident:- (1) For the purpose of this section, Section 162 and Section

163

(a) "grievous hurt" shall have the same meaning as in the Indian Penal Code (45 of 1860)

(b) "Hit and run motor accident" means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be

ascertained in spite of reasonable efforts for the purpose;

(c) "Scheme" means the Scheme framed u/s 163

8. If the identity of the vehicle, which caused accident, cannot be ascertained in spite of reasonable efforts for the purpose, the accident can be said

to be a hit and run motor accident. In the instant case, an FIR came to be lodged in the year 1973 with the allegations that the Army vehicle caused

the accident. Though the claimants have not given the particulars of the vehicle, but all the witnesses have deposed before the Tribunal that

offending vehicle was an Army vehicle. The said evidence has remained un-rebuttal. Thus, issued stands clinched. Even otherwise, the claimant-

respondent has to prove that accident has arisen out of the use of motor vehicle.

9. It is apt to reproduce Section 165 of the Motor Vehicle Act herein-after referred to as the Act, herein:

165. Claims Tribunal (1):- A State Government may, by notification in the Official Gazette, constitute one or more Motor Accident Claims

Tribunal (here after in this chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of

adjudicating upon claims for compensation in respect of accident involving the death of or bodily injury to persons arising out of the use of motor

vehicles, or damages to any property of a third party so arising, or both.

10. This provision of law mandates that the jurisdiction the claims Tribunal can be invoked, if following two conditions are satisfied.

(1) The accident has arisen out of use of the motor vehicle(s); and

(2) The accident has resulted in bodily injury to the person or to the property of the person who is making the claim or death of the person whose

legal representatives are making the claim(s).

11. Keeping in view the peculiar circumstances and facts of the case, I am of the considered view that claimants have established rather proved

that the accident was outcome of use of Army vehicle.

12. The aim and object of awarding compensation is a social one and it is the duty of the Tribunal to achieve it as early as possible without

succumbing to the technicalities and niceties. Apex Court in a case titled as NKV Bros (P) Ltd. v. M. Karumai Amnal and Ors. reported in 1980

SC 1354 laid down the same principle.

13. Learned Counsel for the appellants has placed reliance upon the judgments titled Minu B. Mehta and Anr. v. Balkrishna Ramchandra Nayan

and Anr. reported in 1977 A.CJ.118 and reported in Karnataka State Road Transport Corporation Bangalore Vs. Smt. Biyabi @ Kundan Bai

and Others, .

14. Para 15 out of the judgment reported 2007 ACJ 45 is reproduced herein:

From the above it is clear that all the authorities are in agreement that even for fastening the liability of compensation on the master the Tribunal has

to record a finding that the accident had taken place because of the negligence of the driver. Certainly unless such a finding is recorded the master

cannot be held to be a joint tortfeasor and consequently vicariously liable.

15. It is not necessary that driver should be a party, but for fastening the liability learned Tribunal has to record a finding that the accident is

outcome of use of motor vehicle and driver had driven the vehicle rashly and negligently.

16. Keeping in view the mandate of Section 165 and 166 of the Motor Vehicles Act and the object of awarding compensation, I am of the

considered view that driver is not a necessary party but a proper party. The claim petition can be filed and determined without arraying the driver

as a party. The same view is taken by the Court in a case titled as Union of India (UOI) and Others Vs. Mst. Aisha and Others, .

17. The question of limitation was raised by the appellants and came to be decided by the Tribunal vide its judgment dated 7.3.2000 and held that

claim petition was maintainable. The appellants have not challenged the said judgment so far.

18. The aim, object and purpose of the Act is to save the claimants from starvation, destitution and other social evils and perhaps that was the

reason the legislature in its wisdom deleted Sub-section 3 of Section 166 of the Motor Vehicles Act, 1998. In terms of Sub-section 3, rigour of

limitation has been taken away. The Apex Court in its judgment reported in Vinod Gurudas Raikar Vs. National Insurance Co. Ltd. and others, ;

Dhannalal v. D.P. Vijayvargiya AIR 1996 2155 and New India Assurance Co. Ltd. v. Padma AIR 2003 SC 4394, laid down that the

delay/limitation should not come in the way of granting compensation to victims of vehicular accidents.

19. For the reasons given by the Tribunal Rs. 50,000/- and Rs. 1,25,000/- for medical expenses and under the head of pain and suffering

respectively came to be rightly awarded, but the Tribunal has erred while awarding Rs. 1,00,000/- under the head of career and Rs. 1,35,000/-

for loss of amenities of life.

20. At this stage learned Counsel for the claimant-respondent stated at bar, that

he has no objection in case the amount of compensation is reduced.

21. Keeping in view long pendency of the claim petition and the fact that claimant-respondent had approached after lapse of about 25 years, I

deem it proper to award Rs. 1,50,000/- under the heads ""loss of amenities of life"" and ""career"" instead of Rs. 1,35,000/- and Rs. 1,00,000/-.

Learned Tribunal has also wrongly awarded 9 % interest, which should have been at the most 6%.

22. Thus, the claimant-respondent is held entitled to Rs. 50,000/- under the head medical expenses, Rs. 1,25,000/- under the heads ""pain and

suffering"" and Rs. 1,50,000/- under the heads ""loss of amenities of life"" and ""career"" respectively. In total claimant-respondent is entitled to Rs.

3,25,000/- with interest at the rate of 6% p.a from the date of claim petition till its realization minus the amount already paid to him.

23. In view of the above the impugned award dated 23.9.2002, is modified as indicated above.

24. Appeal is, accordingly, disposed of as indicated above.