
(2019) 07 J&K CK 0032
In the Jammu And Kashmir High Court
Case No : MA No. 142 Of 2018

Sanju Raju And Ors

APPELLANT

Vs

National Insurance Co. Ltd And Ors

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 165, 165(1), 166, 168, 173, 175

Citation : (2019) 07 J&K CK 0032

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : R. Koul, Baldev Singh

Final Decision : Disposed Off

Judgement

Sanjeev Kumar, J

1. This appeal by appellants (hereinafter referred to as 'the claimants' for short) in terms of Section 173 of the Motor Vehicles Act, 1988 ('the

Act' for short) is directed against the order dated 28.07.2018 passed by the Motor Accidents Claims Tribunal, Ramban (hereinafter 'the Tribunal')

in File No.51/Claims titled Sanju Raju and others v. National Insurance Co. Ltd and others, whereby the claim petition of the claimants has been

dismissed being not maintainable under Section 166 of the Act.

2. The relevant facts as are necessary for the disposal of this appeal may be noticed. On 16.04.2012, the deceased Rattan Singh, husband of claimant

No.1 and father of claimants No.2 and 3 was standing on one side of the National Highway at Mehar Ramban. A truck bearing Registration

No.JK02T/6337 driven by respondent No.3 in rash and negligent manner, which was coming from Jammu side, hit the deceased resulting his death on

spot. The claimants, who lost their bread-winner, filed the claim petition in terms of Section 166 read with Section 140 of the Motor Vehicles Act

against the respondents before the Tribunal and claimed a sum of ₹ 6,50,16,504/- by way of compensation. The claimants, in the petition, claimed that

the deceased at the time of his death was 44 years of age and a businessman earning ₹ 4,46,542/- per month. Upon being put on notice, the

respondent No.1, the insurer of the offending vehicle, alone entered appearance through its counsel and contested the petition. The other respondents,

i.e. respondents No. 2 and 3 despite service did not appear before the Tribunal and as such there were proceeded ex parte. On the basis of pleadings

of the parties and the documents on record, the Tribunal framed the following issues:

1. Whether deceased Rattan Singh Raju died as a result of injuries received in a Road Traffic Accident on 16.04.2012 at about 8.30 PM at Mehar

Ramban within the jurisdiction of police station Ramban, involving offending vehicle No.JK02T/6337 (Truck), driven by its driver in a rash and

negligent manner? (OPP)

2. Whether the petitioners are entitled to receive compensation in terms of M.V. Act, and if so, to what extent and from whom? (OPP)

3. Whether the offending vehicle was being driven at the time of accident in contravention of terms and conditions of the insurance policy and the

driver was not holding valid license, thus, respondent insurance company is not liable to compensation? (OPR)

4. Relief?

3. With a view to discharge the onus of the issues and prove their case, the claimants examined Parshotam Singh and Neeraj Kumar as their

witnesses. The claimant No. 1 also entered into the witness-box as her own witness. The insurer i.e. the respondent No.1 examined Shiv Kumar

Gupta, Assistant Manager of the Insurer, Anil Suri, the Chamail Singh (driver) and Avinash Singh (owner) as its witnesses. The Tribunal, after

appreciating and evaluating the evidence brought on record by the parties oral as well as documentary, came to the conclusion that claimants had

failed to prove that deceased Rattan Singh had died in the accident due to rash and negligent driving of the offending vehicle by the respondent No.3

and thus held the claim petition not maintainable under Section 166 of the Motor Vehicles Act. The claim petition of the claimants was thus dismissed

vide order impugned. The claimants are aggrieved of the order impugned and seek to challenge the same inter alia on the following grounds:

(i) That the Tribunal did not appreciate the evidence on record in proper perspective and returned an erroneous finding that the claimants had failed to prove that the deceased Rattan Singh had died in the accident involving the offending vehicle, which was being driven by the respondent No.3 in rash

and negligent manner. The impugned order, therefore, suffers from perversity;

(ii) That the learned Tribunal failed to take notice of the legal maxim *Res Ipsa Loquitur* which was clearly attracted in the facts and

circumstances of the case. Since, it was admitted case of both the parties that accident had taken place due to tyre rod of the offending vehicle

coming out suddenly and, as such, in the absence of proof to the contrary, it was to be presumed that the respondents No.2 and 3 were negligent in

maintaining their vehicle, the use whereof resulted in the accident that killed the deceased.

(iii) That the Tribunal has failed to appreciate that in the admitted facts of the case, the principle of law of torts laid down in the famous case of

Rylands v. Fletcher, (1861-1873 All ER (Reprint) 1) was fully attracted.

4. Per contra, the learned counsel appearing for the respondent No.1, Mr. Baldev Singh vehemently contends that the order impugned passed by the

Tribunal is in consonance with the law. He submits that for maintaining a petition under Section 166 of the Act, proof of rashness and negligence of

the driver of the offending vehicle is sine qua non. He, thus, urges that since the claimants could not prove sufficiently that the deceased Rattan Singh

had died in the motor vehicular accident due to rash and negligence driving of the offending vehicle by its driver, as such, the Tribunal had no option

but to dismiss the claim petition.

5. Having heard the learned counsel for the parties and perused the record, I am of the view that that order impugned passed by the Tribunal is

erroneous in law and, therefore, cannot sustain. From the evidence that has come on record, it is amply proved that the accident, in which the

deceased died, occurred due to tyre rod of the offending vehicle coming out suddenly. It is true, that the witnesses of the claimants have not, in so

many words, explained the manner in which the accident had taken place but the two witnesses produced by the respondent insurer i.e. RW Chamail

Singh driver of the offending vehicle and RW Avinash Singh, the owner of the offending vehicle have clearly substantiated the fact that the driver lost

control of the vehicle due to tyre rod coming out of the vehicle suddenly and the deceased who was standing on the road side was hit by the vehicle

and killed on spot. An FIR registered with regard to the accident, i.e. FIR No.57/2012 in the Police Station Ramban is also to the aforesaid extent. The

FIR which is first version of the incident clearly reveals that the deceased Rattan Singh was standing on the side of National Highway when the driver

of the offending vehicle lost control of the vehicle and hit him which killed the deceased on spot. The driver of the offending vehicle in his statement

has explained as to how he lost control of the vehicle. He attributes his losing the control of the vehicle to the tyre rod of the vehicle coming out

suddenly and causing of the accident. To the same extent is the statement of the owner of the offending vehicle namely Avinash Singh, who in his

deposition, has stated that as per the mechanic's report the tyre rod of the offending vehicle had come out. In my opinion, this was sufficient evidence

for the Tribunal to conclude that the accident had arisen out of use of the motor vehicle which at the relevant time was being driven by the driver

negligently. A person who keeps a motor vehicle is under an obligation to maintain it properly so that when it is brought on the road it does not pose

danger to the life and property of the citizens using the roads. The coming out of the tyre rod while the vehicle was being driven is itself a proof of

negligence of the owner and driver of the vehicle, who had failed to take reasonable care and caution and had brought the vehicle on road which

because of its poor maintenance was a potential threat to the life and property of the citizens using the public roads. The Tribunal also failed to take

note of the provisions of Sections 165, 166 and 168 of the Act, which if read together, would make it abundantly clear that the Tribunal under the Act

is constituted for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to persons,

arising out of use of the motor vehicle or damages to any property of third party so arising or both. From the scheme of Chapter XII, it is clear that a

claim petition under Section 166 of the Act would be maintainable in respect of accidents involving the death of or bodily injury to the persons arising

out of the use of motor vehicle and it does not matter whether the death of or the bodily injury to such person has arisen due to rash and negligent

driving of the vehicle. This court in the case of National Insurance Co. Ltd v. Paramjit Singh and anr., 2014 (1) JKJ 152 [HC] has interpreted the

scope of expression 'arising out of use of motor vehicles' used in Section 165 of the Act and has held that it is not necessary for the claimant to

prove rash and negligent act on the part of the driver of the offending vehicle. It is sufficient if it is proved that the victim of accident sustained injuries

or the deceased lost his life out of use of motor vehicle. The Tribunal has lost sight of this aspect of the matter and the salient provisions of the

Chapter XII, particularly, Sections 165, 166 and 168, which clearly provide the scheme for adjudication of motor accidents claims.

6. That apart, the facts of the case unraveling from the FIR and the statement of the driver and owner of the offending vehicle noted above clearly

make out a case of applicability of the legal maxim 'Res Ipsa Locuitur', which means 'the thing speaks for itself'. It is not in dispute that

the deceased Rattan Singh died in the accident involving the offending vehicle. It is also amply proved that the driver of the offending vehicle lost

control of the vehicle due to the tyre rod of the vehicle coming out suddenly. Without looking for any further proof, the manner in which the things

have happened on spot, it is clear that the accident in which the deceased Rattan Singh died arose out of use of the offending vehicle. The driver of

the offending vehicle could not control the vehicle because of the tyre rod coming out of the vehicle suddenly, which happening can be attributed to the

poor maintenance of the vehicle. Both the driver and the owner were negligent in bringing the poorly maintained vehicle on the road which had

potential of posing danger to the life and property of the citizens using the public roads. That being the position, I am in agreement with the learned

counsel for the claimants that the doctrine of 'Res Ipsa Locuitur' was clearly attracted in the case.

7. A similar case on identical facts also landed before the Supreme Court in Civil Appeal No.6 of 2001 in the case of Kaushnuma Begum v. New

India Insurance Co. Limited reported as (2001) 2 SCC 9. The aforesaid appeal had arisen out of an accident involving a Jeep, the driver whereof lost

the balance due to the front wheel of the Jeep getting burst and in the accident that took place, one Haji Mohammad Hanif who was walking on the

road at that ill-fated moment was hit and crushed to death. The claim petition filed by the widow and the children of the deceased Haji Mohammad

Hanif was dismissed by Tribunal on the ground that there was neither rashness nor negligence in driving the vehicle and hence, neither the driver nor

the owner was liable to pay compensation to the dependants of the deceased. Appeal preferred by the dependants was also dismissed by the Division

bench of the High Court of Allahabad and this is how the matter landed before the Hon^{ble} Supreme Court. The Supreme Court posed a question for

determination, i.e. can a claim be maintained before the Motor Accidents Claims Tribunal on the basis of strict liability propounded in the case of

Reylands v. Fletcher (1861-73 All ER (Reprint) 1). The Supreme Court after discussing the principle laid down in Reylands case *supra* and its

applicability to the Indian context came to the conclusion that like any other common law principle, which is acceptable to our jurisprudence, the Rule

in Reylands v. Fletcher (1861-73 All ER (Reprint) 1) case can be followed at least until any other new principle which excels the former can be

evolved, or until legislation provides differently. What was concluded by the Supreme Court in the case is summed up in Paragraph 19 of the judgment,

which reads as under:

“19. Like any other common law principle, which is acceptable to our jurisprudence, the rule in Rylands vs. Fletcher can be followed at least until

any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in

claims for compensation made in respect of motor accidents.”

8. In the similar set of circumstances as have arisen in the case in hand, the Supreme Court held the claimants entitled to compensation. The Supreme

Court further went on to hold that Section 165(1) of the Act confers powers on the State Government to constitute the Motor Accidents Claims

Tribunals for the purpose of adjudicating upon the claims for compensation in respect of accidents involving death of or bodily injury to persons arising

out of use of the motor vehicles, or damage to any property of third party arising or both. It also took note of Section 175 of the Act, which contains a

prohibition that “no civil court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon

by the claims Tribunal.” It was thus held that the jurisdiction of the Tribunal

constituted under the Act is not restricted to decide the claims arising out of negligence in the use of motor vehicles and the negligence is only one of the species of the causes of action for making a claim for compensation with respect to motor vehicular accidents. There could be other premises for such cause of Action. The Supreme Court thereafter then dwelt upon the rule laid down in *Rylands v. Fletcher* case *supra* and its applicability to our jurisprudence and concluded that the rule aforesaid can be adopted in claims for compensation made in respect of motor accidents.

9. In view of the aforesaid authoritative pronouncement of the Supreme Court, the facts of the instant case clearly attract the applicability of the rule in the *Rylands v. Fletcher*, (1861-1873 All ER (Reprint) 1) case. The driver and owner of the offending vehicle had kept the offending vehicle for their own purposes which they knew if plied on the roads without proper maintenance has the potential of posing danger to the life and liberty of the citizens. They, thus, brought it on the road at their peril and they are, therefore, *prima facie*, answerable for all the damage that has been caused by the use of the aforesaid vehicle. They were, however, entitled to show and excuse this by showing that the injury or the damage was owing to the default of the deceased. In the instant case the respondent-insurer has not led any evidence to prove that it is because of the default of the deceased, he lost life in the accident or that the accident had occurred due to â??vis majorâ?? or â??act of God?.

10. For the foregoing reasons and in view of the clear enunciation of law by the Supreme Court in the case of *Kaushnuma Begum supra*, the order impugned passed by the Tribunal cannot be sustained and the same is, accordingly, set aside. The issue No.1 framed by the Tribunal is held proved in favour of the claimants. The Tribunal has not discussed the other evidence with regard to quantum of compensation and, therefore, it would be appropriate to remand the case back to the Motor Accidents Claims Tribunal, Ramban for working out the compensation payable to the claimants. Learned counsels appearing for the parties, however, submit that it would be for the convenience of all the parties if the matter is instead transferred to MACT, Jammu for further adjudication.

11. Accordingly, the matter for further proceedings as directed above is remanded to MACT, Jammu who shall proceed in the matter to determine the

compensation payable to the claimants as directed above after putting all the parties to notice.

12. Let the records of the case be transmitted by MACT, Ramban to the MACT, Jammu immediately on receipt of order from this Court. Registry to

convey this order to the MACT, Ramban and the MACT, Jammu for compliance.

13. Disposed of, as above.