

(2008) 04 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : CIMA No. 111 Of 2007

Union of India & Anr.

APPELLANT

Vs

Ali Mohammad Ganai & Anr.

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Motor Vehicles Act, 1939 — Section 165

Citation : (2009) JKJ 91 Supp : (2009) 1 SriLJ 376

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : T.H.Khawaja, S.Gowhar, Advocates appearing for the Parties

Judgement

1. Appellants have questioned the award dated 30th of September, 2006 passed by Motor Accident Claims Tribunal, Srinagar, in claim petition

titled as Ali Mohammad Ganai & anr Vs. Union of India and another, for short the impugned award, on the grounds taken in the memo of appeal

Facts:

2. One Jahangir Ahmad Ganaideceased became the victim of vehicular accident on 26.09.1995 at Chandahara Mode Srinagar Anantnag National

High Way. It is averred that said accident was caused by an army vehicle Wanton which was being driven by its driver rashly and negligently. The

said offending vehicle hit the deceased who sustained injuries and succumbed to injuries in SKIMS (SheriKashmir Institute of Medical Sciences)

Soura. He was a student of P.U.C class and was lone son of the parents claimants.

3. Respondents resisted the claim petition on the ground that accident was caused by any army vehicle and identity of the vehicle and driver was

neither pleaded nor established. Following issues came to be framed:

1. Whether on 26.9.1995 an unknown army person while driving an Army vehicle (Wanton) rashly and negligently hit and injured one Jahangir

Ahmad Ganai at Chandhara Mode on National High Way who later on succumbed to the injuries on the same day? O.P.P.

2. In case Issue No. 1 is proved in affirmative, to what amount of compensation are the petitioners entitled to, from whom and in what proportion?

O.P.P.

3. Whether the claim petition is not maintainable and merits dismissal? O.P.R1.

4. Relief.

4. Petitioners claimants besides examining petitioner No. 1 Bashir Ahmad Ganai examined Bashir Ahmad Ganai, Mst. Rafiq, Ali Mohamad

Ganai, Dr. Altaf Kirmani, Additional Professor neurosurgery, SKIMS Soura and Inspector Bashir Ahmad Mir. Respondents appellants have

examined only one witness, namely, Nike Sobaidar D. S. Solanki.

5. The sole argument advanced by the learned counsel for the appellant is that the tribunal has fallen in error while saddling appellant with the

liability because claimants respondents have failed to give and prove the identity of the vehicle and the particulars of the driver.

6. Learned counsel for the respondents argued that there is ample evidence on the file that army vehicle Wanton was being driven by its driver

rashly and negligently at Chandhara Mode, Srinagar Anantnag National High Way and hit the deceased Jahangir Ahmad Ganai who sustained

injuries and succumbed to injuries in SKIMS, Soura. Thus, the tribunal has rightly saddled the appellant with the liability.

7. The core question to be determined in this case is whether the tribunal has rightly saddled the appellant with the liability? All the witnesses

examined by the petitioners claimants have deposed that accident was caused by army vehicle Wanton. The appellants have not been able to

Chatter their evidence in any way and respondents appellants have failed to lead evidence in rebuttal that army vehicle was not involved in the

accident. The Investigating Officer, namely, Bashir Ahmad Mir has also deposed that it was established during the investigation that army vehicle

Wanton has caused the accident. He had made so many communications with army officials for furnishing the particulars of the driver and

registration number of the vehicle but all efforts in vain. In cross examination

also he has deposed that accident was caused by an army vehicle.

Thus identity and owner of the offending vehicle is known.

8. The question that identity of the vehicle and the particulars of the driver have not been established is devoid of any force for the following

reasons:

9. It is profitable to reproduce SubClause I of Section 165 of the Motor Vehicle Act hereinafter referred to as the Act, herein:

165. Claims Tribunals. (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims

Tribunals (hereafter 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 accidents 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 of 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. While going through the provisions of Section 165 and 166 of the Act, one comes to an inescapable conclusion that the claimant(s) have to

prove that accident is outcome of use of motor vehicle.

12. 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.

13. The aim and object of awarding compensation is a social one and it is the duty of the tribunals 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. Vs. M. Karumai Ammal and others, reported in

1980 SC 1354 laid down the same principle. It is profitable to reproduce relevant portion of para3 of the said judgment herein:

3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness

often persuades the courts, as has been observed by us earlier in other cases; to draw an initial presumption in several cases based on the doctrine

of *res ipsa loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape

liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where

it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes.....

14. 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.

15. High Court of Karnataka in case titled Patel Roadways and anr. Vs. Manish Chhotalal Thakkar and Ors, reported in 2001 ACJ 180, has held

as under:

23. But, we do not find any support in Biyabi's case, 2001 ACJ 45 (Karnataka) for appellant's contention that in the absence of driver as a party,

a claim petition is liable to be dismissed as not maintainable or that no pending proceedings can go on, unless and until the driver is impleaded as a

party. There is no such proposition in the said decision. It should be noticed that nowhere in Biyabi this court has held that a claim petition is not

maintainable if the driver is not impleaded as party. All that the decision lays down is that no finding adverse to the driver can be recorded unless

the driver is a party. It is, however, not possible to read more into the said decision or hold that in the absence of the driver, claim petition should

be rejected. In fact in Biyabi, this court did not dismiss the claim petition on the ground that driver was not a party. On the other hand, we find that

on the facts and circumstances, as K.S.R.T.C. vehicles did not have insurance cover and as K.S.R.T.C. proposed to initiate action against erring

drivers for negligence on the basis of finding of negligence recorded by the Tribunal, this court made it clear that no adverse finding can be given

nor action be taken against its driver by K.S.R.T.C. for negligence unless the driver was a party to the claim proceedings; and, therefore, the

matter was remitted to the Tribunal to serve a notice on the driver and then

dispose of the matter. The decision in *Biyabi* is not, therefore, an authority for the proposition that no claim petition against the owner of a vehicle is maintainable without impleading the driver. Whether driver is to be impleaded or not is left to the discretion of the claimant. While there can be no doubt that impleading a driver will be appropriate, as he is a proper party, it cannot be said that he is a necessary party in a claim against the owner and insurer alone. Any finding of negligence of driver, recorded in a petition against the owner, or in a petition against the owner and insurer, without impleading driver, cannot be held to be an 'adverse' finding against the driver nor can it lead to any civil consequences against the driver. Such finding will be only for the purpose of fastening liability on the owner and not to fasten any liability on the driver. However, if the driver is impleaded and notice is issued to him, then civil consequences like making him personally liable will follow on recording a finding of negligence. In the circumstances, the contention that claim petition is not maintainable in the absence of the driver of the car is liable to be rejected.

16. The identity of the vehicle is known for the reasons that claimants have proved by leading sufficient evidence that the owner of the vehicle is Army Union of India.

17. Having glance of the above discussion, I am of the considered view that tribunal has rightly saddled the appellant respondents with the liability.

The finding recorded by the tribunal on issue No. 1 is thus correct, needs no interference.

18. The amount of compensation awarded by the tribunal is only Rs. 2.40 lakhs. I am of the considered view that awarded compensation is too meager for parents who have lost their lone son and that too hope for future and help in the old age. But the tribunal has fallen in error while awarding the interest at the rate of 9%. Thus, I deem it proper to reduce the interest from 9% to 6%.

19. Accordingly, the impugned award is modified as indicated above. Appeal is disposed of. Registry to send down the record along with a copy of this judgment.