

(2009) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CIMA No. 110 Of 2007

Union of India

APPELLANT

Vs

Abdul Hamid Bhat

RESPONDENT

Date of Decision : 24-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Ranbir Penal Code, 1989 — Section 279, 337

Citation : (2009) JKJ 474 Supp

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : J.H.Reshi, S.A.Makroo, Advocates appearing for the Parties

Judgement

Sunil Hali, J.—While standing on roadside at his village Uterusoo on 10.10.1989 the claimant was hit by a Military vehicle bearing

registration No. 1540 86C42299E as a result of the accident, he suffered multiple injuries on his body and his right leg was totally fractured as the

same was run over by the rear left wheel of the vehicle. He was referred to the Bone and Joint Surgery Hospital, Srinagar, where his right lower

limb was amputated below the knee, as a result of which he acquired permanent disability. A case was registered under Section 279/337 RPC

against the erring driver and statement of witnesses were also recorded under Section 161 Cr.P.C. A claim petition came to be filed before the

Motor Accidents Claims Tribunal Anantnag, seeking compensation of Rs. 10 Lacs with interest.

2. In their objections to the claim petition, appellants denied the accident and stated that no vehicle of 21 FAD was reported to be involved in any

such accident on 10.10.1989, thereby denying their liability to pay the

compensation to the claimant.

3. The Tribunal, after hearing the parties, allowed a compensation of Rs. 5 Lacs on various counts, both pecuniary and nonpecuniary and interest

at the rate of 5% from the date of application was filed. Feeling aggrieved of the award, present appeal has been filed. Cross objections under

Order 41 Rule 22 of the Code of Civil Procedure have also been filed by the claimantrespondent.

4. The contention of the appellants is that their vehicle was not involved in the accident. In this respect it be seen that while dealing with this

question, the claimant has examined Mohd Abdullah Bhat and Ghulam Hassan Draboo besides his own statement. All of them have deposed that

claimant was hit by the Army vehicle. They have stated that after the accident took place, the Army vehicle stopped and the number was recorded

by them. Ghulam Hassan H/C also admit that FIR was lodged and the cause of accident was ascertained. It was found that the claimant had

suffered injuries on account of rash and negligent driving of the army vehicle. The statement of the claimant further reveals that the army people had

been approaching him and promising him to provide him a job in the army immediately after 5/6 months of the accident.

5. On the other hand, appellants have examined one Bikram Singh of 21 FAD C/O 56 APO, who has stated that said vehicle was not working

with their Unit neither any such vehicle is owned by any Army Unit.

6. After discussing the evidence the Tribunal has held that there is sufficient evidence on record to show that the army vehicle has hit the claimant

and caused injuries to him. Regarding the actual registration number of the vehicle, there might have been some difficulty in reading the same, but,

this, in itself, would be a ground to deny the involvement of the appellants vehicle in the accident.

7. I find no fault with the findings of the Tribunal on this count. The nature of the accident and surrounding circumstances are such that the doctrine

res ipsa loquitur has to be invoked in the present case, which says that events speaks for themselves. Once the claimant establishes that injuries

were caused by the military vehicle, the requirement under Section 165 and 166 of the Motor Vehicles Act, is complied with. In the present case

the contention of the claimant has also been proved by the his statement and

statement of his witnesses, who have admitted that claimant was hit by an Army vehicle. There might have been difficulty in locating the exact registration number of the vehicle but it is an established fact that because of their shape, size and colour the army vehicles can be easily identified from other vehicles. The contention of the appellants that vehicle in question does not belong to army, cannot be accepted merely on a certificate issued by an officer of the 21 FAD.

8. Learned counsel for the respondent has placed reliance on a judgment of this Court in Union of India and ors vs. Mst. Asha and ors, reported as 2008 (1) SLJ, 88 where it has been held as under:

A claimant becomes entitled to claim compensation if he proves that the accident is outcome of use of motor vehicle evidence produced that the accident was caused by such vehicle held that the claimants have established that the accident was outcome of use of army vehicle.

9. Regarding the other contention of the appellants that claimant is not entitled to such compensation, it be seen that the doctor has proved the certificate issued by him whereby he admits that right lower limb of the claimant was amputated and claimant suffered permanent disability of 70%.

Even though the amount of expenses spent by the claimant has not been proved, it is still incumbent upon the Tribunal to assess the award what is

found to be just compensation on the basis of the evidence produced in the case. The Tribunal has awarded compensation of Rs. 50,000/ on

account of pecuniary damages. This amount, in my opinion, is inadequate as admittedly the claimant has suffered permanent disability on account of

the accident. Though expenses part has not been proved but the Tribunal was under an obligation to determine the just compensation. I, therefore,

award compensation of Rs. 2 Lacs on account of pecuniary damages, keeping in view the permanency of the disability of the claimant. I am not

inclined to interfere with the other findings of the Tribunal. However, interest awarded by the Tribunal at the rate of 5% is enhanced to 9% from the

filing of the application till the amount is realized.

10. For the reasons stated, the appeal is dismissed and crossobjections filed by the respondentclaimant allowed in terms of what has been stated

hereinabove.