

(2008) 06 J&K CK 0015
In the Jammu And Kashmir High Court

Union of India (UOI) and Another

APPELLANT

Vs

Ghulam Nabi Dar

RESPONDENT

Date of Decision : 03-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2010) ACJ 23 : (2008) 3 JKJ 68

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Judgement

Mansoor Ahmad Mir, J.—Respondent-claimant invoked the jurisdiction of Motor Accident Claims Tribunal, Srinagar, on 23rd of February,

1999, with the grievance that his father Habibullah Dar was hit by army vehicle at Galandar Pampore (National Highway Road) on 21st of August,

1998 and succumbed to injuries. Claimant-respondent, at that particular point of time, was accompanying his father. Deceased 55 years of age

was a labourer and a Fisherman was earning more than Rs. 5000/-per month and would have lived up to 95 years of age. Appellant contested the

petition and following issues came to be framed:

1. Whether on 31.8.1998, near Calender Pampore, an accident has occurred due to the rash and negligent driving of Army vehicle by its Driver,

which resulted into the death of deceased, Habibullah Dar? OPP

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

3. Relief.

2. Claimant-respondent besides examining himself examined, Farooq Ahmad Wani, Javaid Hussain Bhat, Mohammad Akram Dar and

Mohammad Shaban. Dr. Hanlid, Sr. Resident, Soura Institute and Mohammad Amin, 10, were summoned at the request of the claimant-

respondent but they failed to procure their attendance and the claimant-respondent filed certified copies of the police challan, death certificate.

Evidence of the claimant-respondent was closed on 21.2.2003.

3. Appellant-non-applicant examined Hawaldar J.P. Narayan, Duru Dev Singh and B.S. Rajput.

4. After hearing learned Counsel for the parties and scanning the evidence, the tribunal passed the impugned award. The appellant feeling dis-

satisfied with the award filed this appeal and questioned the correctness of the award.

5. The witnesses of the claimant have deposed that petitioner, Ghulam Nabi Dar, was accompanying his father on the fateful day and were going

from Pampore to Chandhara but when they reached Galander deceased was hit by an army vehicle which was driven by its driver rashly and

negligently and deceased succumbed to injuries. The deceased was 45 years of age and was earning Rs. 5000/- being labourer and a Fisherman.

The documentary evidence and the certified copies of the documents (supra) also prove the fact that army vehicle was being driven by its driver

rashly and negligently.

Evidence of non-applicant-appellant;

6. Witnesses examined by the non-applicant have stated that in terms of the day book and other connected documents/registers no accident is

recorded on 31st of August, 1998. But one of the witness, namely, Hawaldar J.P. Narayan stated that all the entries in the register had not been

made by him. Duru Dev Singh and B. S. Rajput have stated that record relating to the accident is not available.

Issue No. 1;

7. All the witnesses have deposed that army vehicle was being driven rashly and negligently by its driver and hit the deceased who was on his way

from Pampore to Chandhara, at Galander on 31st August, 1998, who succumbed to injuries. The documents also disclose that the offending

vehicle was Army Vehicle.

8. It is not necessary that claimants should have given particulars of the vehicle and particulars of the driver, registration mark of the offending

vehicle. It is sufficient that if the owner of the offending vehicle is known. The non-applicant-appellant has failed to rebut the evidence of the

claimant and there is no reason to disbelieve them. Thus, argument of learned Counsel for the appellant fails for the following reasons.

9. It is profitable to reproduce Sub-Clause 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 N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, laid down

the same principle. It is profitable to reproduce relevant portion of para-3 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 Another Vs. Manish Chhotalal Thakkar and Others, , has held as under:

23. But, we do not find any support in Karnataka State Road Transport Corporation Bangalore Vs. Smt. Biyabi @ Kundan Bai and Others, 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. Keeping in view the above discussion, it is known that offending vehicle was army vehicle and Tribunal has rightly saddled the appellant with

the liability. The finding returned by the Tribunal needs no interference which is accordingly upheld.

18. It is pleaded that deceased was 45 years of age but in the certified copy of the injury memo age is given as 55 years. Keeping in view the age

of the deceased, the multiplier applicable was 11 but Tribunal has fallen in error by applying multiplier of 13.

19. Respondent-claimant has pleaded and proved that income of the deceased was Rs. 5000/- per month but Tribunal has fallen in error while

holding that his income was Rs. 6000/-. It is but natural that deceased would have been spending Rs. 1500/- for personal expenses. Thus claimant

stands deprived of source of dependency to the tune of Rs. 3500/- per month but the Tribunal has held and assessed loss of dependency to the

tune of Rs. 3000/- per month. The claimant has not disputed the impugned award, thus the loss of dependency is assessed to the tune of Rs.

3000/-. The respondent, is thus entitled to Rs. $3000 \times 12 \times 11 = 3,96,000$ + Rs. 2000 as funeral expenses minus the interim award, with 6% interest

from the date of claim petition till its final realization.

Appeal disposed of and the impugned award is modified as indicated above.

Registry to send down the record along with a copy of this judgment.