

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

.....

Mac App no.23/2022

Union Territory of J&K through Director General, Fire and Emergency
Services

.....Petitioner(s)

Through: Mr Mohsin Qadiri, Sr. AAG

Versus

Mst. Parveena and others

.....Respondent(s)

Through: Mr Wajid Haseeb, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL JUDGE

ORDER

12.02.2025

1. This appeal is directed against Award dated 30.12.2021 passed by Motor Accident Claims Tribunal, Srinagar (for short "*Tribunal*"), in a claim petition bearing File no.181/2014 titled as *Parveena and others v. State of J&K and another*, saddling appellant with the liability of Rs.12,25,200/- minus interim compensation, if any, already paid, along with simple interest @ 7.5% per annum from the date of presentation of claim petition till its final realization, and for setting-aside the same.
2. I have heard learned counsel for parties. I have gone through the record and considered the matter.
3. It had been on 6th September 2014 at about 8.45 PM that husband of respondent no.1, namely, Mushtaq Ahmad Gagloo was hit by a vehicle of Fire and Emergency Department, near Exhibition Road, Srinagar, causing grievous injuries to the said Mushtaq Ahmad Gagloo. He was

admitted in SMHS Hospital Srinagar, but was later shifted to SKIMS Soura, where he succumbed to injuries on 14th September 2014. Obviously, FIR no.85/2014 was registered by police station Shaheed Gunj, Srinagar. Subsequently, it was in terms of Section 166 of Motor Vehicles Act, that a claim petition was filed by claimants – respondents herein before the Tribunal, seeking compensation of Rs.2,84,00,000/-. Objections to the claim petition were filed by appellants. Taking into account pleadings of parties, the Tribunal framed as many as four issues. Parties were directed to adduced witnesses. Claimants/ respondents produced and examined four witnesses, besides claimant no.1 herself. Appellants produced three witnesses. After considering the case, the Tribunal passed impugned Award.

4. First ground of challenge on behalf of appellants is that Tribunal by relying upon statement of respondent no.1 has committed a grave error as her statement was not even relevant and was based on hearsay and same was evident from para 10 of impugned Award.
5. Second ground of challenge on behalf of appellants is that Tribunal by relying upon witness namely, Fayaz Ahmad Gagloo, who claimed to be an eyewitness, had come to conclusion that there was sufficient evidence available to establish that driver, Tariq Ahmad Bhat, was driving the vehicle in rash and negligent manner is totally contrary to the facts of present case and to the statement made by the said witness as according to him he was in a vehicle and was at a distance of 100/200 feet away from the place of occurrence and after accident he rushed to the spot when deceased was hit by a vehicle and he did not see the accident with his own eyes. According to appellants, from the said

statement it is crystal clear that the said witness has not even seen the accident with his own eyes and the Tribunal has surprisingly found the said statement not only sufficient to establish that the accident was caused by driver but also to the extent that he was driving in rash and negligent manner. Thus, conclusion drawn by Tribunal is patently contrary to the factual circumstances of the case.

6. Third ground of challenge on behalf of appellants is that Tribunal has further committed grave error by relying on the statement of Mohammad Afzal Gagloo to come to conclusion that vehicle was being driven in rash and negligent manner as the said witness in one breath has said that he could not see that deceased had come behind the vehicle and simultaneously this accident took place due to negligence of offending vehicle and further goes on to say that it is correct that the conductor of vehicle had warned deceased not to pass. Thus, statement being self-contradictory could not have been relied upon by the Tribunal for coming to conclusion that the vehicle was driven in rash and negligent manner. In fact, the said statement lends support to appellants' version that deceased was himself negligent and it was his negligence that resulted in accident as conductor of vehicle had warned deceased not to pass the vehicle. Thus, Tribunal has committed grave error in appreciating evidence while passing impugned award.
7. Fourth ground of challenge on behalf of appellants is that there is error apparent from the face of the record when the Tribunal in para 31 at page 20 of impugned Award states that driver was negligent because he took injured to hospital. This according to appellant being non-application of mind on the part of the Tribunal.

8. Fifth ground of challenge on behalf of appellants is that award amount is excessive as the same has been arrived at on the basis of exaggerated calculation and without any measuring yardstick. It is being also stated that assuming for the sake of argument, appellants are liable to pay compensation, yet the compensation awarded is exorbitant, excessive, arbitrary and unjust.

9. Insofar as first to fourth grounds of challenge are concerned, those are ill-thought-out. The reason being appellant's admission qua grievous injuries to deceased due to vehicular accident and subsequently his succumbing to injuries. In this regard Para I (c) of appeal is worthwhile to be reproduced hereunder:

c) That accordingly, appellant's department filed detailed reply whereby it has been opposed that the Performa Respondent (Tariq Ahmad Bhat Driver) was not plying the vehicle rashly and negligently but while performing the official duties of dewatering caused due to floods and was reversing the vehicle to place the same at an appropriate position. The deceased despite of signal all of a sudden passed over the vehicle during floods on the backside, due to which minor injuries were caused to him and later died in SKIMS....."

10. From plain reading of Para I (c) of appeal, it is evident that due to vehicular accident deceased got injured and subsequently succumbed to injuries. The Tribunal has also in detail discussed that how in vehicular accident deceased got injured and subsequently succumbed to injuries.

11. In the matters concerning proceedings to claim compensation under Section 166 of Motor Vehicles Act, the Motor Accident Claims Tribunal is to take holistic view of the case and it is necessary to borne in mind that strict proof of any accident caused by a vehicle in a particular manner is not possible to be done by claimant inasmuch as

claimant is merely to establish his case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt could not be applied. Reference in this regard is made to *Bimla Devi and others v. Himachal Road Transport Corporation and others* (2009) 1 SCC 530 and *Parmeshwari v. Amir Chand* (2011) 11 SCC 635.

12. The principles of proof in a criminal case will not be applicable for compensation under Motor Vehicles Act and standard to be followed in such claims is one of preponderance of probability rather than one of proof beyond reasonable doubt.

13. One needs to be mindful that the approach and role of the Motor Accident Claims Tribunals, while examining evidence in accident claim cases, ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by parties to ascertain whether claimant's version is more likely than not true. A somewhat similar situation arose in *Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646, in which the Supreme Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (*Bimla Devi v. Himachal RTC* [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]).”

14. The Supreme Court in *Anita Sharma and others v. The New India Assurance Co. Ltd. and others* (2021) 1 SCC 171, has held that in claim cases, evidence is to be tested on preponderance of probability and principles of strict rule of evidence, proving a point beyond

reasonable doubt, is not available in claim cases, which are adjudged under a benevolent provision contained in Motor Vehicles Act.

15. Insofar as Fifth ground of challenge on behalf of appellants that award granted by the Tribunal is excessive is misconceived.

As regards above submissions, the Tribunal, while deciding Issue no.3, has made threadbare discussion. Deceased, as is evident from the file and impugned Award, was running an iron shop, and used to mechanizing iron grills, gates and trusses etc. at Munawar Abad, Srinagar and it was on the basis of said averment that claimants/respondents maintained that deceased was earning Rs.1.00 lakh per month. Notwithstanding the claim of respondents that deceased was earning Rs.1.00 Lakh per month, the Tribunal took Rs.6000/- as monthly income of deceased.

While doing so, the Tribunal has rightly placed reliance on the judgement rendered by the Supreme Court in *Sarla Verma v. Delhi Transport Corporation 2009 (6) SCC 121*, *National Insurance Co. Ltd v. Pranay Sethi, (2017) 16 SCC 680* and *Magma General Insurance Co. Ltd v. Nanu Ram @ Chuhru Ram and others, 2018 (II) Scale 247*. The Tribunal has also correctly applied the multiplier and multiplicand. Compensation on other accounts has been given by Tribunal appropriately.

16. It may be mentioned here that the Supreme Court in the case of *Sarla Verma* (supra) has laid down the principles governing determination of quantum of compensation in the case of death in a motor accident. The Supreme Court held that compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. Just

compensation is adequate compensation, which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by following well settled steps, namely, ascertaining multiplicand (annual contribution to the family), multiplier and calculation of loss of dependency by multiplying the multiplicand by such multiplier.

17. In *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company, (2011) 13 SCC 236*, the Supreme Court held that claimant, who was working as a coolie, cannot be expected to produce any documentary evidence to substantiate his claim. In absence of any other evidence contrary to claim made by claimant, in the facts of the said case, the Tribunal should have accepted the claim of claimant. The Supreme Court has made it clear that in all cases and in all circumstances, the Tribunal need not to accept claim of claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

18. Again, the Supreme Court in *Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., (2014) 2 SCC 735*, while taking note of earlier

decision in *Ramachandrappa's* case (supra), held that a labourer in an unorganized sector doing his own business could not be expected to produce documents to prove his monthly income. Therefore, there was no reason for Tribunal and the High Court to ask for evidence to prove his monthly income. Going by the state of economy, prevailing at that time and rising prices in agricultural products, the Supreme Court accepted his case that a vegetable vendor was reasonably capable of earning 6,500/- per month.

19. A Constitution Bench of the Supreme Court in *Pranay Sethi* (supra) has held that Section 168 of Motor Vehicles Act, 1988, deals with concept of 'just compensation' and same has to be determined on foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the Tribunal is quite wide, yet it is obligatory on the part of the Tribunal to be guided by the expression, i.e., just compensation.

20. While analysing the case in hand on the touchstone of law laid down by the Supreme Court, as discussed herein above, impugned Award

does not warrant for any interference and as a corollary thereof Appeal on hand is liable to be dismissed.

21.For the foregoing reasons, the instant Appeal is **dismissed**. Interim direction, if any, shall stand vacated.

22.The amount, if any, deposited by appellants before this Court shall be released in favour of claimants/respondents.

23.Copy of this judgement be sent down along with record of the Tribunal.

(Vinod Chatterji Koul)
Judge

Srinagar
12.02.2025
Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/No.

