

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

.....

CMAM no. 249/2015

Reserved on: 01.06.2022

Pronounced on: 17.08.2022

Showkat Ahmad Bhat and others

..... Appellant(s)

Through: Mr. M. Ayoub Bhat, Advocate with
Ms. Mahjabeen Akhter, Advocate

Versus

Khazir Mohammad Bhat and others

..... Respondent(s)

Through: Ms. Rifat Khalida, Advocate
Mr. M. Saleem Bandh, Advocate
Mr. Aftab Ahmad Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Impugned in this Appeal is Award dated 28th November 2015, passed by Motor Accident Claims Tribunal, Pulwama (for short "*Tribunal*") in a Claim Petition titled as *Khazir Mohammad Bhat and another Vs. Showkat Ahmad Bhat and others*, thereby directing appellants to pay an amount of Rs.4,91,000/- along with 6% interest per annum from the date of institution of claim till realization to the claimants/respondents, on the grounds made mention of therein.
2. A claim petition, as perusal of the file would bring to the surface, was filed by claimants/respondents 1&2, before the Tribunal on 19th December 2007, averring therein that deceased, *Mudasir Ahmad Bhat S/o Khazir Mohammad Bhat R/o Batapora Dadsarah Tehsil Tral, aged*

nearly 19 years, died in an accident, which took place on 19th November 2007, near Peer Mohalla Khalil situated on Kangalura-Tral road, due to rash and negligent driving of driver of offending vehicle, bearing Registration no.JK13-5657, which was insured with respondent-Insurance Company. Claimants/Respondents 1&2 prayed for grant of compensation of Rs.13,30000/-, along with interest.

3. Respondent-Insurance Company resisted the claim petition before the Tribunal, amongst others, on the grounds that deceased, who was shown travelling in offending tractor at time of accident, was not covered under the insurance policy and only driver can travel in the tractor as an insured person, as such, respondent no.4 had no contractual obligation to indemnify owner on account of death of deceased as he was not covered under insurance contract; and that respondent no.1, driver of offending tractor, was not having valid driving licence at the time of accident.
4. The Tribunal, taking into consideration pleadings of parties, settled five issues for determining claim petition, which for facility of reference are reproduced hereunder:

1. Whether on 19.11.2007 respondent No. 1 was driving the tractor bearing registration number JK13-5654 from Kangalura towards Tral rashly, negligently and carelessly, due to which it turned turtle and the deceased Mudasir Ahmad fell down it and died on spot? OPP
2. Whether the petitioners are entitled to any compensation, if so, to what extent and from whom? OPP
3. Whether the respondent insurance company is not liable to pay any compensation as because the deceased is not covered by the policy of insurance? OPR4
4. Whether the owner of the offending vehicle has violated the terms and conditions of the policy by allowing the respondent no. 1 to drive the tractor who was not having a valid and effective license on the material date? OPR4
5. Relief.

5. Claimants, in support of their claim petition, produced and examined four witnesses before the Tribunal; besides claimant/respondent no.1 himself. Respondent Insurance Company produced one witness in support of its stand. Appellants/respondents, however, as perusal of record divulges, did not opt to cause appearance and put up their stand before the Tribunal. In terms of impugned Award, the Tribunal found claimants/ respondents entitled to receive compensation of Rs. 4,91,000/- along with 6% interest per annum to be paid by appellants.
6. Heard and considered.
7. Learned counsel for appellant Insurance Company, after reiteration of facts of the case as ingeminated in instant Appeal, has stated that appellant had been set *ex parte* by the Tribunal, followed by issuance of impugned *ex parte* Award against appellants and non-contesting respondents and even no summon or notice was served upon appellants. He also states that award impugned is illegal as it is against the facts.
8. Next contention of learned counsel for appellants is that appellant no.1 was not driving the tractor as he was not driver of tractor and that the story alleged by respondents/claimants in their claim petition is totally false. It is also contended by learned counsel that there is no proof produced before the Tribunal by claimant concerning rash, negligent and careless driving of offending tractor by appellant no.1 and that no positive and admissible proof or evidence is on the file and that even no issue with regard to the fact that deceased was travelling in offending tractor was raised or settled. Learned counsel also avers that the findings recorded during investigation has not been brought on the record nor has been proved before the Tribunal.

9. It is also contention of learned counsel for appellants that deceased was not travelling in the tractor in question and that deceased had been injured while he was walking on the road. According to learned counsel the Tribunal has not made proper and valid enquiry in this behalf nor is there any averments or allegation made in claim petition. Learned counsel for appellants has also invited attention of this Court to the fact that there had been inconsistent and contradictory statements made by witness, namely, Bashir Ahmad, Head Constable as during cross-examination he deposed that deceased was standing on the road when he was hit by offending tractor and because of this, Mudasir Ahmad Bhat was killed, then thereafter witness changed his stand and stated that deceased, Mudasir Ahmad Bhat, was not standing on the road but he was boarding the offending tractor. This conduct of witness as an investigator officer, according to learned counsel for appellants, shows that there is no positive and cogent evidence on the file to connect appellant no.1 with rash and negligent driving of offending tractor.

10. Above contentions of learned counsel for appellants are misconceived. Perusal of the record reveals that although appellants were duly served yet they opted not to cause appearance to contest the claim petition before the Tribunal and, resultantly, the Tribunal rightly initiated *ex parte* proceedings against appellant.

When the record, more particularly statements of witnesses, namely, Nazir Ahmad Paul, Ghulam Hassan Malik and Gurnam Singh, is perused, it shows in unambiguous terms that respondent no.1 – appellant no.1 herein was plying offending tractor in a rash and negligent manner, due to which tractor turned turtle and met with an accident.

11. It is to be kept in mind that in a situation of present nature, the Tribunal has rightly taken a holistic view of the matter and it was to be borne in mind that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability, and the standard of proof beyond reasonable doubt could not have been applied in the matter relating to payment of compensation in a motor vehicle accident.
12. It is a trite law that strict principles of proof in a criminal case will not be applicable in a claim for compensation under the Motor Vehicles Act and that standard to be followed in motor accident claims is one of preponderance of probability rather than one of proof beyond reasonable doubt. Reference in this regard is made to *Sunita v. Rajasthan State Road Transport Corporation*, (2019) SCC Online SC 195; *Bimla Devi v. Himachal RTC* (2009) 13 SCC 530; *Dulcina Fernandes v. Joaquim Xavier Cruz*, (2013) 10 SCC 646.
13. 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.
14. Learned counsel for appellants has also averred that there is no evidence qua earning of deceased and that Tribunal has without any legal basis taken monthly income of deceased as Rs.5500/-. Again, if this submission of learned counsel for appellants is analysed and considered

in the context of law laid down by the Supreme Court in *National Insurance Co. Ltd v. Pranay Sethi, (2017) 16 SCC 680*, the same pales into insignificance.

15. In view of above discussion, the instant appeal is without any merit and is, accordingly, dismissed. Interim direction, if any, shall stand vacated.
16. Copy be sent down along with the record.

Srinagar
17.08.2022
Ajaz Ahmad, PS



(Vinod Chatterji Koul)
Judge