

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

MAC App No. 52/2021

Reserved On : 12.09.2022

Pronounced On: 22.09.2022

State of J&K & Ors.

...Appellant(s)

Through: Ms. Asifa Padroo, AAG

Versus

Mir Fathima & Ors.

.....Respondent

Through: Mr. Nazir Ahmad, Advocate

CORAM: HON'BLE MR JUSTICE M.A. CHOWDHARY, JUDGE

JUDGEMENT

1. The instant appeal is directed against the Award dated 09.12.2017 passed by Motor Accident Claims Tribunal Pulwama, in 76/CP titled Abdul Gani Mir & Anr. Vs. State of J&K & Ors. seeking setting aside of the same.
2. Brief facts giving rise to laying of Motor Accident Claim and the appeal are that on 12.02.2003 the deceased namely Aijaz Ahmad Mir was travelling in a Police Gypsy bearing registration No. 4026-JK02Q belonging to appellants alongwith other police officials including Dy.SP DAR Awantipora and while proceeding towards Pampore and reaching near Konibal Bus Stop Pampore, the said gypsy was hit by a land mine blast pre planned by the anti social elements to kill the police personnel which resulted into death of the deceased namely Aijaz Ahmad Mir on spot, other police personnel were injured

and said Gypsy was totally damaged. In this connection an FIR was lodged at Police Station Pampore.

3. Since the said occurrence involved the use of motor vehicle so the parents of the deceased filed a claim petition before MACT Pulwama to seek compensation under Motor Vehicles Act against the appellants. The claimants (herein respondents) claimed compensation for the death of the deceased on the grounds that the deceased at the time of accident was a young healthy and hard working person at the age of 27 years. The deceased was working as SPO in Police Department and was receiving monthly salary of Rs. 3300/- and that the deceased was only bread earner of his family who was dependable on the earnings of the deceased. In view of good health and hard worker, the claimants were expecting that the deceased would have earned upto the age of 70 years, as such, the claimants are deprived from the future earning of the deceased. They claimed compensation of Rs. 10,50,000/- under various heads.
4. The appellants strongly objected to the maintainability of the claim petition and resisted the claim on the grounds that the claimants have no cause of action against the appellants. Besides claimants have been compensated already as per the rules and norms. It is submitted that occurrence took place due to subversive activity, there being no negligence on part of the appellants herein vis-a-vis the occurrence. The occurrence is the result of well planned conspiracy of the militants and in this connection a case FIR No. 18/2003 U/Ss 302,307,427 RPC and

3/5 Explosive Substance Act (ESA) was registered at P/S Pampore. They further submit that an ex-gratia relief of Rs. 1.90 lacs have been paid by the department and brother of deceased was also provided employment in terms of SRO 43 of 1994, in the Flood and Irrigation Department by the Government for the death of deceased SPO.

5. On the basis of the pleadings of the parties, following issues were raised :

i/ Whether on 12.02.2003, the deceased Aijaz Ahmad Mir while travelling in police gypsy bearing registration No. 4026-JKO2Q belonging to respondents and while reaching near Konibal bus stop the said gypsy was hit by a landmine blast resulting in the death of deceased on spot?OPP

ii/ Whether the petitioners are entitled to compensation?....OPP

iii/ Whether the deceased died due to IED blast carried out by militants while travelling in a gypsy bearing registration No. 4026-JK02Q belonging to the respondents as such death of the deceased is not outcome of motor vehicle accident?...OPR.

6. Only two witnesses, namely Aijaz Ahmad Bhat and Abdul Gani Mir were examined by the claimants. PW Aijaz Ahmad Bhat stated that he is the neighbor of the petitioners. Deceased who was working in police department was known to him. The vehicle in which Aijaz Ahmad Mir deceased was traveling got badly damaged. Deceased was the lone bread earner of his family and was unmarried; that he had not seen the blast with his own eyes.

He at the time of blast was sitting at his home. Another witness Abdul Gani Mir, one of the claimants, corroborated the averments mentioned in the petition word by word. He admits that Aijaz Ahmad deceased working as SPO was his son who got killed in a landmine blast near Konibal Pampore. The death of the deceased caused colossal damage to the petitioners. On the other hand, respondents (appellants herein) examined only one witness Mushtaq Ahmad Najar to discharge the burden. He states that he is working in police department as an accountant and is presently posted in District Police Awantipora. He also admits that Aijaz Ahmad deceased was working in police department as SPO who died during active service. He states that legal heirs of the deceased have taken the ex-gratia relief. He denied having knowledge whether any compassionate appointment was provided to the legal heirs of deceased in terms of SRO 43.

7. The Tribunal vide impugned judgment held claimants/respondents entitled to the compensation of Rs. 3,86,600/- in equal proportions alongwith 6% interest from the date of filing of the claim petition till realization of the entire awarded amount.

8. The appellants have assailed the impugned judgment on two factors;

i/ Firstly that there was no negligence on the part of the driver or the appellants herein and the death of the deceased and injuries to the injured had been caused in a mine blast which was beyond their control as such even the

incident in question is too remote, and unconnected with the use of the vehicle.

ii/ secondly that the deceased who was working as SPO with the appellants had been granted ex-gratia relief in the amount of Rs. 1.90 lacs and his brother was also provided compassionate appointment in terms of SRO 43 of 1994 as such the claimants/respondents are not entitled to seek compensation for his death caused in an accident and tribunal has misdirected itself not to appreciate the above grounds and grant compensation though the appellants were not liable to pay the same. Let us deal with these points one by one.

9. Ms. Asifa Padroo AAG learned counsel for the appellants relied on a judgment passed by Himachal Pradesh High Court in case titled ***Himachal Road Transport Corpn. & Ors. Vs. Om Prakash & Ors.*** reported as 1992 ACJ 40 (HP). On a perusal of this judgment it has been found that case related to a bomb blast in a Bus of the Himachal Road Transport Corporation at Chakki Bridge Pathankot. Ld. Counsel for the appellants has tried to canvass that in the judgment the compensation was granted for the reasons that the blast had taken place inside the vehicle and it was observed that this was within the control of crew of the bus and counsel has tried to point out that since this case relates to landmine blast by the militants and there was no negligence on the part of the driver of the vehicle or the appellants. Ms. Padroo argued that since land mine blast was too remote, therefore, it was

unconnected with the use of the vehicle, as such, the tribunal had failed to appreciate the landmine blast which was beyond the control of the driver or the appellants and there is no justification to grant this compensation.

10. Heard, perused the record and considered.

11. It is an admitted case of the parties that the deceased Aijaz Ahmad Mir who was working as SPO while travelling in a police gypsy bearing registration No. 4026-JK02Q owned by the police received injuries in a land mine blast planted by the militants on 12.2.2003 at a place near Konibal Bus Stop Pampore and in that accident besides the deceased, other occupants policemen also suffered serious injuries. Parents of the deceased Aijaz Ahmad Mir, filed claim petition in terms of section 163-A of M.V.Act seeking compensation. The tribunal vide impugned judgment awarded the compensation in the amount of Rs. 3,86,600/-with 6% interest. Appellants aggrieved of that award challenged the same before this court and in the meanwhile, father of the deceased Ab. Gani Mir died and his sons Manzoor Ahmed Mir, Feroz Ahmad Mir, Fayaz Ahmad Mir and daughters Tasleema Jan and Sweeti Jan were substituted as his LRs.

12. Though the petition was filed by the claimants in terms of Section 163-A of the M.V. Act which provides that the claimant need not to prove the negligence of the driver, however, since the learned counsel for the appellant has raised important questions with regard to the use of the vehicle same is required to adverted to. High Court of Andhra Pradesh in a case reported *in 2011 ACJ*

861 titled Bhupathi Prameela V. Superintendent of Police, Vizianagaram & Ors. dealing with the case of mine blast held in paras 54 and 55 as under:-

“54. Admittedly, they were proceeding in the forest area in which, extremists were moving. In such a situation, the police higher officials should have been very cautious and careful. With their rich experience, they ought to have visualized that the extremists may keep a watch on the movements of the police and may use landmines to kill the police personnel. The past experience shows that as and when police officers were careless and were going into forest area on vehicles, the extremists used landmines and blasted the vehicles. In the background of the events that occurred previously, the police higher officials ought not to have taken the bus into the forest area without due care and caution, ignoring the fact, that the extremists may use landmines at any time in the forest area. Taking a bus with police personnel into the forest area where extremists are moving without proper care and precaution is nothing but a negligent act by the police higher officials. Normally, the practice is to do combing operation by walk or by motorcycles. The Act of the superior police officers, without visualizing the consequences and asking the police personnel to travel by bus into the forest area, is nothing but, in our considered view, a negligent act.

55. We are of the view that the driver of the vehicle alone need not be rash and negligent in driving the vehicle, but if there is any negligent act on the part of the owner of the vehicle or on the part of the persons responsible for plying the vehicle, it also amounts to rash and negligent driving. For example, when a river is flowing and if the owner or conductor of a vehicle asks the driver of the vehicle to pass through the river and the vehicle capsized in the middle of the river, then the owner or the manager of the vehicle cannot escape from liability as it also amounts to rash and negligent driving of the vehicle. To be more clear, for example, if a road is under repair or a bridge is about to collapse, knowing very well the condition of the road or bridge, asking the driver to pass through such road or bridge also amounts to rash and negligent driving. The words rash and negligent driving has to be given a wider meaning and not a narrow meaning. It must cover all the

circumstances wherein it appears that the persons responsible for taking the vehicle on public road are negligent and not careful in visualizing the consequences for any reason, then it must be held that they were negligent and the accident occurred out of the use of the motor vehicle. Therefore, any negligent act on the part of the owner or on the part of the manager or on the part of the person responsible for the vehicle has also to be treated as rash and negligent driving.”

13. This court has also in a case titled **National Insurance Co. Ltd. Vs. Shiv Dutt Sharma** reported as **1(2005) ACC 473** dealing with the case of bomb blast and other terrorist activities held that the principle emerging from various judgments with regard to the scope of term arising out of use of vehicle held that passenger travelling in bus when suffers from injury on account of bomb blast or on account of any other activity including terrorist activity, would be within his right to claim compensation. A Division Bench of this Court in another case titled **Smt. Sneh Sarma Vs. Sh. Sewa Sarma** reported as **1996 SLJ 151** held that death or injuries due to terrorist activities to passengers travelling in motor vehicle compensation can be claimed holding that it is duty of owner and crew of the vehicle to ensure safe journey of passengers, the liability arises where owner or crew remain negligent and fail to ensure safe journey of the passengers. Accident caused in such case would be deemed to have arisen out of the use of the motor vehicle and compensation can be claimed under the provisions of Section 165 of Motor Vehicle Act. Hon'ble Apex Court in a case titled **Shivaji Dayanu Patil & Ors. vs. Smt. Vatschala Uttam More** reported as **AIR 1991 SC 1769** had upheld the compensation granted in a case where there was collusion
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between a petrol tanker and a truck on National Highway No.4 near village Kavatha in District Satara, Maharashtra State and due to the leakage of petrol from the tanker which had went off the road and fell on its left side at a distance of about 20 feet from the highway, a number of persons who had assembled near the petrol tanker sustained burn injuries and some of them died. The Hon'ble Apex Court upheld the award granting compensation holding that even the accident was remote but had arisen out of the 'use of the vehicle'.

14. In view of the law laid down by the Apex Court and this court and having regard to the facts of this case, it is held that the death of the deceased had taken place due to use of the vehicle and the same cannot be said that the land mine blast can divest the accident from the use of the vehicle. The appellants being functionaries of the law and order in the State knew it very well that planting of land mine was the order of the day in those days particularly the security vehicles being the target. Appellants thus were negligent in ensuring safety of the the vehicle and its occupants, despite there being standard operating procedure (SOP) in those days to give road clearance by the security forces by combing the roads. It appears that such an exercise had not been undertaken by the appellants who are negligent on that count.

15. Another aspect of this case is that since the petition had been filed under section 163-A of the M.V. Act and the petitioners in such a claim petition were not under any obligation to prove the

negligence. Hon'ble Apex Court in a case titled **United India Insurance Co. Ltd. V. Sunil Kumar & Anr** reported as **2018 ACJ 1** held that Insurance Company cannot raise the plea of negligence in a petition under section 163-A at par with the proceedings under section 166 which would not only be self contradictory but also defeat the very legislative intention. The tribunal has rightly held the appellants are liable to pay compensation in terms of the M.V.Act , therefore, this plea raised by the appellants with regard to their non-negligence is rejected.

16. Coming to the second limb of the arguments that the claimants have been compensated by paying ex-gratia relief of an amount of Rs. 1.90 lacs by the appellants and that one of the siblings (brother) of the deceased had also been given compassionate appointment for the death of the deceased, as such, they have been sufficiently compensated and they are not entitled to be re-compensated under the M.V.Act.

17. The Apex Court in a case titled **Vimal Kanwar & Ors. v. Kishore Dan & Ors.** reported as **2013 ACJ 1441** has held that no deductions of the amount received under Provident Fund, pension and insurance are permissible while granting compensation by the Tribunal. It has further been held that compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependants may be entitled for compassionate

appointment but that cannot be termed as 'pecuniary advantage' that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act. For the reasons assigned hereinabove, the second plea of the appellant also fails and is rejected.

18. Having regard to the discussion made hereinabove, in the backdrop of the fact legal situation, it is held that even if the cause of accident is remote or as a result of subversive activity involved, the victim is entitled to grant of compensation under Motor Vehicle Act, for the use of the vehicle and all other reliefs granted under some other statutes or schemes are not adjustable towards the compensation payable under the Motor Vehicles Act.

19. In view of the observations made hereinabove, the appeal filed by the appellants is found without any merit and substance and is accordingly dismissed. Impugned award passed by the MACT Pulwama, awarding compensation to the claimants to the tune of Rs. 3,86,600/- alongwith interest @ 6% is upheld. The amount of compensation deposited, if any, with this Registry shall be released in favour of the respondents herein in terms of the award.

20. The record of the Tribunal be sent back alongwith a copy of this judgment.

SRINAGAR
22.09.2022

(M.A.CHOWDHARY)
JUDGE

Mujtaba

Whether the order is reportable : Yes/No