

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on:29.09.2021  
Pronounced on: 11.10.2021

OWP No.1232/2017

ALI MOHAMMAD MIR

...PETITIONER(S)

Through: Mr. Shabir Ahmad Dar, Advocate.

Vs.

STATE OF J&K & ORS.

....RESPONDENT(S)

Through: Mr. B. A. Dar, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Petitioner has challenged Government Order No.194 of 2017 dated 10.03.2017 as also communication No.Lg1/claim-petition/2017/1896-97 dated 24.04.2017 to the extent the same directs recovery of the amount of compensation awarded by Motor Accident Claims Tribunal, Srinagar, in favour of claimants in the case titled Mohammad Yaseen Anchari & ors. vs. Director General of Police and others, from the petitioner.

2) The facts emerging from the pleadings are that on 12.09.2009, petitioner, who is employed as a driver in J&K Police, was driving a police bus bearing registration No.JK13-3452 in which a police party of District Police Lines, Srinagar, was proceeding from Central Jail,

Srinagar, after lodging the prisoners over there. On reaching near Kathi Darwaza, Srinagar, a mine blast took place due to which petitioner lost control over the vehicle and a pedestrian, namely, Mst. Khatija, was run over by the vehicle resulting in her death on spot.

3) The legal heirs and dependents of the deceased Khatija filed a claim petition before Motor Accident Claims Tribunal, Srinagar, seeking compensation on account of death of the deceased. The claim petition was filed against the Government of Jammu and Kashmir through its Home Secretary and Director General of Police being the owners of the offending vehicle.

4) The Tribunal after trial of the case came to the conclusion that on the fateful day the petitioner was driving the bus in question when a mine blast took place at the place of occurrence as a result of which the petitioner lost control over the bus and the deceased was knocked down by the bus resulting in her death. The Tribunal further came to the conclusion that the petitioner was driving the offending bus in a rash and negligent manner without any police escort. Accordingly, the Tribunal, finding the respondents in the claim petition vicariously liable for the acts of petitioner, awarded a sum of Rs.6,45,928/ along with interest @6% per annum in favour of the claimants and against the respondents therein.

5) It seems that while according sanction to the drawl of amount of Rs.7,91000/ for satisfying the claim as awarded in favour of claimants, the respondent No.1 herein vide its order No.194 of 2017 dated

10.03.2017\_laid down a condition that the amount shall be recovered from the erring driver of the vehicle, the petitioner herein. It is this part of the order and the communication issued consequent to the aforesaid order, that are under challenge before this Court in this writ petition.

6) It has been contended by the petitioner that the impugned order has been passed without observing the principles of natural justice, inasmuch as the petitioner has not been afforded any opportunity of being heard. It is further contended that the impugned order has been passed without considering any other material on record and without taking note of the fact that the accident was caused not because of the negligence of the petitioner but because of the mine blast and that there was no material on record to even remotely suggest that the petitioner was responsible for the accident.

7) The respondents have contested the petition by filing a reply thereto. In the reply it has been contended that the writ petition is not maintainable as disputed questions of fact have arisen in this case. It has been admitted by respondents that they have issued communication pursuant to the impugned Government Order but no recovery has been initiated against the petitioner in view of the stay order passed by this Court. The respondents have, in their reply, admitted the cause of accident as projected by the petitioner in the petition.

8) I have heard learned counsel for the parties and perused the record of the case.

9) It is not in dispute that the petitioner at the time of the accident was driving the vehicle which suffered the accident. It is also not in dispute that the live and proximate cause of the accident leading to death of the deceased was the mine blast which took place near the place of occurrence. This fact has been clearly admitted by the respondents in para (2) of their reply. Even the fact relating to mine blast finds a mention in the FIR bearing No.73/2009 of Police Station, Rainawari, which has been registered in respect of the incident. Claims Tribunal, while deciding issue No.1 which related to the occurrence, has also come to the conclusion that the accident had taken place due to mine blast as a result of which petitioner lost control over the vehicle and the deceased got knocked down by the vehicle in question. In the face of this material, it cannot even remotely be suggested that the petitioner was responsible for the accident or that he was negligent to such a degree as would amount to any dereliction of duty on his part.

10) Merely because the Claims Tribunal while deciding claim petition has come to the conclusion that there has been lack of care on the part of petitioner does not lead to a conclusion that the petitioner was solely responsible for the accident. It is a settled law that the proceedings before a Claims Tribunal are in the nature of an enquiry and the standard of proof is of a lesser degree than even in proceedings of civil nature. A fact in a proceeding before the Claims Tribunal has to be proved on the basis of fair evidence, not even on the basis of preponderance of probabilities.

11) Apart from the above, merely because the Claims Tribunal has awarded compensation against the respondents herein does not lead to a conclusion that the petitioner has been negligent to an extent that he has to be held responsible for payment of compensation to the claimants. Victims of a motor accident and their dependents are entitled to compensation even in a case where they have suffered injuries/death on account of use of a motor vehicle. The element of negligence is not necessarily to be proved for entitling a claimant to compensation. Thus, merely because the Tribunal has awarded compensation in favour of the claimants does not mean that driver of the offending vehicle has to reimburse the same to his owner, particularly when no such direction has been passed by the Tribunal against the petitioner.

12) Petitioner is right in contending that the Government, while providing for recovery of the awarded sum from him, has not observed the principles of natural justice. There is nothing on record and not even an averment in the reply filed by the respondents, to suggest that any enquiry was held by the respondents before incorporating the impugned condition in the Government Order. The petitioner was not even a party to the proceedings before the Claims Tribunal.

13) Rule 346 of J&K Police Rules provide that recovery from pay of the whole or part of any pecuniary loss cause to Government by the negligence or breach of order has to be made after responsibility for the loss of Government property etc. is established on enquiry. It further

provides that extent of recovery has to be determined according to the circumstances of the case.

14) In the instant case, admittedly, no enquiry has been conducted with regard to alleged negligence on the part of the petitioner before incorporating the condition with regard to recovery of compensation amount from the petitioner. Thus, respondents have observed the principles of natural justice as well as provisions of Rule 346 of the J&K Police Rules, in breach in this case. The impugned condition, therefore, is not sustainable in law.

15) For the foregoing reasons, the writ petition is allowed and the impugned Government Order No.194 of 2017 dated 10.03.2017, to the extent it directs recovery of amount of compensation from the petitioner is quashed.

Srinagar  
11.10.2021  
*"Bhat Altaf, PS"*

(Sanjay Dhar)  
 Judge

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*