

(1993) 09 DEL CK 0059

In the Delhi High Court

Delhi Transport Corporation

APPELLANT

Vs

Leelawanti and Others

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Citation : (1995) 1 ACC 330 : (1994) ACJ 136

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Judgement

P.K. Bahri, J.—This appeal is brought by Delhi Transport Corporation against Order dated 25.5.1981 of the Motor Accidents Claims Tribunal by which it has awarded Rs. 50,000/- to the claimants along with interest at the rate of 6 per cent per annum from the date of the award till realisation.

2. The only question which has been argued before me by learned Counsel for the appellant is that the finding of the Tribunal that the accident had occurred on account of rash and negligent driving of the driver of the bus of the appellant is not correct. She has argued that the only star-witness of the claimants, P.W. 2, Sham Lai, had turned hostile while giving testimony in the criminal Court where the driver of the bus was prosecuted and thus no reliance could have been placed on his testimony given before the Tribunal.

3. It has been contended on behalf of the respondents that the testimony given in the criminal Court is not to be taken note of and particularly when Sham Lai was not confronted with any portion of his testimony given in the criminal Court.

4. Facts are not, indeed, in dispute that on 5.4.1976 at about 3.30 p.m. when Om Prakash Virmani, since deceased, was coming on his motor cycle and had gone a few steps from the patrol pump which exists on the main Roshanara Road that the bus No. DLY 9792 belonging to the appellant and being driven by appellant's driver, namely, Jaswant Singh, R. W, 1, had come suddenly from the side of the University Road and had come on the main road at a high speed and had struck the motor-cyclist from the back of the motor cycle Which resulted in

fatal injuries. P.W. 2 had made the statement to the police on the spot and on his statement, the F.I.R. was registered.

5. Exh. PW 5/1 is the copy of the site plan prepared by the Investigating Officer showing the spot where the accident took place. The bare look at the site plan shows that the bus came from the side road, i.e., University Road on the main Roshanara Road and after taking the turn towards the petrol pump, it had struck against the motor-cyclist. When a vehicle approaches from the side road and tries to come on the main road, it becomes incumbent on the driver of such a vehicle to be extra cautious of the traffic passing on the main road.

6. P.W. 2 had made a deposition before the Tribunal that the accident took place in the manner mentioned above. The driver of the D.T.C. on the other hand, has deposed before the Tribunal that he was driving the bus at a slow speed and it was the motor-cyclist who had struck in the front of the bus. The testimony of the driver has been disbelieved by the Tribunal and for good reasons. From the site plan, copy of which is Exh. PW 5/1, it becomes evident that there could be no occasion for the motor-cyclist to have struck against the bus because the motor-cyclist was proceeding in the same direction in which the bus was to go and motor-cyclist was on the extreme left side of the road whereas the bus had come from the side road and while taking the turn towards the petrol pump, it has struck against the motor-cyclist.

7. No part of the testimony allegedly given by P.W. 2 in the criminal Court, certified copy of which was produced later on by the appellant on the record of the Tribunal, was confronted to the witness P.W. 2, Sham Lal, as was required under the provisions of Section 145 of the Indian Evidence Act. Hence, no advantage could be taken by the appellant with regard to anything stated by P.W. 2 allegedly in his testimony before the criminal Court for the reasons mentioned above.

8. Keeping in view the testimony of P.W. 2 and the manner in which it appears the accident had occurred, I am of the firm view that the Tribunal was right in coming to the conclusion that this accident had occurred on account of gross negligent and rash driving of the D.T.C. bus by its driver.

9. I find no merit in this appeal which I hereby dismiss. The surety or the bank guarantee, if any, given by the respondents claimants is discharged. Copy of this order be sent to the Tribunal as well as to Punjab National Bank, Subzi Mandi, Ghanta Ghar, Delhi, where the amount is stated to have been deposited. The parties are left to bear their own costs in this appeal.

10. The record be returned to the appropriate Tribunal.