

**(2012) 12 AHC CK 0032**

**In the Allahabad High Court**

**Case No :** First Appeal From Order No. 43 of 1999

Depot Manager, U.P. State Road Transport Corporation and  
Another

APPELLANT

Vs

Smt. Sushila Devi and Others

RESPONDENT

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**Date of Decision :** 20-12-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338, 427

**Citation :** (2013) 1 AWC 614

**Hon'ble Judges :** Devi Prasad Singh, J;Arvind Kumar Tripathi, J

**Bench :** Division Bench

**Advocate :** M. Chandra, for the Appellant; Rajendra Jaiswal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Arvind Kumar Tripathi (II), J.—Heard Sri M. Chandra learned counsel for the appellants and Sri Rajendra Jaiswal, learned counsel for the respondents. The present first appeal from order has been filed by Depot Manager, U.P. State Road Transport Corporation, Bareilly and another against award of Motor Accident Claims Tribunal, Sitapur/Additional District Judge. Sitapur, dated 17.4.1998.

2. By the impugned award learned Motor Accident Claims Tribunal has decided two cases M.A.C. Case No. 88 of 1995, Smt. Sushila Devi and others v. Depot Manager, U.P.S.R.T.C., Bareilly: M.A.C. Case No. 144 of 1995, Smt. Sushila Devi v. Depot Manager, U.P.S.R.T.C., Bareilly, which have arisen from the same accident which occurred on 31.1.1997 at about 7.15 p.m. while petitioner Smt. Sushila Devi was going alongwith her husband Brij Pal Singh deceased and her son on cycle, a bus No. U.P. 25/6951 which was going towards Lakhimpur hit the cycle near Rekapur while bus made a turn without honking the horn. In this accident, the bus crushed Brij Pal Singh. Her son and she herself had received injuries F.I.R. was lodged of this accident by a police personnel. The bus fled away after the accident. Her husband was earning Rs. 3,000 per month. In M.A.C. Case No. 88 of 1995 appellants/opposite parties have filed their separate

written statement in which the facts were denied and it was urged that the so-called accident occurred when the cyclist turned towards right side all of a sudden. The bus driver was not at fault. If it is found a case of contributory negligence then the compensation should be awarded in that proportion.

3. In M.A.C. Case No. 88 of 1995 following issues were framed:

(i) Whether bus No. U.P. 25/6951 was being driven rashly and negligently by its driver on the date, time and place of accident?

(ii) Whether bus owner is liable for paying the compensation on account of negligent act of the driver?

(iii) Whether deceased himself was responsible for the accident or whether it was on account of contributory negligence of the deceased and driver?

(iv) Whether claimants are heirs and dependents of the deceased whether the compensation amount claimed is highly excessive?

4. In M.A.C. Case No. 144 of 1995 following issues were framed:

(i). Whether Sushila Devi received injuries in an accident which occurred on 31.3.1995 at about 7.15 p.m. near Village Barkherwa, P.S. Hargaon. District-Sitapur?

(ii) What relief if any petitioner is entitled?

5. Both the cases were consolidated and Smt. Shushila Devi examined herself as P.W. 1 and Molhe Ram was examined as P.W. 2. In both the M.A.C. cases several papers were filed as documentary evidence which shall be discussed, later on as and when necessary. Opposite party examined Swami Dayal as O.P.W. 1 and no documentary evidence was filed from their side. The Tribunal after going through the evidence and arguments of the parties partly allowed the claim petition No. 88 of 1995 to the tune of Rs. 2,11,000 as compensation alongwith 12% simple interest per annum from the date of filing of the petition. In M.A.C. Case No. 144 of 1995, the Tribunal directed to pay Rs. 2,000 alongwith 12% simple rate of interest per annum from the date of filing of the petition. Feeling aggrieved this F.A.F.O. has been filed.

6. It was argued from the side of learned counsel for the appellants that deceased Brij Pal Singh was going on cycle his son sat on the horizontal rod of the front and Smt. Sushila Devi on the carrier. The first Information report was lodged by a police personnel. The accident did not occur due rash driving of the bus, but rash and negligent driving of the cyclist. The person who has lodged the F.I.R. has not been examined as the P.W. and was not a witness. Claimants Smt. Sushila Devi was sitting on the carrier and it was not possible for her to see driver of the bus and learned Tribunal relied upon her evidence and discarded the evidence of the witness who was the most natural witness. Claimants have not been able to prove the negligence of the bus driver. The income of the deceased was not proved and the multiplier applied is not correct.

7. Learned counsel for the respondents argued that the decision of the Tribunal was correct on all the points and supported the judgment.

8. P.W. 1 Sushila Devi is the eye-witness and injured. She has specifically stated that bus was going to Lukhimpur from the side of Sitapur and was being driven rashly and negligently. The bus driver did not blow the horn and hit the cycle. Govind and Molhe Ram were also coming just behind their cycle. Molhe Ram has also given the same evidence and said that bus turned towards the cycle without blowing the horn and after the accident bus driver fled away alongwith bus.

9. It is on record that first information report was lodged on 31.3.95 in Police Station, Hargaon at about 8.05 p.m. as Case Crime No. 82 of 1995 under Sections 279, 337, 338, 304A and 427, I.P.C., by Indra Bahardur Singh against the driver of the roadways bus.

10. In the written statement of the appellant, accident has been admitted. Learned Tribunal has after going through the evidence of the driver of the bus found that his evidence cannot be believed because he himself was an interested party and facing criminal case. After going through the finding of learned Tribunal, we do not find any irregularity or illegality in appreciating the evidence.

11. The age of the deceased was 32 years so multiplier of 17 was applied. Since, there was no documentary evidence regarding income of the deceased, the Tribunal fixed the notional income Rs. 1,500 per month which also needs no interference from the above discussion. It is clear that the Tribunal has passed the award after going through the evidence and correctively appreciating it.

12. One last thing, was argued by the learned counsel for the appellant that interest at the rate of 12% which is excessive.

13. Considering the date of accident and date of award. We are of the opinion that the rate of interest should be reduced to 9% simple interest per annum.

14. With this modification the first appeal from order is liable to be dismissed. The first appeal from order is modified to the extent that the rate of interest will be now 9% simple interest per annum. For the rest. The first appeal from order is dismissed.