
(1985) 01 AHC CK 0066
In the Allahabad High Court

Gur Saran Lal Srivastava

APPELLANT

Vs

U.P. State Road Transport Corporation

RESPONDENT

Date of Decision : 18-01-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D
Motor Vehicles Act, 1939 — Section 110D
Motor Vehicles Act, 1939 — Section 110D

Citation : (1985) 1 ACC 396

Hon'ble Judges : O.P. Saxena, J;I.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.P. Singh, J.—These two appeals u/s 110-D of the Motor Vehicles Act, 1939, arise out of the judgment/award dated 5-9-79 of Shri Ramanand Rai, Member, Motor Accidents Claims Tribunal, Gorakhpur awarding a compensation of Rs. 32,680 with interest @ 6% per annum from the date of the application till the date of the receipt of the amount as well as Rs. 150/- as costs of the proceedings.

2. The brief facts are that on 3-7-78 at about 7 A.M. Rajesh Kumar deceased aged 20 years was sleeping on a cot in the open courtyard in front of railway quarter No. T/1-B when he was run over and crushed by Bus No. USB 6878 of the U.P. State Road Transport Corporation (opposite-party) when its driver Satya Narain Singh happened to drive the bus backwards in order to park the same in front of the office of the Railway Mail Service Gorakhpur for taking up the mail bags from there. The said office was situated across the road opposite the said .quarter. Rajesh Kumar died on the spot instantaneously. The F.I.R. of this incident was lodged at P.S. Cantt, Gorakhpur by the driver. Another report of the accident was lodged at the same police station by one Satish Chandra Srivastava, a relation of the deceased.

3. The post mortem examination of the dead body of Rajesh Kumar was conducted by Dr. Krishna Mohan Singh, A.W. 4, Medical Officer Care Unit, City

Dispensary, Jafra Bazar attached to the district Hospital, Gorakhpur. From the post mortem examination report and the deposition of the doctor, it clearly appears that very serious injuries were found on the head and chest of the deceased which resulted in his instantaneous death.

4. The claimants-appellants are the father and mother of the deceased. Their allegation is that the accident occurred due to the rash and negligent driving of the bus. They claimed compensation to the tune of two lakh rupees apportioned under three heads; 1, Rs. 1,80,000 for the loss of normal expectation of income at the rate of Rs. 500/- per month upto the age of 80 years) Rs. 10,000 for the loss of love and affection; 3) Rs. 10,000/- for physical pain and suffering and mental shock etc.

5. The opposite-party, corporation did not deny that the death of Rajesh Kumar was caused by the said bus but contended that the accident did not take place due to the rash and negligent driving of the bus by its driver Satya Narain Singh rather it occurred due to the negligence of the deceased himself.

6. The claimants-appellants examined Gursaran Lal Srivastav, applicant No. 1 as A.W. 1, Sunder Devi, A.W. 2 (eye witness), Bhagwant Pande A.W. 3, who proved the F.I.R. and Dr. Krishna Mohan Singh, A.W. 4 None was examined by the Corporation, opposite party.

7. The Tribunal, after assessing the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the said bus by its driver Satya Narian Singh. He also concluded that the longevity of the family of the deceased was at last up to 65 years. The ages of Gur Saran Lal Srivastava, applicant No. 1 and Smt. Lila Kumari Srivastava, applicant No. 2 were 43 and 39 respectively. The deceased was found to be 20 years of age at the time of the accident. He was a student of LL.B. at the time of the accident but nevertheless he was engaged as Contractor in Irrigation Division, Gonda-Behraich. His earning capacity was held to be between Rs. 1,000 and Rs. 1,500 per month. The learned Tribunal held that in the circumstances of the case the deceased was able to render financial help of about Rs. 150/- per month to his parents. With the above data he concluded that the annual help would be of Rs. 1,800/- and it would have been available to the applicants for 22 years bringing the pecuniary amount to Rs. 39,600/-. After deducting 20% towards the lump sum deduction the balance due was calculated at Rs. 31,680, A sum of Rs. 1000 was added to it as compensation for pain and suffering caused to the applicants. The total amount of compensation thus was Rs. 32,680 plus interest and costs as mentioned above.

8. Feeling aggrieved the claimants-appellants have preferred F.A F.O. No. 29 of 1980 for the enhancement of the compensation amount.

9. The Corporation-opposite party has filed F.A.F.O. No. 39 of 1980 against the award of compensation.

10. We have heard Shri S.C. Verma for the applicants-appellants and Shri S.K. Sharma for the Corporation-opposite-party. The circumstances under which the death occurred are not disputed. Smt. Sunder Devi, A.W. 2, who lived in quarter No. T/1-B had deposed the facts as narrated above about the manner of the accident and further stated that the deceased was the son of her brother Gur Saran Lal. He had come to her house in the marriage of her daughter. After the marriage was over he had stayed there for a few days more. On the fatal day he was sleeping on a cot in the court yard of her quarter. She further stated that at about 7 a.m. she saw the bus in question being driven backwards overriding the cot of the deceased and crushing him to death. There is no evidence to rebut these facts, the Corporation, in the written statement pleaded that the accident took place not due to the rash and negligent driving of the said bus but by its driver but on account of the own negligence of he deceased. But, we do not find any force in this contention. The bus driver would have been the best person to narrate the facts under which the accident took place but for reasons best known to the Corporation it did not produce him. Thus the adverse presumption has to be drawn against the Corporation. Besides, the principle of *res ipsa loquitur* would be drawn to the facts of the case and we hold and confirm the finding that the accident took place due to the rash and negligent driving of the said bus by its driver.

11. The deceased was 20 years old on the date of the accident i.e. 3-7-78. The ages of the two claimants were deposed as 43 and 39 respectively on 19-7-79 almost one year after the date of the accident. Thus on the date of the accident they were 42 and 38 years old respectively. The learned Tribunal has taken the age of longevity as 65 and we see no reasons to differ from this view. In these circumstances the deceased would have lived for 45 years more but the pecuniary advantage flowing from him would have been available to his parents for 32 and 27 years respectively only. There is nothing on the record to show that the learned Tribunal went wrong in taking the average earning capacity of Rajesh Kumar deceased to be between Rs. 1000/- and Rs. 1,500/- per month. However, we differ from the view of the learned Tribunal that he would have spared only Rs. 150/- per month for his parents. We hold that he would have spared an average Rs. 250/- per month for his parents.

12. In our opinion, this is a fit case in which the multiple of 20 years purchase should be applied. On this basis the total amount of compensation would come to Rs. $250 \times 12 \times 20 = \text{Rs. } 60,000$. When a multiple is applied there does not arise any question of deduction we, however, do not agree with the learned Tribunal with regard to awarding compensation for pain and suffering caused to the claimants by the death of their son. We agree with the learned Tribunal that no compensation is to be allowed for "loss of love and affection."

13. For the above reasons F.A.F.O. No. 29 of 1980 succeeds party. The award of the learned Tribunal is modified to this extent that instead of Rs. 32,680/- the appellant-claimants would be entitled to Rs. 60,000/- as compensation. This

amount would carry interest of 6% per annum from the date of the application till the date of the realisation of the awards. We maintain the award of Rs. 150/- as costs of the proceedings to the claimants-appellants.

14. F.A.F.O. No. 39 of 1980 is hereby dismissed.

15. The costs of the appeals are made easy.