

(1987) 10 AHC CK 0053
In the Allahabad High Court

Jafri Begum and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A
Motor Vehicles Act, 1988 — Section 110A
Motor Vehicles Act, 1988 — Section 110A

Citation : (1988) 1 ACC 1 : (1988) ACJ 550

Hon'ble Judges : K.C. Agrawal, J;B.L. Yadav, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This appeal is directed against the judgment of the Motor Accident Claims Tribunal, Allahabad, dated September 9, 1982, allowing the application made by the appellants for grant of compensation.

2. The U.P. State Road Transport Corporation (respondent No. 2) has preferred a cross-objection.

3. Brief facts are that Bus No. URG 6017 in which the appellant No. 1's husband (Imamul Hasan) was travelling met with an accident on Grand Trunk Road in village Kasiya police station Kokhraj district Allahabad on December 29, 1980, at about 8 a.m. The accident took place as the bus driver lost control on account of its high speed and dashed the same against the tree, as a result of the accident Imamul Hasan received serious injuries resulting in his instantaneous death. The appellant No. 1 (Smt. Jafri Begum), who is the widow of the deceased Imamul Hasan, and was aged about 25 years at that time, along with her two sons, arrayed as appellants Nos. 2 and 3, namely, Zulqarnain and Mohd. Hasanain, filed a claim petition u/s 110-A of the Motor Vehicles Act. They claimed Rs. 2,36,000/- as compensation asserting that the deceased was a student of LL.B. (Part I). After his studies he wanted to start practice as an advocate. The appellant as further claimed that the deceased had an earning of Rs. 500/- per

month from food-grains business. The application was contested by the U.P. State Road Transport Corporation as well as the State of Uttar Pradesh. It was alleged that the accident did not take place due to the rashness on the part of the driver but due to vis major. Their case was that the tie-rod of the bus was broken all of a sudden and as a result of the same the accident occurred.

4. On the pleadings of the parties, the following issues were framed:

(1) Whether the accident resulting in the death of Imamul Hasan was due to rash and negligent driving of Bus No. RUG 6017 ?

(2) To what amount of compensation, if any, are the claimants entitled ?

5. On issue No. 1 the Tribunal hold, after scanning the evidence, that the accident occurred due to rashness and negligence of the driver. The case of the respondents that the tie-rod had broken all of a sudden and that the accident took place due to the breakage of the same was not accepted.

6. On issue No. 2 the Tribunal found that the appellants failed to establish that the deceased Imamul Hasan was doing foodgrains business and as such it disbelieved their case to that extent. Its view was that the deceased would have joined the Bar, he was likely to earn Rs. 300/- per month. After coming to this conclusion the Tribunal allowed compensation of Rs. 55,000/-. The Tribunal held that the total amount compensation awardable would be Rs. 1,58,400/-. After deducting 33 per cent. From the same, the total compensation payable would be Rs. 55,000/-.

7. Aggrieved by the Tribunal's award, the present appeal has been filed by Smt. Jafri Begum and her two minor children. Her claim is that the compensation awarded is much too low and, on the fact established, the compensation should have been much more than Rs. 55,000/-.

8. Cross-objections have been filed by the U.P. State Road Transport Corporation challenging the finding of the Tribunal that the accident resulted due to the rashness on the part of the driver. It was pleaded that the accident was an act of God and due to the reasons beyond the control of the driver hence U P. State Road Transport Corporation was not responsible for payment of compensation. The U.P. State Road Transport Corporation also took the ground in the cross-objection that the compensation awarded was on the side of excessiveness.

9. We have heard Dr. R.G. Padia learned Counsel for the appellants, and Sri S.K. Sharma, for the U.P. State Road Transport Corporation, in support of their respective cases.

10. We may first dispose the cross-objection in so far as it was alleged that the accident resulted due to the tie-rod breaking all of a sudden. The burden of proof that the tie-rod broken down was on the Corporation. No evidence, either documentary or oral, was adduced on behalf of the Corporation, which could establish the breakage of the tie-rod. In the absence of any evidence, it was not

possible to uphold the plea of the Corporation.

11. Coming to the question of negligence, the evidence adduced on behalf of the appellants established that the accident took place due to the rash driving of the bus by the driver. On account of the rashness, the driver lost control on the vehicle as a result of which it collided with the tree. We are in agreement with the Tribunal that the accident resulted due to the rashness on the part of the driver.

12. Coming to the question of compensation, we find ourselves entirely in agreement, after going through the evidence, with the Tribunal that the appellants failed to establish that Imamul Hasan was doing foodgrain business. What could be established by her was that deceased had 2-1/2-3 bighas of land. She did not produce any evidence to prove that her husband was a foodgrain dealer. We, consequently, uphold the finding of the Tribunal.

13. The next basis for claim of compensation was that the deceased was a student of LL.B. (Part-I) and after having done LL B. he would have joined the Bar and practiced. Assuming that fact to be correct the Tribunal held that the deceased would have been making Rs. 300/- per month had he joined the Bar. While coming to that conclusion, the Tribunal has considered every pros and cons of the matter and has given allowance to the prospects of an advocate which he could claim by joining the profession. To this extent this Court is in agreement. But, even if Rs. 300/- per month would have been earned by deceased Imamul Hasan, he would have been spending something on himself. The Tribunal did not take note of this fact. If out of Rs. 300/- one-third is assumed to have been spent by the deceased on himself, his monthly income would have come to Rs. 200/-. Multiplying it by twelve, the annual income can be found as Rs. 2400/-. The evidence on the record shows that the average age of the deceased's family members was 70 years. Taking that fact into account if Rs. 2400/- is multiplied by 44, the amount will come to Rs. 1,05,600/- out of this, 33 per cent is to be deducted on account of lump sum payment. The total amount of compensation that can be found to be payable to the appellants would be Rs. 70,600/- instead of Rs. 55,000/- as found by the Tribunal.

14. On this amount of Rs. 70,600/- the appellants will further be entitled to interest at the rate of six per cent per annum from the date of making the application. Consequently, we allow the appeal partly and enhance the compensation from Rs. 55,000/- to Rs. 70,600/-. This would be payable to the appellants with interest at the rate of six per cent per annum. There shall be no order as to costs.

15. The cross-objection is dismissed.