

(1995) 01 AHC CK 0087

In the Allahabad High Court

Case No : First Appeal from Order No. 67 of 1982

Latif Ahmad Khan

APPELLANT

Vs

The U.P. State Road Transport Corporation

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110
Motor Vehicles Act, 1988 — Section 168

Citation : (1995) ACJ 1241 : AIR 1995 All 297

Hon'ble Judges : S.C. Mohapatra, J;N.L. Ganguly, J

Bench : Division Bench

Advocate : Triloki Nath, for the Appellant; Sudhir Chandra and Vineet Saren, for the Respondent

Final Decision : Dismissed

Judgement

1. These are two appeals u/s 110-D of Motor Vehicle Act, 1939, one by the claimants and the other by the owner. Since they arise out of the same accident and there is a common judgment, we heard both the appeals together and we dispose of the same in this judgment.

2. Shaheed Latif Khan aged about 24 years and Km. Farrash Latif aged about 17 years were travelling in a bus bearing registration No. UTI 2316 belonging to the owner. When the bus was negotiating turning with High speed near Sherkot Octroi Post, it had collided with a truck coming from the opposite direction and on account of this accident, Latif and Farrash succumbed to the fatal injuries on 31-10-1970. In respect of the bus, there was an insurance and Farrash and Latif being passengers insurer paid Rs. 20,000/- to their father. However, not being satisfied with this amount, application was filed by the parents, brothers and sisters for compensation claiming Rs. 6 lacs.

3. Owner of the bus claimed that he was not negligent in driving the vehicle and accordingly is not liable to pay any compensation. Claimants examined three witnesses and produced documents like assessment orders of Income Tax in

support of their claim. Considering these materials, Tribunal has awarded Rs. 5000/- as compensation to the father and Rs. 39,200/- as compensation to the mother. No compensation has been awarded to the brothers and sisters. This is grievance of both the claimants as well as the owner,

4. As regards the brothers and sisters of the two deceased, there is no doubt that they are legal representatives of the deceased persons. However, not a word has been breathed in evidence about the loss sustained by them. Though legal representatives are entitled to compensation, in absence of materials in the present case, we are not able to award any compensation to them and affirm the award of the Tribunal in this respect.

5. Parents stand on a completely different footing. Their case for compensation is to be considered differently. In the present case, they have lost a son aged about 24 years who was reading in final B.A. Class of Aligarh University and a daughter aged about 17 years who was reading in IIInd year B.A. Class of the University. There is no doubt that the daughter would have got married and would have left the family. Son, however, would have been in the family and would have assisted to the parents. It is in evidence that the family has a partnership business where in the deceased son was a partner. Although, the father claimant has given evidence that on account of the death of his son, he has lost business, we are not inclined to accept the same inasmuch as in his evidence, he has stated that there were four partners in the business. If the son is dead, his share in the partnership which is equal to other partners would devolve on the heirs. So the profit of the firm cannot be lost to the father. Besides there is no direct evidence as to the part played by the deceased son in the functioning of partnership business though in respect of the profit earned by him, he was paying Income Tax. On this account father is not entitled to any compensation.

6. Further potentiality of earning of a son aged about 24 years cannot be lost sight of. Besides, the son must be rendering some help in the family. If better evidence would have, been adduced, we could have determined the compensation more accurately. In the absence of such evidence, a reasonable guess is to be made. Similarly, a grown up daughter aged about 17 years must be rendering some assistance in the family which is lost. This would have been available till she would have been married. Added to it, the parents have lost two children. Taking into consideration these factors, we are satisfied that the compensation of Rs. 30,000/- to the father and Rs.50,000/- to the mother would be just compensation. From out of it, insurer has already paid Rs. 20,000/- @ Rs. 10,000/- for the son and daughter. Thus, the father would be entitled to Rs. 20,000/- more as compensation and mother would be entitled to Rs. 40,000/- more as compensation. As has been directed by the Tribunal, the amount shall carry interest @ 6% per annum from the date of application till the date of payment.

7. In the result, claimants' appeal is allowed in part and owner's appeal is dismissed. There shall be no order as to costs.

8. Appeal dismissed.