
(2009) 07 AHC CK 0218

In the Allahabad High Court

Case No : First Appeal From Order No. 158 of 2007

Managing Director, U.P.S.R.T.C., Lucknow & Ors.

APPELLANT

Vs

Rinka Devi & Anr.

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2009) 07 AHC CK 0218

Hon'ble Judges : Prakash Krishna, J and Satish Chandra, J

Final Decision : Dismissed

Judgement

Dr. Satish Chandra, J.—Heard Sri U.C. Pandey, learned Counsel for the appellant and Sri S.K. Upadhyay Learned Counsel for the respondents.

2. This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the order/judgment dated 16th November, 2006, passed by the Motor Accident Claims Tribunal, Sultanpur in claim case No. 43 of 2005.

3. The brief facts of the case are that in the night of 27th October, 2004, the claimants alongwith his/her son were returning to home by tempo after participating in Durga Pooja. When the tempo reached near the village of Ghasitey ka purwa on Sultanpur Raibarreilly Road, the U.P. Roadways Bus No. U.P.78 T 4694 knocked the tempo from the backside. Few passengers including the son of the claimants Subhash were fallen outside the tempo, which resulted the grievous hurt to the child Subhash. The child was taken to the hospital at Sultanpur and later on he was referred to the Medical College, Lucknow. On 30th October, 2004, the child died in the hospital. An F.I.R. was also lodged against the driver of the said UPSRTC Bus. The claimants has filed the claim petition where the Tribunal has awarded compensation of Rs. 1,55,000 against the U.P. State Road Transport Corporation. Being aggrieved, the U.P. State Road Transport Corporation has knocked the door of this Hon''ble Court through the instant appeal.

4. With this background, learned Counsel for the appellants denied the involvement of roadways bus in the said accident but has accepted that the said bus was running at the relevant time on the said route. Learned Counsel for the appellants also submit that the compensation was awarded on higher side.

5. We have heard the learned Counsel for both the parties at length and perused the record.

6. From the record, it appears that a criminal case No. 1082 of 2004 was registered against the bus driver of the said bus. In these circumstances, we are of the view, that the said accident has occurred due to negligent and rash driving of the bus driver of bus No. U.P.78 T4694.

7. In the instant case, the age of the deceased child was taken at about 10 years as per the death certificate. The Tribunal has taken the notional income of Rs. 15,000 per annum. Out of it, by deducting 1/3rd for the self expenditure, Rs. 10,000 was taken for the purpose of computation. By looking to the age of the child and parents, the multiplier of 15 has been applied. Thus, the compensation was awarded Rs. 1,50,000. In addition, the medical expenses of Rs. 2,000, transport expenses Rs. 1,000 and funeral expenses Rs. 2,000 was awarded. Thus, the total compensation was awarded Rs. 1,55,000 for the death of Master Subhash who was aged about 10 years old.

8. It may be mentioned that in case of the death of a child, there may have been no actual pecuniary benefit derived by the parents during the child's life time. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. v. Jenkitis*, (1913) AC 1, and Lord Atkinson said thus:

"all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them."

9. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with

reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

10. In the light of the above discussion and by considering the totality of the facts and circumstances of the case, we find no reason to interfere with the order of the Tribunal, which is hereby sustained alongwith the reasons mentioned therein.

The appeal is dismissed. No order as to costs. Appeal dismissed.