

(2004) 10 AHC CK 0134
In the Allahabad High Court
Case No : F.A.F.O. No. 48 of 1999

Managing Director/Regional Manager, U.P.S.R.T. Corporation and Another APPELLANT

Vs

Smt. Dharma Devi and Others RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

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

Citation : (2005) 3 AWC 2380 : (2005) 2 AWC 2380

Hon'ble Judges : Rajiv Sharma, J; Pradeep Kant, J

Bench : Division Bench

Advocate : Mahesh Chandra, for the Appellant; R.M. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and Rajiv Sharma, JJ.—Heard learned counsel for the appellant Sri Mahesh Chandra and Sri R. M. Dubey for the respondents,

2. Aggrieved by an award passed by the Motor Accident Claims Tribunal dated 8.5.1988, the present F. A. F. O. has been preferred by the Managing Director, U. P. State Road Transport Corporation (hereinafter referred to as the U. P. S. R. T. C.).

3. The facts giving rise to the present appeal, in brief, are as follows :

On 23.12.1995, Uma Shankar (deceased) was travelling in Tempo No. UP-32/A-7105 at Lucknow-Raebareli road. Near village Gaura, U. P. S. R. T. C. bus bearing number UP-78/N-795, which was coming from the opposite direction, hit the Tempo resulting into serious injuries to ten persons and death of seven persons. Uma Shankar (deceased) was also one of the victims, who died on the spot, as a result of the said accident. Claimants, namely, his wife and children, filed a claim petition bearing number 119 of 1996 before the Motor Accident Claims Tribunal claiming an amount of Rs. 6,60,000 towards compensation on the pleading that the accident had occurred because of the rash and negligent

driving of the driver of U. P. S. R. T. C. bus, which has resulted into death of Uma Shankar, who was only 40 years in age, at the time of death and was having an income of Rs. 3,500 per month. It was also the case of the claimants that the Tempo was being driven at a moderate speed on the left side of the road, whereas the bus was being driven at a very high speed, rashly and negligently, which hit the Tempo, while going on the wrong side i.e. towards the right side of the road.

4. The date of accident, namely, 23.12,1995, the place of accident, namely, village Gaura on the State Highway, the time of accident, namely, 9.20 a.m., all were admitted in the written statement filed by the present appellant. The defence, which was taken by the appellant, was that the accident had taken place not because of rash and negligent driving of the bus driver but because of the rash and negligent driving of the Tempo driver. Another plea was taken that the Tempo was overloaded as in all there were 17 passengers therein, which disbalanced the Tempo, causing the aforesaid accident and, therefore, also the U. P. S. R. T. C. could not be held liable.

5. Relevant issues were framed by the Tribunal. The parties led evidence. On behalf of the claimants, Smt. Dharma Devi, widow of the deceased was examined as P. W. 1 and one Prem Chandra, an eyewitness of the accident was examined as P. W. 2. Apart from this, copy of the. F. I. R. in case crime No. 605/95 under Sections 279, 337, 427/338, 304 of the I. P. C., registered at Police Station Mohanlalganj against the driver of the bus Vishambhar Nath and the post mortem report alongwith succession certificate, pay slip and also the charge-sheet submitted by the Investigating Officer against Vishambhar Nath, were also filed. The technical report of the tempo as well as of the bus were also filed. On behalf of the present appellants, the bus driver Vishambhar Nath was examined as D. W. 1 and Jai Prakash Shukla, the conductor of the bus was examined as D. W. 2. So far the documentary evidence is concerned, the present appellants filed list of the wounded persons and also the report submitted by the Senior Station Incharge at Police Station Mohanlalganj.

6. The Tribunal, after considering the evidence of parties and scrutinizing the documentary evidence, has recorded a finding holding the bus driver as guilty of rash and negligent driving, which resulted in the accident, causing death of Uma Shankar. While doing so, the Tribunal has observed that the date, time and place of occurrence has been admitted by the defendants, namely, present appellants and that the aforesaid admitted facts and the very fact that the bus left the Charbagh station at 9 O'clock in the morning and the accident took place near village Gaura at 9.20 a.m., which is at a distance of about 25 kms. from Charbagh station, speak of rash and negligent driving of the bus. The Tribunal discarded the testimony of driver Vishambhar Nath, D. W. 1 and Jai Prakash Shukla, D. W. 2, holding them to be interested witnesses. The Tribunal took into consideration the fact that criminal cases were lodged against these persons and that they were trying to shield their own act and, therefore, they were interested

witnesses.

7. On the amount of compensation, the Tribunal recorded a finding that the deceased was 40 years of age at the time of his death and that he was having an income of Rs. 2,455 per month. On consideration of the dependency factor, the Tribunal observed that the deceased must be giving Rs. 1,500 per month to them for expenses, which comes to Rs. 18,000 per year and by applying a multiplier of 15, the Tribunal awarded a compensation of Rs. 2,70,000.

8. Apart from this, Rs. 15,000 more were granted towards other heads. Thus, in all Rs. 2,85,000 has been awarded towards compensation alongwith interest at the rate of 12% per annum.

9. Sri Mahesh Chandra, while assailing the findings recorded by the Tribunal, has submitted that the award is palpably erroneous as the Tribunal has totally discarded the evidence of Vishambhar Dayal, the driver of the bus and Jai Prakash Shukla, the conductor, by treating them to be interested witnesses. His argument is that under no rule, the evidence of the bus driver and the conductor could have been held to be that of interested witnesses so as to ignore their testimony.

10. It is true that the witnesses to the accident, namely, the bus driver and the conductor would not lose their testimony simply because their vehicle was involved in the accident but due weightage has to be given to an independent witness, who is not involved in the accident at all and who has no grudges or enmity with the bus driver or the conductor as against the testimony of those on whom responsibility lies for causing the accident. The testimony of the independent witness has to be given more weightage and preference over the testimony of interested witness. Interested witnesses are those, who, by their own evidence, could plead defence or take advantage in the proceedings, which have been lodged against them either in civil jurisdiction or in criminal trial.

11. In the case of Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, , the Apex Court while considering the weightage of interested witnesses, observed as under:

"The Tribunal and the High Court rejected the version of Abdul Khalique primarily on the ground that there was no corroboration to his testimony. We are of the view that the courts below were not justified in disbelieving the testimony of Abdul Khalique. He was a disinterested witness who was having tea in a restaurant at a distance of about 15/20 feet from the place of occurrence. There is nothing on the record to show that he was trying to help the claimants in any manner or was not a truthful witness. On the other hand the Nagar Mahapalika produced before the Tribunal the driver of the vehicle and an Assistant Engineer who were its employees. Both were interested witnesses. The Nagar Mahapalika did not produce even a single independent witness to support its version. The Tribunal and the High Court fell into patent error in preferring the evidence of two wholly interested witnesses to that of Abdul Khalique who was an

independent witness and whose presence on the spot could not be doubted."

12. In the case in hand also, the claimants Smt. Dharma Devi, widow of the deceased, who corroborated the accident and the manner in which it had taken place and Prem Chandra P. W. 2 was an eye witness and had seen the occurrence from a distance of only 15 steps. No discrepancy could be pointed out in the statement of Prem Chandra who gave vivid picture of the manner in which the accident had taken place and the factum of driving the bus rashly and negligently at a high speed and also that Tempo was being driven moderately on the left side of the road. The death of seven persons occurred on the spot and ten were seriously injured. The impact of the accident was such that seven persons died on the spot. The period which was consumed by the bus in covering the distance of 25 kms. i.e. from Charbagh station to village Gaura was only 20 minutes. It did not require any further evidence to be led to establish that the bus was running at a very high speed so that it covered a distance of 25 kms. in 20 minutes, that too by passing on the roads, which were loaded with heavy traffic.

13. As against this, in their statement Vishambhar Dayal, driver of the bus and Jai Prakash Shukla, conductor, both tried to improve the admission which was made by the appellants in their written statements about the time of occurrence by saying that they left the Charbagh station at 9 O'clock in the morning and reached village Gaura at 9 :45 a.m. This statement obviously was an afterthought as in the F. I. R. and in the claim petition, the time of occurrence has been shown as 9 :20 a.m. which at the first instance was admitted by the appellants in their written statement. The time of accident has been given in Para 9 of the claim petition, which fact is admitted in the written statement. Nowhere in the written statement the aforesaid facts have been disputed.

14. We can, therefore, safely presume that when occasion to lead evidence came, the bus driver and the conductor, with a view to justify their defence, stated that they had reached the village Gaura at 9 :45 a.m. There is nothing on record to corroborate this statement nor any independent witness was examined by the U. P. S. R. T. C.

15. On consideration of the statement of the defence witnesses, it is clear that they have utterly failed to disprove the theory set up by the claimants and are trying to wriggle out of the situation by giving an incorrect and calculated statement about the time of the occurrence, which cannot be believed. The post-mortem report establishes the cause of death. The charge-sheet submitted against the driver also shows that he was involved in the accident.

16. We do not find any reason to take a different view as against the view taken by the Motor Accident Claims Tribunal. Simply because the Tribunal termed the bus driver and the conductor as interested witnesses, it would not vitiate the award nor can be termed as discrepancy so as to take a different view. Even after holding that these two witnesses were interested, the Tribunal has taken into consideration the statements given by them but in any case, we have also

gone through their statements and we hold that there is nothing in their statements so as to controvert the evidence led by the claimants and particularly the evidence given by the eye witness Prem Chandra.

17. We, therefore, conclude by holding that the findings recorded by the Motor Accident Claims Tribunal that the accident had taken place because of the rash and negligent driving of the driver of bus does not suffer from any error.

18. On the question of compensation, no serious arguments have been urged except that the rate of interest is on the higher side. We have considered the aforesaid argument and we find that the amount of compensation, by taking into account the age of the deceased at the time of death, his income and his life expectancy, is neither excessive nor arbitrary. The accident had taken place in the year 1995 and, therefore, the award of interest at the rate of 12% was also not excessive.

19. We do not find any force in the F. A. F. O., which is hereby dismissed.

20. We further provide that in case any money is in deposit either before this Court or before the Tribunal, the same shall be allowed to be withdrawn by the claimants-respondents, as per the award.