

(1990) 02 AHC CK 0029
In the Allahabad High Court

Smt. Shanti Devi and Others

APPELLANT

Vs

Ziley Singh and Others

RESPONDENT

Date of Decision : 19-02-1990

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1990) 2 ACC 153

Hon'ble Judges : N.N. Mithal, J;M.L. Bhat, J

Bench : Division Bench

Judgement

N.N. Mithal, J.—This is a claimants" appeal against the award dated 25.7.1980 passed by the Motor Accident Claims Tribunal (I additional District Judge), Ghaziabad dismissing the petition on the ground that the driver of the vehicle was not negligent while driving the same.

2. The claimants are widow and children of the deceased, Mala Singh, who is said to have been travelling in the bus belonging to the U.P. State Road Transport Corporation bearing No. U.T.G.4536 on 1.1.1978, which was going from Meerut to Delhi. On way after crossing Modinagar town when the bus was trying to negotiate a curve to come to the bridge on the canal, it suddenly turned towards left and fell down into a Khud on that side causing serious injuries to Mala Singh on account of which he died at a later stage. claim for Rs. 52,500/- has put forward in a petition u/s 110-A of the Motor Vehicles Act.

3. The defence in the claim was that the driver was not guilty of rash and negligent driving and the accident took place only on account of his efforts to avoid hitting an old lady, who had suddenly tried to cross the road and in the process the wheels of the vehicle slipped and went into a ditch by the side of the road.

4. The Tribunal framed two issues-one about the rash and negligent driving by the driver and the other about the quantum of compensation. On the first issue the Tribunal agreed with the defence plans and came to the conclusion that it

had become inevitable to take recourse to turn the vehicle towards the left in order to avoid hitting the old lady and as such there was no negligence on the part of the driver. On the question of quantum the Tribunal has recorded a finding that the claimants could be awarded upto Rs. 30,000/- by way of compensation but it only decided issue No. 2 in favour of the claimants. Since issue No. 1 has been decided against the claimants, the petition was dismissed; hence this appeal.

5. Unfortunately despite the list having been revised, no one appears for the appellants. However, Sri S.K. Sharma, learned Counsel for the Corporation, placed before us all the relevant facts and evidence in the case. When confronted with the question as to how the present case could be said to be one of inevitable accident since there was no evidence that the driver was trying to avoid a greater disaster, the learned Counsel was not able to explain the same.

6. Even if the version of the driver of the vehicle is to be believed the fact remains that there is a canal on the Meerut - Ghaziabad route beyond Modinagar town and just before the canal bridge there is a curve in the road. When the vehicle was on this curve before approaching the bridge over the canal some old lady is said to have attempted to cross the road, in order to avoid hitting that old lady the driver turned the vehicle towards left and in the process the vehicle landed in a ditch on the left side of the road. Even if there was no evidence of negligence, the facts themselves clearly go to show that the driver of the vehicle was negligent. It is necessary for the driver to slow down the vehicle when he was approaching the curve on the road. It appears that the vehicle was not at all under his control at that point of time because he was unable either to slow down or to stop the bus in the process of avoiding to hit the old lady. The question of inevitability of the accident arises in those cases where the only alternative left to the driver is to choose between greater disaster and a lesser one. Had it been the case of the Corporation that some other vehicle was coming from the opposite side and it had to be avoided by turning the vehicle to the left, one can understand the action of the driver because in that case a head-on collision would have certainly resulted in a greater disaster and there could be fatal injuries to more than one. However, when it was a question of avoiding to hit the old lady trying to cross the road, the same principle cannot be applied with equal force, particularly in a case where there was a deep ditch by the side of the margin of the road towards left this situation could have been visualised by the driver before he turned the vehicle beyond the limits of the road, it cannot, therefore, be said that the driver was not driving the vehicle rashly or in a negligent manner. In the statement of the driver it is mentioned that the accident had taken place about half a furlong before the canal. According to him a tonga was standing by the side of the road towards the right of the vehicle but it was on its proper side. A woman passenger alighted from the said Tonga and started crossing the road. The tonga was noticed by the driver from a distance of one furlong and one passenger was seen standing by the side of the tonga. In spite of this no precaution was taken by him. According to him

the old lady suddenly appeared on the road because of which he had to turn the vehicle towards the left and in the process it went down the ditch causing injuries to 5.7 passengers, one of whom was the deceased. The manner in which the accident is said to have occurred, according to the driver, leaves no room for doubt that the bus was being driven with carelessness and in a rash manner. He admits that the speed of the vehicle was about 36-40 km. He also admits that he had been plying the vehicle on this route for about 5-6 years. In these circumstances, he should have been aware about the topography of the land near the bridge and he should have taken precautionary measure such as allowing down the vehicle at that point. No such steps having been taken, the driver must be said to be rash and negligent. The evidence on record also supports this conclusion. Disagreeing with the finding of the Tribunal was hold that the driver of the vehicle was negligent and he was driving the vehicle in a rash an negligent manner.

7. Coming to the question of compensation, it is admitted that the deceased was about 50 years of age at the time of his death and was drawing Rs. 700/- per month as his income. Giving allowance for some amount that he might be spending over himself, we thing a sum of Rs. 465/- per month should be taken as the family dependency which for eight years i.e. the age of his retirement will come to about Rs. 44,640/-. The claimants have, however, limited their claim on this score to Rs. 25, 000/-. Accordingly we award the said amount by way of compensation on account of loss of support from the deceased.

8. Apart from this the claimants have also claimed Rs. 10, 000/- due to and mental agony to them on account of sudden death of Mala Singh. It cannot be dented that the death of the only bread earner in the family in such circumstances must have caused a let of mental agony and shock to the members of the family. It is difficult to assese the except loss caused to them in monitary terms but in our view the ends of justice would be met if a sum of Rs. 5000/- is award on this score.

9. The claimants have also claimed a sum of Rs. 10, 000/- for loss of marital status to the appellant No. 1 and love and affection by the other claimants. There is no doubt that the death of husband of a Hindu wife reders her totally helpless and dependent on others. Her position is really miserable sometime. Her loss also cannot be assessed in terms of money with any exactitude. However, in our opinion a sum of Rs. 5000/- on this score should as enough. On the question of funeral expenses there being no evidence, the Tribunal was right in not awarding any amount in respect thereto. Thus, in our opinion, the appellant should be entitled to a sum of Rs. 25, 000/- on account of the financial loss caused to them due to the accident resulting in the death of Mala Singh and a further sum of Rs. 10,000/- on account of mental shock and loss of marital status to the appellant No. 1. Thus the claimants are entitled to a total sum of Rs. 35, 000/- form the respondent No. 1.

10. The appeal is accordingly allowed. The award of the court below is set aside

and a sum of Rs. 35, 000/- is awarded by way of compensation to the claimants, appellants. In addition to the above compensation the claimants would also be entitled to 6% interest from the date of the order of the court below i.e. 25.7.1980. There will be no order as to costs.