

(1985) 05 DEL CK 0083
In the Delhi High Court
Case No : F.A.O. No. 152 of 1971

Sohagwati

APPELLANT

Vs

Delhi Transport Undertaking

RESPONDENT

Date of Decision : 24-05-1985

Acts Referred:

Citation : (1985) 05 DEL CK 0083

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : D.D. Sharma, for the Appellant; H.S. Dhir and Kaanwaljit Dhir, for the Respondent

Final Decision : Allowed

Judgement

S.B. Wad, J.—This is an appeal by the heirs of deceased Roshan Lal against the order of the Motor Accidents Claims Tribunal dated 18.1.1971 dismissing the claim petition. Roshan Lal was killed in a road accident caused by the D.T.U. (now D.T.C.) bus No. DLP 817 on 25th July, 1966. The accident took place at Jawahar Lal Nehru Marg opposite to the Casualty Ward of Irwin Hospital, Delhi. Deceased Roshan Lal was working as a Senior Laboratory Technician in Irwin Hospital and was residing in Quarter No. 17 of the Irwin Hospital, Delhi. Around 9.45 p.m. he along with Jaswant Singh was going from the side of the gate of Casualty Ward of the Irwin Hospital towards Asaf Ali Road. According to the claimants the said bus came in speed and hit Roshan Lal from the left side of the bus. Roshan Lal was rushed to the Irwin Hospital where he was operated upon but he died the next day. The version of the Respondent D.T.C. was that the bus was coming at a slow speed but the deceased came from Irwin Hospital side running ahead of the bus, took a sudden left turn and hit the bus. The injuries were caused to him because of the fall on the patri. It was further contended that there was a slight drizzling on the night and the road was slippery. The version of the Petitioner was supported by three eye-witnesses, Jaswant Singh, PW 1, Om Prakash, PW 2, Kishori Lal, PW 3. A suggestion was made to them in the cross-examination that

it was drizzling and the road had become slippery. But they had denied the suggestion. The evidence of the eye-witnesses was rejected by the Tribunal on the ground that they were interested witnesses working in the Irwin Hospital. It is difficult to agree with the finding of the Tribunal. Deceased Roshan Lal was working in the Irwin Hospital.

The accident took place in front of the Irwin Hospital. It was therefore natural that some employees of the Irwin Hospital would be around. It was not as if some persons known to deceased Roshan Lal staying far away from Irwin Hospital had come forward to give evidence. The evidence given by the eye-witnesses is trustworthy.

2. It is difficult to accept the evidence of the witnesses for the Respondent. Driver and conductor are the two witnesses who are directly interested in avoiding their liability. But even they had not stated that the deceased slipped on the road. Their case is that the deceased came running from inside the Irwin Hospital crossed the bus but suddenly turned to the left and hit the bus on the front left side. This is completely against their own version and the other evidence on record that the deceased had almost crossed the road which is about 35 to 40 feet wide. So also their claim that the injuries were suffered by the deceased because of the fall on patri was not supported independently by any of the eyewitnesses. The eye-witnesses have said that the patri was not immediately near the place of accident but at a little distance. The site plan was prepared by A.S.I. Mir Singh which is exhibited PW 6/1. This does not show that the patri was so near to the place of accident. The Tribunal has misread the plan. The position as to where the accident took place and the distance of the patri from the road are not correctly appreciated by the Tribunal. It is only Mir Singh A.S.I, who has stated in his evidence that it was drizzling on the night of 25th July, 1966.

3. The finding of the Tribunal that the bus was running at a slow speed is also in the nature of conjectures. This is clear from the injuries received by the deceased. Dr. Vishnoo Kumar, PW 4 conducted the postmortem examination. According to him death was due to intracranial haemorrhage and fracture of scalp consequent to head injury. Such grievous injuries cannot be caused to a person merely by turning to his left and hitting the bus which had almost slowed down. Such impact can be caused only if a person is hit by a vehicle coming from an opposite side at a great speed. The accident took place around 9.45 p.m. The Respondents have tried to say that the bus stop was about 15 paces ahead of the place of accident. It appears that the bus was at great speed and did not intend to stop at the bus stop. This usually happens in the night time particularly when there are no commuters at the bus stop. It was the duty of the driver of the bus to slow down particularly in the area in front of the hospital. Normally, when the sick and ailing persons visit the hospital they would not be as alert as ordinary man due to worries and suffering. That is why the movement of traffic is regulated, especially near the hospital. Same is the case near the schools

because we cannot expect young boys and girls to be as cautious as the grown up people while approaching or crossing the road near the school. On the evidence on record I hold that the accident took place because of the rash and negligent driving of the driver of the D.T.C. bus. I do not agree with the Tribunal that the accident took place because of error of judgment on the part of Roshan Lal. The order of the Tribunal therefore must be set aside.

4. Roshan Lal died due to injuries suffered in the accident. He was 52 years old at the time of the accident. He was working as Senior Laboratory Technician in the Irwin Hospital at the time of his death. He was drawing a salary of Rs. 392/- per month. Roshan Lal was survived by his widow, mother, three minor sons and one unmarried daughter to support. Considering his responsibility for the family it could safely be held that he was contributing Rs. 250/- per month to the family. The normal age of retirement was 58. After his retirement he would have got a pension of about Rs. 140/- per month. Considering his family responsibilities, I find that Rs. 30,000/- would be just compensation in this case. The claimant shall also be entitled to interest at the rate of 9 % from March 1970 till the date of payment. Respondent No. 1, the D.T.C. is directed to draw up a cheque for Rs. 30,000/- and the interest as directed above and deposit with the Registrar of this Court within three months from today. The cheque be drawn in the name of Sohagwati, widow of Roshan Lal. The Registrar shall deliver the cheque to the claimant after issuing the notice. The appeal is allowed with cost.