
(2014) 11 AHC CK 0001
In the Allahabad High Court
Case No : F.A.F.O. No. 1078 of 2012

U.P. Rajya Sadak Parivahan Nigam

APPELLANT

Vs

Meera and Others

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A 166 168 173

Citation : (2015) 3 ACC 127

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Akhter Abbas, Advocate for the Appellant; Shakti Singh, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Anil Kumar, J.

1. Heard Mr. Akhter Abbas, learned Counsel for the appellant and Mr. Shakti Singh, learned Counsel for the respondents. Present appeal has been filed by Sahayak Chhetriya Prabandhak, Uttar Pradesh Rajya Sadak Parivahan Nigam, Lucknow under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 9.8.2012 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 12, Lucknow in claim petition No. 197 of 2010 under Section 166 of the Motor Vehicles Act, 1988, Smt. Meera and Others v. Sahayak Chhetriya Parabandhak, Uttar Pradesh Rajya Sadak Parivahan Nigam, Lucknow), thereby awarding an amount of Rs. 3,93,500 with simple interest of 6% per annum from the date of presentation of petition.

2. Facts, in brief, of the present case are that on 22.3.2010 at about 12.30 p.m. near UCO Bank, Banthara, Kanpur Road Vijay Kumar Lodhi was standing on the side of road with his friend Vishal Singh, a bus belongs to U.P.S.R.T.C. having registration No. U.P. 42 T/6560 hit the deceased due to rash and negligent driving by the driver as a result of which Vijay Kumar \\Lodhi sustained grievous

injuries later on died.

3. Mr. Akhter Abbas, learned Counsel for the appellant while challenging the judgment passed by the Tribunal submits that the finding given by the Tribunal that the accident took place due to rash and negligent driving of the driver of the bus is incorrect, contrary to the material on record that the driver was not driving the bus rashly and negligently. In this regard Tribunal has not considered the evidence given by the driver Ram Ji (D.W.-1) on the point in issue, so the impugned judgment is liable to be set aside.

4. I have heard learned Counsel for the parties and going through the record.

5. Further from the perusal of the material on record the position which emerge out is that while adjudicating the claim petition the Tribunal has framed four issues.

6. So far as issue Nos. 1 and 2 are concerned, they are that (a) whether the accident took place due to rash and negligent driving by the driver of the bus, (b) whether the accident took place due to negligence of the deceased?

7. The Tribunal on the basis of material on record as well as taking into consideration the evidence, oral as well as documentary, mainly the evidence given by P.W. 2 (Harish Chand Saroj an eye-witness) that accident has taken place due to rash and negligent driving of the roadways bus as a result of which two persons, who are standing on road side suffered injuries and the motorcycle was also damaged. In addition to above said fact, the Tribunal has also taken into consideration that the driver of the roadways bus in his evidence has categorically stated that while he was driving the bus a buffalo came in front of his bus so in order to save buffalo, an accident in question has taken place so, keeping in view the said facts, finding recorded by the Tribunal while passing the impugned judgment, is based on material on record/evidence, hence submission made by Mr. Akhtar Abbas, learned Counsel for the appellant that accident has not taken place due to rash and negligent driving of the bus, is incorrect.

8. Section 168 of the Motor Vehicles Act, 1988, provides that the Claims Tribunal shall make an award determining the amount of compensation, which appears to be "just". In the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , the Supreme Court held that the word "just", as it nomenclature denotes, equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable; if it exceeds, it is termed as unfair, unreasonable, unequitable, not just.

9. The determination of compensation must be based on certain data establishing reasonable nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to them.

10. Moreover, in the present case, the Tribunal while awarding the compensation has taken into consideration that in the present case income has not been proved

so the view taken by Hon"ble the Apex Court in the case of Laxmi Devi and Others Vs. Mohammad Tabbar and Another, , that if the income of the deceased is not proved on the basis of material on record, the notional income should be taken. Accordingly, he has taken the income of the deceased as Rs. 3,000 per month as notional income after deducting 1/3rd towards personal expenses. In order to grant compensation, the Tribunal has adopted multiplier of 16 as per Second Schedule of Section 163A of the Act on the ground that the age of deceased was 35 years thus, granted total compensation of Rs. 3,93,500, the details of which is as under:

The said action on the part of Tribunal is in accordance with law with Second Schedule of Section 163A of the Act as well as the law laid down by Hon"ble Apex Court in the case of National Insurance Co. Ltd. Vs. Ammini Amma and Others, .

11. So, I do not find any illegality or infirmity in the impugned judgment and award dated 9.8.2012 passed by Motor Accident Claims Tribunal/Additional District Judge, Court No. 12, Lucknow in claim petition No. 197 of 2010.

12. For the foregoing reasons, the appeal lacks merit and is dismissed. No order as to cost.