
(2012) 05 AHC CK 0263

In the Allahabad High Court

Case No : First Appeal From Order No. 2520 of 2010

U.P. State Road Transport Corporation and Another

APPELLANT

Vs

Rajendra Kumar Gupta and Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 165, 165(1), 166
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 7 ADJ 317

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Samir Sharma, for the Appellant; Manoj Kumar Singh and H.P. Dube, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Aditya Nath Mittal, J.—This First Appeal From Order has been filed against the award dated 28.4.2010 passed by the Chairman, Motor Accident Claim Tribunal (District Judge), Jaunpur in Motor Accident Claims Case No. 96 of 2007, whereby the Tribunal awarded a sum of Rs. 4,10,000/- alongwith 6% simple interest per annum. The facts in brief are that Vaibhav Gupta, who was the son of the claimants, was travelling from Jaunpur to Lucknow by Bus No. U.P.-65 AR-1874 owned by U.P. State Road Transport Corporation. The deceased requested the Bus driver to stop the Bus to attend the naturals call. The Bus was stopped by the driver at a place where a live high voltage electric wire was hanging. While getting down from the bus, the deceased got in touch with the electric wire, fell down on the road and died due to electric shock.

2. The Motor Accident Claim Tribunal, Jaunpur after recording the evidence of both the parties and considering the F.I.R. as well as the investigation, came to the conclusion that deceased died due to negligence of the driver of the Bus and passed the impugned award.

3. The award has been challenged mainly on the ground that the death of

Vaibhav Gupta (deceased) was not caused due to any rash and negligence driving of the Corporation Bus, on the part of the Bus Driver, hence the Corporation was not liable to pay any compensation. The claim petition was not maintainable as the death of Vaibhav Gupta was not caused due to an accident arising out of the use of a motor vehicles. The electric wires maintained by the U.P. Power Corporation, were at a height of 21 Ft. from the ground level. The current did not pass through in the Bus. The deceased was required to be careful. He touched the said wire due to which he was electrocuted. There was negligence on the part of the deceased, and that the evidence adduced on behalf of the claimants was in the nature of highly interested witnesses. The Tribunal has without any basis assumed the income of the deceased @ Rs. 3000/- per month and has wrongly applied the multiplier of 17. The Tribunal ought to have adopted a lower multiplier taking into account the age of the parents of the deceased. The Tribunal has erred in awarding the penal interest @ 9% in case the amount of compensation is not paid by the Corporation within 30 days. The claimants were not entitled for any interest and thus the impugned award is illegal, arbitrary, erroneous, excessive and without jurisdiction.

4. Mr. Samir Sharma, Learned Counsel appeared for the appellants and Mr. Manoj Kumar Singh, Learned Counsel appeared for the respondent Nos. 1 and 2. Notices were also sent to the respondent Nos. 3 and 4 but none appeared for these respondents.

5. Heard Learned Counsel for both the parties and perused the lower Court record.

6. The main points for determination are :

- (i) Whether there has been any negligence on the part of the Driver of the Bus?
- (ii) Whether the said accident is an accident arising out of the use of motor vehicle?
- (iii) Whether the Tribunal has erred in fixing the annual income of the deceased as well as the multiplier?
- (iv) Whether the Tribunal has exceeded its jurisdiction in awarding penal interest at the rate of 9% per annum?

Point No. 1

7. It is an admitted fact that on the day of incident the deceased Vaibhav Gupta was travelling by Bus No. U.P.-65 AR-1874 from Jaunpur to Lucknow. The Bus was owned by the appellants. It is also admitted fact that the deceased had requested the Bus Driver to stop the Bus to attend the natural call. It is also admitted case that the deceased came in contact with the loosely hanging live high tension wire and died due to electric shock. The deceased was a bona fide passenger of the aforesaid Bus. There is no such plea that the Bus was stopped by the driver under any emergent situation. After considering the request of the

deceased, the driver must have taken the decision to stop the Bus on the road side. The incident took place at about 5:30 p.m. in the evening on 28.3.2007. In the month of March at about 5:30 p.m. there remains sufficient day light and it cannot be said that the driver could not see the 11,000 Volt electric wire hanging on the road side. The driver should have taken proper precaution while parking the Bus on the road side, which he negligently failed to observe. It has come in the evidence that the deceased was a intelligent young man and was engaged in the business. He was aged 23 years and was expected to have quick reflexes, to avoid the contract with wire. Deceased being an intelligent businessman and major in age, it cannot be assumed that he had himself touched the high voltage wire.

8. The Tribunal has discussed the evidence of Rajendra Kumar Gupta, P.W. -1 and Anil Giri, P.W. -2 at length and has also considered the result of the criminal case registered at Crime No. 185 of 2007 u/s 279/304A I.P.C. at P.S. Kamrauli, District Sultanpur in which the report was lodged against the driver of the aforesaid Bus No. U.P.-65 AR-1874. The Investigating Officer after recording the evidence of the witnesses came to the conclusion that it was the negligent act of the driver of the Bus due to which this incident took place. A perusal of the postmortem report also reveals that the deceased died due to shock as a result of anti-mortem, "electrocuted". Considering the evidence available on record, the only conclusion which can be drawn is that the driver of the Bus was negligent in stopping the Bus near the hanging (live) high voltage wire due to which the deceased was electrocuted and ultimately expired. We do not find substance in the argument of Learned Counsel for the appellants that the Bus was being driven with due care and caution, and the view taken by the Claims Tribunal is erroneous. The point is decided accordingly that the accident took place due to the negligence of the driver of the Bus.

Point No. 2

9. It has been argued by Learned Counsel for the appellants that the alleged accident cannot be said to have occurred due to use of the motor vehicles. The claim petition was filed u/s 166 of the Motor Vehicles Act. The Claims Tribunals have been constituted by the State Government u/s 165 of the Motor Vehicles Act, 1988. As per the provisions of 166(1), an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made by the legal representatives of the deceased. The Section 165(1) runs as under :

165. Claims Tribunals--(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.-- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 140 [and Section 163A].

10. A plain reading of the provisions of Section 165(1), shows that the accident involving the death or bodily injury to a person should arise out of the use of motor vehicles. Learned Counsel for the appellants has argued that at the time of accident the Bus was stationed at the road, and that the accident did not take place within the Bus, hence the appellants are not liable to pay any compensation. In this regard, it is necessary to refer some important judgments of Hon"ble the Supreme Court as follows:

In *New India Assurance Company Ltd. Vs. Yadu Sambhaji More and Others*, , the Hon"ble Apex Court has interpreted the words "accident arising out of the use of a motor vehicle". The facts of that case in brief were that a petrol tanker was got hit by a truck due to which petrol started leaking from the tanker. At day break the local people started collecting the petrol leaking out from the tanker. In the melee the petrol caught fire and there was a big explosion in which 46 persons lost their lives. The legal heirs filed the claim petition. The owner and insurer contested the claim petition on the ground that the fire and the explosion causing the death of those who had assembled at the accident site could not be said to be an accident arising out of the use of a motor vehicle.

The Claims Tribunal also observed that the local people were trying to steal petrol from the petrol tanker and the fire and the explosion were the result of their attempt to steal the petrol leaking out from the tanker. In other words, it was the people who had assembled at the accident site and some of whom eventually died as a result of it who were responsible for causing the fire and explosion accident and the later accident had no causal connection with the earlier road accident of the tanker. The fire and the explosion could not be said to be an accident arising out of the use of the tanker.

Against the order of the Claims Tribunal appeals were filed before the High Court. A learned single judge of the High Court allowed the appeal and reversed the order passed by the Claims Tribunal.

Against the decision of the single judge, the owner of the petrol tanker and the insurance company filed a Letters Patent Appeal which was dismissed by a division bench of the High Court. The owner of the petrol tanker and the insurance company then brought the matter to the Apex Court challenging the judgment and order of the High Court.

The SLP was dismissed by the Apex Court in view of decision in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, . The Court considered at length, the questions whether the fire and explosion of the petrol tanker in which Deepak Uttam More lost his life could be said to have resulted from an accident arising out of the use of a motor vehicle, namely the petrol tanker. The Court

answered the question in the affirmative, that is to say, in favor of the claimant and against the insurer.

In *Smt. Rita Devi and others v. New India Assurance Co. Ltd.* and another, AIR 2000 SC 1930, the facts in brief were that one Dasarath Singh was a driver of an auto rickshaw owned by Lalit Singh. The vehicle in question was registered as a public carrier vehicle used for hire by the passengers. This vehicle was insured with the respondent-Insurance Company. On 22nd of March, 1995, it is stated that some unknown passengers hired the above auto rickshaw from rickshaw stand at Dimapur between 5 to 6 p.m. It is also not in dispute that the said auto rickshaw was reported stolen and the dead body of driver Dasarath Singh was recovered by the police on the next day, the auto rickshaw was never recovered and the claim of the owner for the loss of auto rickshaw was accepted by the respondent-Insurance Company and a sum of Rs. 47,220/- was settled by the said company towards the loss suffered by the owner.

Dealing with the question of "accident arising out of the use of the motor vehicle," Hon"ble the Apex Court held that : "A conjoint reading of the above two sub-clauses of Section 163A shows that a victim or his heirs are entitled to claim from the owner/Insurance Company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied) without having to prove wrongful act or neglect or default of any one. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle".

The question, therefore, is can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

In *Challis v. London and South Western Railway Company*, (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge, that

his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held :

The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

In the case of *Nisbet v. Rayne and Burn*, (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:

That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of *Challis* (supra). In the case of *Nisbet*, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of *Nisbet*, and that it makes no difference whether the pistol shot was deliberately fired at *Nisbet* or whether it was intended for somebody else and not for *Nisbet*.

The judgment of the Court of Appeal in *Nisbet's* case (1910 (2) KB 689) was followed by the majority judgment by the House of Lords in the case of *Board of Management of Trim Joint District School v. Kelly*, (1914 AC 667).

Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (*Dasarath Singh*)

was caused accidentally in the process of committing the theft of the auto rickshaw.

In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, this Court while pronouncing on the interpretation of Section 92A of the Motor Vehicles Act, 1939 held as follows (para 12 of AIR):

Section 92A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of beneficial legislation the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held:

This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92A, Parliament however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation u/s 92A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Section 92A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment.

11. The Hon'ble Apex Court thus considering all the aspects, held that :

we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial Court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

12. It is well-settled that when same words are used in a statute in various sections, they should be given the same meaning. The words "arising out of use of motor vehicle" have been used in various sections of Motor Vehicles Act, 1988, and so they have to be given the same meaning.

13. The above noted decisions are fully applicable to the facts of present appeal. In this appeal, It is admitted fact that the deceased was travelling by the aforesaid Bus owned by the appellants and he was going from Jaunpur to

Lucknow. The expression "Use of Motor Vehicles" should be widely construed. We should not take only the literal meaning of it. Whenever any person purchases a ticket for travelling by a particular Bus such person is ordinarily expected to use that Bus from the point of departure to the point of destination. In the present case the deceased boarded the Bus at Jaunpur and was travelling upto Lucknow. The accident took place in between Jaunpur and Lucknow. The word "use of Motor Vehicles" do not mean that the passenger will always remains seated within the Bus and will not get down in between for any purpose, such as to attend to natural call or for refreshments. After attending to the call of nature, the deceased was required to board the Bus again to reach the destination. There may be a care of breakdown of a Bus, in which event the Corporation has a duty to arrange another Bus for the passengers to reach to the place of destination without any extra charge.

14. Hence it cannot be said that at the time of accident the deceased was not using the motor vehicles, or that the accident did not take place, arising out of the use of the motor vehicle. The argument of Learned Counsel for the appellants in this regard is without any substance and has no force. The point is decided accordingly.

Point No. 3

15. Learned Counsel for the appellants has argued that the Tribunal has erred in fixing the actual income of the deceased as well as the multiplier.

16. The Tribunal has fixed the monthly income at the rate of 3,000/- per month on the basis of the pleadings as well as relying upon the case of Laxmi Devi and others v. Mohd. Tabbar and others, 2008 (2) TAC 394 and 1/3 has been deducted for the personal expenses of the deceased. In this way, the actual dependency has been fixed at 24,000/- per annum. In this era of inflation, this dependency cannot be said to be excessive.

17. Learned Counsel for the appellants has argued that the Tribunal has erred in fixing the multiplier of 17 on the basis of the age of the deceased while the multiplier should have been fixed on the basis of the age of the dependents. In this regard, Learned Counsel for the appellants has drawn our attention towards the case of New India Assurance Company Ltd. v. Smt. Shanti Pathak and others, 2007 (4) TAC 17 (SC) and National Insurance Co. Ltd. v. Sobina Lakai and others, 2007 (3) TAC 19 (SC).

18. In New India Assurance Company Ltd. v. Smt. Shanti Pathak and others (supra) there was death of a young man, aged about 25 years had died. His mother was aged about 65 years and father about more than 65 years. As the matter was pending since long which related to the accident of 2002, the Hon'ble Supreme Court considering the age of the mother and father, applied the multiplier of 5.

19. In National Insurance Co. Ltd. v. Sobina Lakai and others (supra) there was

no decision on the point of multiplier, rather it related to a fake insurance policy after the accident. In the present appeal no such ground is taken, hence on facts the case is not applicable.

20. The present appeal has although being filed u/s 166 of the Motor Vehicles Act and the multiplier has been provided for the petition filed u/s 163(A). It is settled law that a Tribunal can take guidance from the table provided in the Second Schedule of the Motor Vehicles Act. The multipliers have been provided depending upon the age of the victim and not on the age of the dependents. There were different pronouncement of the Hon"ble Supreme Court regarding adoption of the multiplier and this question was again taken in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , in which Hon"ble the Apex Court, considering the various judgments and principles laid down therein, held that:

The multipliers indicated in Susamma Thomas, Trilok Chandra and Charlie (for claims u/s 166 of MV Act) is given below in juxtaposition with the multiplier mentioned in the Second Schedule for claims u/s 163A of MV Act (with appropriate deceleration after 50 years) :

Age of the deceased (1)

Multiplier scale as envisaged in Susamma Thomas (2)

Multiplier scale as adopted by Trilok Chandra (3)

Multiplier scale in Trilok Chandra as clarified in Charlie (4)

Multiplier specified in second column in the Table in II Schedule to MV Act (5)

Multiplier actually used in Second Schedule to MV Act (as seen from the quantum of compensation) (6)

Upto 15 yrs

-

-

-

15

20

15 to 20 yrs.

16

18

18

16

19

21 to 25 yrs.

15

17

18

17

18

26 to 30 yrs.

14

16

17

18

17

31 to 35 yrs.

13

15

16

17

16

36 to 40 yrs.

12

14

15

16

15

41 to 45 yrs.

11

13

14

15

14

46 to 50 yrs.

10

12

13

13

12

51 to 55 yrs.

9

11

11

11

10

56 to 60 yrs.

8

10

09

8

8

61 to 65 yrs.

6

08

07

5

6

Above 65 yrs

5

05

05

5

19. Tribunals/Courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling u/s 166 and not u/s 163A of MV Act. In cases falling u/s 166 of the MV Act, Davies method is applicable.

20. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

21. As per the above table in which the earlier judgments of the Hon''ble Supreme Court in Susamma Thomas, Trilok Chandra and Charlie have been discussed alongwith Second Schedule of the Motor Vehicles Act, the multiplier of 18 should have been applied. The Tribunal has applied the multiplier of 17 which in no case can be said to be excessive. It is also relevant to mention that in the present case the age of the father was around 50 years and the age of the mother was 40 years at the time of filing the claim petition on 15.5.2007. In the above referred case of New India Assurance Company Ltd. v. Smt. Shanti Pathak and others (supra), the Hon''ble Supreme Court has not laid down any principle for applying the multiplier on the basis of age of the parents. In the present case, the principles laid down in Smt. Sarla Verma and others v. Delhi Transport Corporation and another (supra) are fully applicable.

22. In these circumstances, we do not find any substance in the argument of Learned Counsel for the appellants that the Tribunal has erred in assessing the annual income of the deceased and has erred in applying a wrong multiplier. In the result this point is also decided against the appellants.

Point No. 4

23. Learned Counsel for the appellants has argued that the Tribunal has erred in awarding the penal interest at the rate of 9% which is not permissible under the Motor Vehicles Act. It is not disputed that the Tribunal has power to award interest either from the date of presentation of the petition or from a later date. In the present case, the Tribunal, as per the provisions of Section 168(3) directed the amount of award to be paid within 30 days of the date of announcing the award. The Tribunal has further ordered that if the amount of the award is not paid within 30 days then the appellants shall be liable to pay the interest at the rate of 9% per annum.

24. In our opinion, the interest for nonpayment with the stipulated time could not be termed as penal interest but a concession granted to the appellants to pay the amount of the award within 30 days with 6% interest. The Tribunal had the power to grant even the 9% interest from the date of the petition.

25. No other point arises nor was argued.

26. For the reasons stated above, we do not find any good ground to interfere with the impugned award. The appeal is accordingly dismissed. No order as to the costs. Let the lower Court record be sent back to the Tribunal for further action.