
(2010) 03 AHC CK 0235
In the Allahabad High Court

U.P. State Road Transport Corporation and Another	APPELLANT
Vs	
Smt. Vidya Devi and Others	RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 167, 173, 92

Citation : (2011) ACJ 2659 : (2010) 3 AWC 2371

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and S.C. Chaurasia, JJ.—Heard Sri Prabhakar Tewari, learned Counsel for the appellants, learned Counsel for the respondents and perused the record.

The present first appeal from order has been preferred u/s 173 of the Motor Vehicles Act against the impugned award dated 28.8.2003, passed by the M.A.C.T./Ist Additional District Judge, Gonda in M.A.C. No. 34 of 2001, Smt. Vidya Devi and Ors. v. U.P.S.R.T.C. and Anr.

2. The brief facts, giving rise to the appeal, are that Ram Bahore Pandey, who happens to be driver of the appellants' bus was killed by robbers on 22nd June, 2000. He was driving the Bus No. U.P. 42C 1505 carrying the passengers from Delhi to Gonda in the intervening night of 22/23rd June, 2000 on G.T. Road within the Police Station- Rampur, district-Sitapur, near Khageshia Mau, the said bus was stopped by the robbers. During the course of night robbery, driver of the bus, Ram Bahore Pandey, had tried to oppose the robbers from looting the bus and in consequence thereof, he was killed by the robbers. An F.I.R. of the incident was lodged and the claimants-dependents of the deceased, Ram Bahore Pandey, filed a claim petition u/s 163A read with Section 167 of the Act and Rule 204 of the U.P. Motor Vehicle Rules, 1998. The dependents-claimants of the deceased have claimed compensation to the tune of Rs. 5,80,000.

3. The Tribunal has framed Issue No. 1 with regard to consequential death of Ram Bahore Pandey. During course of the trial, the appellants have filed written statement and have admitted the incident that in the intervening night of 22/23rd June, 2000, Sri Ram Bahore Pandey, was the driver of appellants' bus No. U.P.-42C 1505 and when the bus arrived near Khageshia Mau. it was looted by the robbers. The bus was stopped by the robbers by blocking road by falling of trees.

4. It has been admitted by the learned Counsel for the appellants that it is a case of road hold up for the purpose of robbery.

The Tribunal relying upon the admitted facts on record and the evidence led by parties arrived to the conclusion that the claimants are entitled for compensation and accordingly it granted compensation to the tune of Rs. 5,28,000

5. The solitary argument advanced by the learned Counsel for the appellants is that it was not an accidental death caused by the vehicle rather, it was caused by the robbers when Ram Bahore Pandey, was killed by the robbers. Accordingly, the submission of the learned Counsel for the appellants is that since Ram Bahore Pandey, driver of the bus, had not died in the motor accident, the appellants are not liable to pay any compensation.

6. On the other hand, the submission of learned Counsel for the respondents is that in the incident in which Ram Bahore Pandey, died was an accident since the robbery was for the purpose of looting the bus and Ram Bahore Pandey, while discharging his obligations, tried to check the robbers, was killed.

7. It has also been argued by learned Counsel for the respondents that the purpose of robbery was to loot the bus passengers and not to kill Ram Bahore Pandey. The death of Ram Bahore Pandey was an accident and the claimants are entitled for compensation in view of the provisions contained in Section 163A of the Motor Vehicles Act under the structured formula.

8. Section 163A of the Motor Vehicles Act provides that in case of death or permanent disablement or injury due to accident arising out of use of motor vehicle, compensation may be awarded under Second Schedule of the Act to the legal heirs or the dependents of the victim, as the case may be. Sub-section (2) of Section 163A of the Motor Vehicles Act, provides that it shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or any other person. For convenience, Section 163A of the Motor Vehicles Act is reproduced as under:

163A. Special provisions as to payment of compensation on structured formula baste.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor

vehicle, compensation as indicated in the Second Schedule, to the legal heirs of the victim, as the case may be.

Explanation. - For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was- due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the official Gazette, from time to time amend the Second Schedule.

9. The use of a motor vehicle means that the accident occurred by the use of motor vehicle. The submission of the learned Counsel for the appellants seems to carry weight to the extent that merely the involvement of a vehicle shall not make out a case for payment of compensation unless, it is established that it is an accident. However, it is submitted that the death of Ram Bahore Pandey, is an incident of murder and not an accident calling for adjudication by this Court. Undoubtedly, in case, it is an accident, the claimants shall be entitled for payment of compensation and in case, it is not an accidental but simplicitor murder, then the claimants may not be entitled for payment of compensation under the Motor Vehicles Act.

10. The word "accident" in the Black's Law Dictionary (Seventh Edition) has been defined as under:

accident, n. 1. An unintended and . unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. 2. Equity practice. An unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct-accidental, adj.

"The word "accident", in accident policies, means an event which takes place without one's foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident.

In view of the above, an incident shall be an accident, in case it is an outcome of the unintended and unforeseen injurious occurrence.

11. In the present case, the robbers had stopped the bus by falling the trees on the road to rob the passengers. Their intention was not to kill the driver of the

bus. However, during the course of robbery, Sri Ram Bahore Pandey, tried to prevent them or became hurdle in the nefarious activities of the robbers, he was killed. The manner in which Ram Bahore Pandey, was killed, seems to be an accident occurred during the course of employment as driver of the appellants.

12. The attention of the Court has been invited towards the judgment of the Hon"ble Supreme Court in Smt. Rita Devi and Ors. v. New India Assurance Co. Ltd. and Anr. 2000 (2) TAC 213 : 2000 (3) AWC 1860 (SC). In the said judgment, their Lordships of the Hon"ble Supreme Court have distinguished the meaning of death by murder and "accidental death" and held that 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. In such a situation, the dependents of the deceased may not be entitled for compensation but, in case, 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. For convenience, Para No. 10 of the judgment of the Hon"ble Supreme Court in the case of Smt. Rita Devi and Ors. (supra) is reproduced as under:

10. 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.

13. In the case of Smt. Rita Devi and Ors. (supra), their Lordships of Hon"ble Supreme Court have considered various Indian as well as Foreign judgments and ruled that in case, intention of the culprits was designed for some other purpose and while doing so, a person is killed, in such circumstances, it shall be an accidental murder. The present case seems to be covered by the judgment of the Hon"ble Supreme Court as referred hereinabove.

14. Section 167 of the Motor Vehicles Act gives option to such a person either to claim compensation under the Act or under the Workmen's Compensation Act, 1923. The dependents of the deceased in pursuance of the powers conferred by Section 167 of the Motor Vehicles Act. had chosen to approach the Tribunal. For convenience, Section 167 of the Motor Vehicles Act is reproduced as under:

Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923)

where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

15. The option conferred by Section 167 of the Motor Vehicles Act is specific and permit the dependents of the deceased, who died because of the accident to claim compensation under the Motor Vehicles Act. The claimants were entitled to approach the Tribunal for the purpose of compensation under the Motor Vehicles Act. Hence, the Tribunal was very well within the jurisdiction to grant compensation to the dependents of the deceased.

16. The provisions contained under the Motor Vehicles Act are beneficial and while interpreting the statutory provisions, construction which favours the sufferers should be adopted.

17. Section 92 of the Motor Vehicles Act creates embargo to enter into a contract or settlement which frustrates the purpose of the Act. For convenience, Section 92 of the Motor Vehicles Act is reproduced as under:

92. Voidance of contracts restrictive of liability.-Any contract for the conveyance of a passenger in a stage carriage or contract carriage, in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

18. In view of the provisions contained in Section 92 of the Motor Vehicles Act, any condition imposed or purports to be imposed with respect to enforcement of any such liability accrued by the statutory provisions contained in the Act, shall be void. The liability conferred by Section 163A of the Motor Vehicles Act, on the basis of structured formula cannot be circumvented or deleted by interpreting the statutory provisions, otherwise, affecting the rights of the parties. For payment of compensation u/s 163A of the Motor Vehicles Act, it shall not be necessary for the claimants to plead or establish that the death or permanent disablement in respect of which the claim has been made due to any wrongful act or neglect or default of the owner of the vehicles concerned or any other person. For claiming the benefit of Section 163A of the Motor Vehicles Act, it is not necessary for the dependents or the claimants of the deceased to establish any wrongful act or any neglect or default of the owner of the vehicle or vehicles concerned or of any other person. It is sufficient that death occurred in the said incident and in consequence thereof, the dependents of the deceased shall be entitled for payment of compensation.

19. As discussed hereinabove, the deceased Ram Bahore Pandey died while discharging his duties, by the hands of the robbers. The intention of robbers was

to rob the passengers of the bus and not to kill Ram Bahore Pandey. A person died in the incident while creating hurdle in the way of robbers to continue with their nefarious activities. The dependents of the deceased Ram Bahore Pandey, seem to be entitled for payment of compensation.

20. It has been stated by the learned Counsel for the respondents that the interest should have been awarded from the date of filing of the claim petition. But, the dependents of the deceased have not preferred any appeal or raised any plea by filing a cross-appeal. The present appeal has been preferred by the appellants against the impugned award. The powers of the appellate court are based on the statutory obligations. Unless an aggrieved party knocks the doors of the Court under the statutory provisions, no relief may be granted merely on oral submissions.

In view of above, the payment of compensation cannot be enhanced at this stage merely on the basis of oral submissions made by the respondents' counsel.

21. In view of the discussions made hereinabove, the impugned award does not seem to suffer from any impropriety or illegality. The appeal is devoid of merits. It is dismissed accordingly.