

(1987) 01 AHC CK 0041
In the Allahabad High Court

U.P. State Road Transport Corporation	Vs	APPELLANT
Dewarti and Others		RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Citation : (1987) 1 ACC 433

Hon'ble Judges : O.P. Mehrotra, J;N.N. Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—The U.P. State Road Transport Corporation has assailed the award of the Motor Accident Claims Tribunal, Banda, whereby a sum of Rs. 31,000/- has been awarded as compensation on account of the death of one Ram Raj Singh who died as a result of an accident involving appellant's Bus No. UPG 2049.

2. According to the allegation made in the claim petition, an accident took place on 28-12-1976 at about 9-40 a.m. at a place nearly 2 kms. from Mataundh towards Mahoba-Banda road, At the relevant time, the deceased Ram Raj Singh was driving his bullock-cart on that road and on account of collision of the aforesaid Bus with the bullock-cart from behind, the said Ram Raj Singh fell down from his bullock cart and subsequently died on account of injuries received by him. The claimants are the widow, sons and daughter of the deceased. A sum of Rs. 1,07,000/- was claimed on the ground that the monthly income of the deceased was Rs. 1000/- to the extent of which he was supporting the family. Some amount was claimed on account of medical expenses, damage caused to the bullock-cart, loss of one bullock in the accident and for funeral and other expenses.

3. The claim was contested on behalf of the appellant and it was alleged that the accident did not take place on account of the rash or negligent driving of the vehicle by the Driver. The amount of compensation is also disputed. However, the

involvement of the vehicle in question in the accident is admitted and it also admitted that Ram Raj Singh and one of his bullocks died on account of the injuries received in the accident. However, the manner in which the accident is said to have taken place is disputed. According to the defence of the appellant, five bullock-carts were going towards Banda and the driver of the vehicle was in the process of overtaking the bullock-carts. The bullock-cart which was being driven by Ram Raj Singh suddenly went out of control due to bolting of bullocks which resulted in the accident. The driver tried to avoid the accident by turning the Bus towards the right but the brakes of the vehicle failed and after the accident the Bus dashed against a tree and thereafter proceeded into nearby fields and stopped only at a distance of 100 paces from the road side causing injuries to some passengers, the driver and the conductor. It was further alleged that the driver had blown the horn before overtaking the bullock-carts and in view of this the driver was not negligent or rash in driving the vehicle.

4. The Tribunal framed as many as five issues which "are reproduced below:

- (1) Whether Ramraj Singh deceased was injured on account of the rash and negligent driving of the Bus No. U.P.G. 2049 by O.P. No. 2 as alleged?
- (2) Whether the deceased contributed to the accident by his own negligence as alleged?
- (3) Are the claimants legal heirs of the deceased entitled to claim compensation?
- (4) Is the claim barred by time?
- (5) To what amount, if any, and which of the claimants are entitled and from which O.P.?

5. All the issues were decided against the appellant. On issues Nos. 1 and 2, the Tribunal has given a detailed finding and it has come to the conclusion that the driver of the vehicle was negligent and the Corporation was also guilty in putting a defective Bus on the road.

6. We have been taken through the evidence on the record and also the findings recorded by the Claims Tribunal and we find that D.W. 1 Ashraf Husain who was a fitter employed by the appellant has clearly stated that only a day before the accident, the Bus was reported to be defective and was so recorded in the Defect Register after he had examined the same. This fact alone is sufficient to hold that the Corporation was negligent in allowing a defective bus to ply on a highway. It is surprising that in spite of the fact that only a day before the bus was found to be defective and before the said defect had been set right the vehicle was allowed to ply on the public road which is a grossest case of negligence on the part of a public undertaking. If the public undertakings themselves act in such an irresponsible manner jeopardising the life of innocent users of the road, what can be said about the private owners of the vehicles The public undertakings are supposed to be more careful in these matters for they have the requisite funds and also the expertise to have the vehicles examined every now and then and

also have specialised staff to look into the traffic and commercial side of the undertaking.

7. D.W. 2 Mohd. Jalil Khan who was the driver of the ill-fated bus has come out with a different story about the manner in which the accident took place. According to him, the accident took place in the middle of the road. Five bullock-carts in a row laden with Bhusa and Karbi were proceeding towards Banda and the bus was coming from behind at a speed of 33 to 40 Kms. per hour. On the blowing of horns, two of the bullock-carts moved to the left side but the remaining three continued to move on the Pucca part of the road. The bullock-cart driven by Ram Raj Singh was the third one and as soon as the vehicle approached near the said bullock-cart, its bullocks bolted and went out of control. As a result one of the bullocks came in front of the bus but had a very slight touch with the bullock. In cross-examination he admitted that both the front glasses of the bus were broken. It is really surprising that the driver should have materially denied the very stand taken by the defendant in the written statement. The plea that two of the carts had moved away to the left side was not taken in the written statement where it was clearly admitted that after striking against the bullock-cart, the vehicle went to the right-side and after dashing against a tree, it went 100 paces ahead before it came to a halt in the nearby fields. The very stand taken by the appellant speaks volumes about the likely speed of the vehicle. The allegations in the written statement also do not mention any impact with the bullock. The Claims Tribunal was, therefore, fully justified in holding that the accident was caused on account of gross negligence on the part of the Corporation as also the driver of the vehicle. The findings on these issues are, therefore, confirmed.

8. Nothing has been argued so far as findings on Issues Nos. 3 and 4 are concerned. Sri S.K. Sharma, learned Counsel for the appellant, has, however, laid stress, mainly on Issue No. 5. His submission was that the Tribunal was wrong in taking the life span as 75 years for the deceased Ram Raj Singh and also that the Tribunal has erred in not making deductions from the lump sum amount awarded.

9. The Tribunal has taken the longevity in the family as 75 years. There was evidence to support this as one of the brothers of the deceased was 70 years of age while the other one was 65 years of age. The accident had taken place in December, 1976 and the Tribunal decided the claim in April, 1978. It is, therefore, apparent that the deceased was the youngest of the three brothers. It was urged that there is nothing in the evidence to show that his eldest brother who is 70 years of age was still carrying on cultivation. However, no effort was made to cross-examine the PWs on this question and, therefore, we do not find any merit in this submission. The Tribunal has believed the statement of the widow and the statement of Harish Chandra who is one of the claimants. The Tribunal has rightly felt that their testimony may be some what exaggerated as regards the claims put forward by them and instead of upholding the income at

Rs. 12,000/- per year as claimed, it has been found that he must have been earning about Rs. 3,000/- per year. After setting apart Rs. 1,000/- for his personal expenses, the contribution towards the family has been found to be Rs. 2,000/- per year. Taking the life span to be 75 years the Tribunal has calculated the amount of compensation as Rs. 30,000/-.

10. The main submission of Sri Sharma was that when a lump sum amount was being awarded, a deduction should have been made from it. He appears to be right to some extent that when lump sum amount is awarded as compensation, some deduction ought to be made therefrom. We were inclined to consider a deduction of 10 per cent but that will hardly amount Rs. 3,000/- and considering the circumstances that the Claims Tribunal did not award any interest on the amount awarded, we think it proper that in this case no deduction should be made. The whole exercise in computing the amount of compensation is more or less based on some conjecture which has to be guided by some set principles of Rs. 3,000/- in the amount of compensation awarded, in our opinion, is not such which invite any interference by the Court.

11. The only other sum awarded by the Tribunal is Rs. 1,000/- as cost of one bullock which had also died on account of injuries received in the accident. The amount appears to be quite reasonable and we do not propose to interfere.

12. In the circumstances, the award of Rs. 31,000/- as compensation by the Tribunal appears to be fully justified and does not require any interference by us.

13. The claimants have preferred a cross-objection for the enhancement of the amount of compensation awarded. They have also claimed in this cross-objection that the compensation for the loss of bullock, damage to the bullock-cart, funeral expenses and medical expenses should also be awarded to them. However, on being taken through the evidence on the record and all the documentary evidence filed by the parties with the help of the claimants' learned Counsel, we do not find that any sufficient ground has been made out for enhancement of compensation or for awarding compensation, claims in respect of which have been rejected by the Tribunal. We do not therefore, find ourselves persuaded to enhance the compensation as awarded by the Claims Tribunal.

14. In the result the appeal as well as the cross-objection both fail and are accordingly dismissed. We, however, make no order as to costs and the parties are left to bear their own costs in the appeal as well as the cross-objection.