
(1993) 12 AHC CK 0013
In the Allahabad High Court
Case No : F.A.F.O. No's. 527 and 487 of 1985

U.P. State Road Transport Corporation	APPELLANT
Vs	
Raj Pratap Singh and Another	RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Citation : (1994) ACJ 317

Hon'ble Judges : S.K. Verma, J;A.P. Misra, J

Bench : Division Bench

Judgement

A.P. Misra, J.—The aforesaid two appeals arise out of judgment and decree dated 16th April 1985, passed by the Motor Accidents Claims Tribunal, Mirzapur, for Rs. 55,000/- as against the U.P. State Road Transport Corporation (hereinafter referred to as "U.P.S.R.T.C.") and Rs. 5,000/- as against Baikunth Nath Pandey (appellant in the other F.A.F.O. No. 487 of 1985). The claimant also filed cross-objection claiming enhanced compensation of Rs. 2,35,000/-. Since both the appeals and the cross-objection arise out of the same judgment they are being disposed of by means of this common judgment.

2. The claimant-respondent's case is that on 11th May, 1982, at 5.30 p.m. his son Surendra Pratap Singh was waiting for a bus at the U.P. Roadways Bus Station at Mirzapur, where he was knocked down by a Roadways bus and he died thereafter. The said bus was driven by Baikunth Nath Pandey, aforesaid. The deceased was waiting for the bus going towards Barkachha inside the Roadways compound when the said bus came in the compound and knocked him down. Deceased was the only earning son of the claimant's family. His monthly income was said to be Rs. 1,000/- and he was 22 years of age. His parents are: Raj Pratap Singh and Kamlesh Kunwar, father and mother, respectively, along with his sister and brothers. The deceased used to work on agriculture and carpet manufacturing. The claimants claimed Rs. 50,000 for mental shock, physical pain and suffering of the claimants and other members of the family, Rs. 50,000/- for loss of love and affection and Rs. 2,00,000/- for loss of normal dispensation,

amounting to Rs. 3,00,000/-.

3. The appellant of both the aforesaid appeals has filed separate written statement. U.P.S.R.T.C. denied the claim and further stated that no fatal accident took place near the Roadways Bus Station by any U.P.S.R.T.C. bus. Further, the compensation claimed by the claimants is excessive and the number of the bus mentioned by the claimant, which struck down the deceased, did not belong to U.P.S.R.T.C. Baikunth Nath Pandey, appellant in the other appeal, in his written statement alleged that on the date and time of occurrence, he was not driving the Roadways bus No. UTB 2378 and, in fact, there is no such number of any Roadways bus. The Tribunal found that the accident in question did take place on 11th May, 1982, at 5.30 p.m. in the campus of U.P. Roadways Bus Station, Mirzapur, by the U.P. Roadways bus driven by Baikunth Nath Pandey; further, the accident took place on account of negligence and misconduct on the part of the driver; the parents are entitled to maintain the claim petition and it cannot be rejected on account of any misjoinder of parties; and finally, awarded compensation to the tune of Rs. 60,000/- to the claimants, Rs. 55,000/- payable by the U.P.S.R.T.C. and Rs. 5,000/- by the driver Baikunth Nath Pandey.

4. Learned counsel for the appellant (F.A.F.O. No. 527 of 1985) urged that there is no evidence to prove that the U.P.S.R.T.C. owns any bus bearing No. UTB 2378, which is said to have caused the accident in question and the compensation should not have been awarded as against the appellant. In this regard, one has always to keep in mind whether the actual accident took place on the said date, time and place or not, which led to the death of the deceased and secondly, whether the number of the bus recorded and relied by the claimant was true or not. Sometimes, it may be when the accident takes place, one is certain that the accident has taken place at the place and time and on the date by a particular vehicle, but may miss to correctly record the number of vehicle. If such number is wrongly recorded it would deprive the claimant of the benefit and entitlement under the Act. One may broadly record the accident whether by a bus, by a truck, by a jeep, by a car and if otherwise on evidence it is possible to conclude that the accident did take place with such vehicle as described but only if there is an error in recording the number of the vehicle then that by itself should not disentitle the claimant of his legitimate claim. However, it is the duty of the court to scrutinise the evidence on record in such cases with special care for drawing an inference that irrespective of the incorrect recording of the number, the accident did take place from the vehicle belonging to the proprietor or owner of a particular make. To the same effect is the observation in N.K.V. Bros. (P) Ltd. Vs. M. Karumai Ammal and Others, , in which it is held:

Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes.

In this regard, the Tribunal has scrutinised the statements of PW 1, Ram Kishore Jaiswar, Ex M.L.A., PW 2, Sri Ram, who was a teacher in Junior High School, PW 3, Ravindra Kumar Singh, uncle of the deceased and PW 5, Raj Pratap Singh, father of the deceased. On the basis of the said testimony it recorded that it shows that the accident took place by the U.P. Roadways bus which came from the workshop at 5.30 p.m. on 11th May, 1982, inside the Roadways Bus Station campus, which was being driven by Baikunth Nath Pandey. However, their evidence further shows that the said Roadways bus was numbered as UTB 2378. On scrutinising the evidence of the respondent and even recording of the statement of Baikunth Nath Pandey, DW 1, it was found that even the said driver mentioned the bus which was driven at that time was numbered as UTY 2378. Thus, the difference in recording was only in the third letter, viz., "B" was recorded for "Y". It is on scrutinising the evidence both of the claimant and respondent the Tribunal found that the evidence on the record clearly indicated and proved that the accident in question did take place on 11th May, 1982, at 5.30 p.m. in the campus of U.P. Roadways Bus Station, Mirzapur, by the U.P. Roadways bus which was driven by Baikunth Nath Pandey. We do not find that the finding recorded calls for any interference as we have observed above and on the facts of this case merely on wrong recording of the letter "B" for the letter "Y" if other evidence is proved on the record that would disentitle the claim of the amount he is entitled to under the said Act. Hence, contention of the appellant is unsustainable. Apart from this, there is no other sustainable ground raised by the appellant, which calls for any interference with the impugned judgment and decree. Hence, the appeal of U.P.S.R.T.C. fails.

5. Coming to the cross-objection filed by the claimant the contention is awarding of Rs. 60,000/- was too low and thus it should be enhanced to Rs. 3,00,000/- as it was claimed in the claim petition. The main contention on behalf of the claimant is that recording of finding of Rs. 1,000/- as income was wrong as Rs. 1,000/- was the amount given by the deceased to his parents which income should be treated as his saving and thus income would be larger. The contention is raised only on the basis of a statement by PW 3, Ravindra Kumar Singh, that the deceased used to give Rs. 1,000/- to his parents. Having considered this contention, we find no merit in the same. The statement of his giving to his parents Rs. 1,000/- which is his earning would not mean as if he has given after spending his earnings and what remained in balance was paid to him. Neither there is any such evidence on record, nor any such cross-objection is brought to our notice which could attribute to the suggestion as alleged by the counsel for the appellant. We find that the Tribunal recorded the finding based on the testimony of PWs. Hence, computing compensation on the basis of enhanced income as urged by the counsel for the objector is not sustainable especially in view of the statement of other PWs, that the income of the deceased was Rs. 1,000/-. Hence the finding recorded by the learned Tribunal does not call for any interference. The Tribunal has fixed the expectancy of life at 70 years. The similar view has been taken in Shiv Prasad Gupta Agarwala Vs. S.M. Sabir

Zaidi, , T.V. Gnanavelu and Another Vs. D.P. Kannayya and Others, and Srisailam Devastanam Vs. Bhavani Pramilamma and Others, . The enhanced claim was urged on the basis of the deceased being 22 years of age and taking 70 years as expectancy of life he would have earned at least for 48 years, but allowing compensation only for 12 years is unsustainable and hence the claimant is entitled for higher compensation. In this regard, even before the Tribunal the appellant urged that only the father and mother could be considered to be beneficiaries and compensation has to be considered for the benefit of beneficiaries and hence the expectancy of life must correlate with the expectancy of the life of the beneficiaries. In this case, the Tribunal recorded a finding that both the mother and father (parents), the beneficiaries, were of 58 years and since they were the only beneficiaries who could claim and taking 70 years as expectancy of life the computation of income of the deceased should only be for 12 years which the Tribunal did.

6. In C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others, , it was held that the life expectancy of the deceased or of the beneficiaries, whichever is shorter, is an important factor. The Tribunal further recorded that out of Rs. 1,000/- of income half amount could be taken to be the personal expenditure of the deceased and the remaining half, viz., Rs. 500/- per month would be contributed towards the family. Thus accepting Rs. 500/- out of his income if computed is Rs. 6,000/- per annum is the pecuniary loss to the family. Hence, calculating it for 12 years it recorded Rs. 72,000/- for the same. Further, it granted Rs. 5,000/- on account of mental shock and Rs. 3,000/- for loss of love and affection. No serious argument was urged as against these two findings of awarding compensation of Rs. 5,000/- and Rs. 3,000/- respectively before us. Thus, the total amount computed was Rs. 80,000/- and after making deduction for lump sum payment by 25 per cent it awarded Rs. 60,000/-. The awarding of this compensation on the facts and circumstances of this case to the extent of Rs. 60,000/- was justified and the claim of the objector for enhancement on the grounds raised in the objection is unsustainable. Hence the objection is rejected.

7. Finally, coming to the appeal filed by the driver (F.A.F.O. No. 487 of 1985) it was urged that he was in the service of the U.P.S.R.T.C. and as accident took place while he was performing his duties for U.P.S.R.T.C., the said Corporation has the vicarious liability to pay any compensation payable on account of the said accident and the driver should not be made liable for the same.

8. Having heard learned counsel for the parties and having perused the impugned judgment we do not find any reason has been recorded by the Tribunal in awarding Rs. 5,000/- to be payable by the driver except the recording of finding that the accident took place on account of negligence of the driver. That by itself would not make the appellant (driver) liable unless there was something more either under the Motor Vehicles Act or under the service conditions of the driver to which learned counsel for the opposite party could not draw our attention. The Tribunal having found that the accident having taken place on

account of negligence of the driver and the U.P.S.R.T.C. being liable being owner of the bus there is no reason to proportionately award the compensation of Rs. 55,000/- payable by the U.P.S.R.T.C. and Rs. 5,000/- by the driver. If there is any negligence in driving it is always open to take appropriate measure if advised in a given case by the employer in accordance with the terms and conditions of the contract. However, awarding compensation payable by the driver by the impugned judgment to the extent of Rs. 5,000/- is set aside and his appeal is allowed. The said amount of Rs. 5,000/- is and would be payable by the U.P.S.R.T.C. to the claimant along with Rs. 55,000/- already awarded as against it.

9. Accordingly, Appeal No. 527 of 1985 and the objection filed by the objector are dismissed, while Appeal No. 487 of 1985 is allowed. Costs on parties.