
(2007) 03 AHC CK 0192
In the Allahabad High Court

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

Date of Decision : 02-03-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 110

Citation : (2007) ACJ 2080 : (2007) 4 ADJ 493 : (2007) 2 AWC 1829 : (2007) 2 AWC 1827 : (2007) 2 UPLBEC 70

Hon'ble Judges : R.K. Rastogi, J;A.K. Yog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Yog and R.K. Rastogi, JJ.—Both these appeal and cross objection have arisen out of an award passed in M.A.C.P. No. 88 of 1988, Smt. Shanti Devi and Ors. v. U.P. State Road Transport Corporation.

2. The facts relevant for disposal of above appeal and cross objection are that the claimant respondents filed the aforesaid claim petition before the MAC. T., Kanpur Dehat u/s 110 of the Motor Vehicles Act, 1939 with these allegations that Sri Mahesh Chandra Verma who was husband of claimant No. 1 and father of claimant respondents No. 2 to 6 was waiting for a Tempo for going to his village Shivrajpur near Townpora G.T. Road on 28.4.1988 at about 2.40 P.M. At that time Roadways Bus No. U.H.K. 883 of Bewar Depot Etawah reached there. It was being driven rashly and negligently by its driver and it crushed Mahesh Chandra Verma. Consequently Mahesh Chandra Verma died on the spot. F.I.R. of the incident was lodged at police station Bilhaur on the same day. Mahesh Chandra Verma was aged about 40 years at the time of the accident. He was a Commission Agent in the transport business and was also doing the business of supply of building material, and was earning Rs. 2200/- per month from this business. He was the only earning member of his family and from the date of the accident, the claimants lost their source of livelihood. If he had not died in the accident, he would have lived for 40 years more and would have contributed Rs.

5,28,000/- upto the age of 60 years. They therefore claimed the above amount for loss of dependency and Rs. 5000/- for mental agony because of his death , in all Rs. 5,33,000/-.

3. The case was contested by the appellant respondent U.P.S.R.T.C. It filed a written statement. A perusal of the written statement reveals that it contains only denial of the allegations made in the claim petition and does not specifically state its own case which is generally described in additional pleas of the written statement. The case of the claimant opposite parties as pleaded in paras 1 to 6, 9,10,12 to 14 and 18 to 21 of the petition has been flatly denied in the written statement. Regarding para 8,11 and 17 it has been pleaded that they do not require admission or denial. In its para 7, it has been stated that the contents of para 7 of the claim petition are denied and the petitioners are put to strict proof thereof. It has further been stated thereon that the father of the deceased can not be treated to be legal heir of the deceased in presence of widow and children of the deceased. It may, however, be pointed out that this claim petition has been filed by the widow and children of the deceased and the father of the deceased had not been impleaded. As such it is not clear as to why this plea regarding father has been taken in para 7 of the written statement.

4. Thereafter it has been stated in para 15 that no accident took place with the Bus No. U.H.K. 883. In para 16 ownership of the above bus has been admitted by the U.P.S.R.T.C. In para 22 it has been stated that the-claim is highly excessive. In para 23 it has been stated that as no accident had taken place with the above bus , the allegations of rash and negligent driving of the bus are also false. It was, therefore , submitted that no liability can be fastened upon the UPSRTC.

5. In view of the aforesaid pleadings the learned Presiding Officer of the Tribunal framed following issues:

1. Whether the disputed accident took place due to rash and negligent driving of the Bus No. U.H.K. 883 of UPSRTC by its driver ?

2. Whether the UPSRTC is liable for compensation ?

3. To what relief is the petitioner entitled ?

6. Learned Presiding Officer of the Tribunal held on issue No. 1 that the accident had taken place on 28.4.88 at 2.40 P.M. by Bus No. U.H.K. 883 owned by UPSRTC and this accident took place due to rash and negligent driving of its driver. He held on Issue No. 2 that the UPSRTC is liable for tortuous acts of its driver. He held on issue No. 3 that the income of the deceased would have been 1000/- per month only and out of this amount, he would have been spending Rs. 500/- upon himself, and the remaining Rs. 500/- would have been spent by him upon the claimants. He further held that according to the post mortem report the age of the deceased Mahesh Chandra Verma was 45 years, and so he could maintain his family for a period of 15 years more. He, therefore, was of the view

that in this way the the monetary loss for the period of 15 years at the rate of Rs. 500/- per month could be assessed to be Rs. 90,000/- but since this amount is being paid to the petitioners in lump sum a further deduction of 40% is to be made on this amount. He , therefore fixed amount of Rs. 54,000/- only as compensation. Regarding claim of Rs. 5000/- for mental shock and agony , he held that the petitioners were not entitled to claim any such amount under this head. He was further of the view that the petitioners were entitled to simple interest at 6% per annum on the amount of compensation. He therefore allowed compensation of Rs. 54,000/- with interest, pendente lite and future, till the date of actual recovery at the rate of 6% per annum.

7. Aggrieved with the aforesaid award the UPSRTC filed the present appeal and being dissatisfied with the amount of compensation , the claimant respondents filed the counter claim.

8. We have heard the learned Counsel for both the parties and have perused the record.

9. The following points arise for determination of this appeal:

1. Whether any accident took place by Bus No. UHK 883 on 28.4.88 resulting into death of Mahesh Chandra Verma ?
2. Whether the above accident took place due to rash and negligent driving of the offending Bus by its driver?
3. What amount of compensation should be awarded to the claimant-respondents?

10. First of all we take up the points No. 1 and 2 which are interconnected.

11. The petitioners' case is that on 28.4.88 at about 2.40 P.M. an accident had taken place with the Bus No. UHK 883 resulting into death of Mahesh Chandra Verma on the spot and this accident took place due to rash and negligent driving of its driver. The petitioners with a view to prove this allegation examined Om Prakash Verma as P.W. I. It may be mentioned that Om Prakash Verma had soon after the above accident lodged the report at the police station Bilhaur at 4.15 P.M. The distance of the place of the accident from the police station is 10Kms. He is the younger brother of the deceased Mahesh Chandra Verma and is an eye witness of the accident. He (P.W. 1) had stated in his report that on 28.4.88 he and his brother Mahesh Chandra Verma had gone to Janata Transport Company Uttaripura in connection with some urgent piece of work and thereafter they were coming back to their village Shivajpur and were waiting for a Tempo near the main road and at about 2.40 P.M. Bus No. UHK883 came from the side of Bilhaur which was being driven by the driver in rash and negligent manner and it crushed his brother Mahesh Chandra Verma. He somehow protected himself. His brother died on the spot. He further stated that this accident was witnessed by Gaya Prasad Gupta alias Babbu and Komal Pandey (driver) and other persons. Om Prakash Verma was examined as P.W. 1 by the petitioners and he has given

the same version of the accident in his statement also. He was cross examined at length by the opposite party but there is nothing in that cross examination which may create any doubt regarding veracity of his testimony. It may be mentioned that the post mortem on the body of the deceased Mahesh Chandra Verma was conducted on 4 29.4.88 at 12.40 P.M. by Dr. Santosh Kumar. He has been examined as P.W. 3. He has stated that death of the deceased had taken place on account of shock and haemorrhage due to profuse bleeding from the ante mortem injuries about one day ago from the time of post mortem.

12. The appellant opposite party examined Sri Shyam Babu Singh driver as O.P.W.1, He stated that the accident had not taken place from his Bus No. UHK 883. O.P. W.2 Saras Chandra Dubey was conductor of the Bus who has supported the statement of Shyam Babu Singh. It is to be seen that after registration of the case at the police station the police had investigated the case and submitted a charge sheet against Shyam Babu Singh , the driver of the offending Bus and a copy of that charge sheet has been filed as Paper No. C21. It is to be seen that in view of the testimony of Om Prakash P.W.1 which is supported by documentary evidence of the prompt F.I.R. of the case, the aforesaid statements of the driver and the conductor of the Bus do not inspire any confidence, and the learned Presiding Officer of the claims tribunal has rightly disbelieved them. Sri Om Prakash Verma has also stated that due to rash and negligent driving of the driver of the offending Bus UHK 883 the accident had taken place on 28.4.88 at 2.40 P.M. and Mahesh Chandra Srivastava died as a result of this accident. Finding no reason to disbelieve this statement, we confirm the findings of the trial court on issues No. 1 and 2.

13. Now, we take up question No. 3. It is to be seen that according to the allegations made in the claim petition the age of Mahesh Chandra Verma was 40 years at the time of the accident and he was earning Rs. 2200/- per month as commission agent in the transport business and by supply of building material. His real brother Om Prakash Verma , whose statement was recorded as P.W. 1, has stated that Mahesh Chandra Verma was earning Rs. 3000-4000 per month from his business. Smt. Shanti Devi (P.W.2) wife of the deceased has stated that her husband was earning Rs. 2500-3000 permonth. P.W. 4 Duli Chandra , father of the deceased , stated that Mahesh Chandra verma was earning Rs 2000-2500 per month. The U.P.S.R.T.C. has disputed the aforesaid income of the deceased but it has led no evidence in support of its case on the point. The Presiding Officer of the Tribunal has assessed the income of the deceased to be Rs. 1000/-. His above assessment has been disputed by both the parties. The UPSRTC has stated that this amount is excessive and on the other hand the contention of the claimants is that this is under assessment of deceased's income.

14. Considering the submissions made by both the parties as well as the statements of the witnesses on the point of income of the deceased, we are of the view that the income of the deceased can safely be assessed to be Rs. 2000/- per month from the business of supply of building material as well as

from the business of commission agent as stated by his father Duli Chandra(P.W.4), Thus, the annual income of the deceased comes to Rs. 24,000/-. Out of this amount the deceased would have been spending $\frac{1}{3}$ upon himself and so after making deduction of $\frac{1}{3}$ of above amount which is Rs. 8000/-, the dependency of the claimants comes to Rs. 16,000/- per year. The claim of petitioners is that the age of the deceased was 40 years at the time of his death but according to the post mortem report his age was 45 years at that time. According to the second schedule of Motor Vehicles Act, 1988 multiplier of 15 years shall be applied in respect of the deceased whose age was above 40 years but not exceeding 45 years. Thus after multiplying Rs. 16,000/- by 15, the amount of compensation would come to Rs. 2,40,000/- The presiding officer of the Tribunal had erroneously made further deduction of 40% for lump sum payment on the amount of compensation. When the deduction of 50% had already been made for self expenses, there was no question of again making 40% deduction for lump sum payment. The wife of the deceased is also entitled to compensation for loss of consortium and his other sons and daughters are also entitled to compensation towards mental pain and suffering due to death of their father. The petitioners have not claimed for loss of consortium nor they have claimed any amount regarding funeral expenses, and as such when there was no claim under these heads, there is no question of granting any amount to them for these items, though under law these amounts could have been allowed if claim had been made. The claimants have, however, claimed Rs. 5000/- as compensation for mental pain and suffering due to death of the deceased. The Presiding Officer of the Tribunal has taken a view that no amount is admissible under this head. This view is erroneous, The legal position is that the heirs of the deceased are not entitled to any compensation for any physical and mental pain suffered by the deceased on account of the injury caused to him but they are certainly entitled to compensation for mental pain and suffering suffered by them due to untimely death of their family member as has happened in the present case. In the present case the deceased is the husband of petitioner No. 1 and father of the remaining claimants. Hence this claim of Rs. 5000/-under this head also deserves to be allowed.

15. Learned Counsel for the appellant contended before us that the deceased was a business man and so his heirs must also have been running that business and in this way there was no question of loss of earning and as such no amount should have been awarded as compensation. It is to be seen that no such plea was taken by the UPSRTC in its written statement. A plea unless it is taken in the written statement can not be considered. Moreover, Smt. Shanti Devi widow of the deceased Mahesh Chandra Verma stated in her statement that she has got five children i.e. one daughter and four sons and they were all students and she had to bear the expenses of their education.It is thus clear that no business inherited was being done by the children of the deceased and they were students at the time of his death and were not in a position to run the business and as such the above contention of the appellant deserves to be rejected on merits also.

16. The position in this way is that there is no force in the appeal filed by the appellant and it is liable to be dismissed. The cross objection of the claimant respondents, on the other hand, deserves to be allowed and the amount of compensation deserves to be enhanced to Rs. 2,45,000/- from Rs. 54000/- as discussed above. The claimant opposite parties are also entitled to pendente lite and future interest on this amount at the rate of 6% per month "till the date of actual recovery from the date of filing the claim petition. Out of the above amount a sum of Rs. 1,45,000/- plus interest thereon and costs of the petition shall be payable to the respondent No. 1. Smt. Shanti Devi widow of the deceased and the remaining amount including the interest thereon shall be equally shared by the remaining claimants. The amount already paid, if any, by the U.P.S.R.T.C. shall be liable to be adjusted in the above amount.

17. The appeal filed by the appellant is , accordingly, dismissed with costs and the cross objection of the claimant respondents stands allowed with proportionate costs subject to the above directions.