
(1985) 05 AHC CK 0049
In the Allahabad High Court

U.P. State Road Transport Corporation	APPELLANT
Vs	
Zakiya Begum	RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110(A)

Citation : (1986) 2 ACC 20 : (1987) ACJ 685

Hon'ble Judges : K.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.P. Misra, J.—The present appeal arises out of the judgment and decree dated 20th July, 1978, passed by the Motor Accident Claims Tribunal, Mathura, in Motor Accident Claim Petition No. 23 of 1977.

2. Claim petition u/s 110(A) of the Motor Vehicles Act had been filed by the wife and two minor sons of the deceased Mohd. Asfaq. On 21st November, 1976, at 9.30 A.M. an accident took place on the Agra- Aligarh road near village Baraus in which two roadways buses Nos. UPB 7508 and UPB 5035 dashed against each other. It resulted into the death of four or five persons on the spot and several received injuries. The deceased was travelling by bus No. UPB 7508 which was going from Sadabad to Agra. He was a teacher getting Rs. 476/- per month as salary including dearness allowance. The case set up in the claim petition was that the death occurred due to negligent driving of the buses by the drivers of both the buses. A claim was made for Rs. 1,75,000/-.

3. The respondent U.P. State Road Transport Corporation contested the claim on the ground that the accident was not on account of any negligence but on the facts and circumstances of the case was inevitable. In fact, both the drivers were driving the buses at moderate speed. At the time of occurrence there was a little drizzling and the road was alippery. The driver of bus No. UPB 5035 while going towards Sadabad side noticed a Tonga and a cycle going towards the same side

and since the cycle was being driven carelessly on hearing the horn the cyclist fell down. In order to save him the driver of the bus got his vehicle moved on the right side and it is at that time on account of a bullock cart, the driver of bus No. UPB 7508 had to cut on the right side. This resulted into direct collision of both. It is on these facts, it was stated, that the accident was not caused on account of either rashness or negligent driving.

4. The Tribunal came to the conclusion that there was a clear negligence on the part of the driver of bus No. UPB 5035 on account of which the collision occurred, in which five persons including the driver of bus No. UPB 7508 died. The Tribunal decreed in favour of claimants to the tune of Rs. 65,000/-. After deducting the ex-gratia payment of Rs. 9,000/- the balance comes to Rs. 56,000/-. An interest at the rate of 6-1/4 per cent per annum on the said amount was also made payable from the date of the award.

5. It was contended by the appellant that the finding recorded by the Tribunal was not proper as on the evidence it could not be said that the accident was actually caused on account of negligence of the driver. On the basis of evidence it is clear that bus No. UPB 5035, which was coming from Agra, actually came to the extreme right when it struck against the other bus UPB 7508, which was coming from opposite direction. At the time of this accident, the other bus was on its left side and a part of which was on the kachchi patri.

6. In order to substantiate the case set up in the claim petition, the claimants examined P.W. 2 Mohd. Aziz Khan, who was a passenger travelling in bus No. UPB 5035. According to him, when the accident took place the two wheels of bus No. 7508 were on the kachchi patri and the bus No. UPB 5035 took a turn on the right side and collided with the other bus. This fact is corroborated by another witness Trilok Singh (D.W. 1) who is Conductor of bus No. UPB 5035. This fact is also admitted by Madan Lal (D.W. 2) and Raj Pal Singh (D.W. 3) who were passenger and conductor respectively in bus No. UPB 7508. However, D.W. Trilok Singh, Conductor of bus No. UPB 5035 disowned that P.W. 2 Mohd. Aziz Khan was travelling in his bus at the time of the occurrence. The Tribunal rightly disbelieved this part of evidence of the Conductor D.W. 1 Trilok Singh since he admitted that he could not recognise the faces of all the passengers who were occasionally travelling in his bus and it is not the case that Mohd. Aziz Khan travelled off and on. In view of this, it is established that at the time of the accident Bus No. UPB 5035 went to the extreme right of the metallic road while the driver of bus No. UPB 7508 went on the left side of the patri. It is also not in dispute that at the time of impact both were in motion.

7. Counsel for the appellant urged that the accident was inevitable on account of the fact that the driver had to turn his bus to the extreme right on account of the Tonga and the cyclist. An accident occurs on account of various reasons and in some cases it could be said that the accident was not on account of negligence, but not in a case when the two Roadways buses coming from opposite direction and both were seeing obstruction on the road, namely, the driver of bus No. UPB

5035 saw Tonga and cycle going in its front while the driver of bus No. UPB 7508 saw the bullock cart in front. It is also necessary to point out in such a situation, it is the duty of the driver to slow down the vehicle at a speed to keep the control of the vehicle to the extent that in case he has to turn left, right or stop the vehicle it is in full control. If the driver is not cautious and does not keep control over his vehicle then in such a situation, as in the present case, it may be inevitable to meet with the said accident. In fact, the driver of bus No. UPB 5035 turned to the extreme right and in spite of the driver of bus No. UPB 7508 pleading his vehicle on the left side of patri the impact of collision was so deep that it revulted into several deaths and injuries. On these facts it can simply be inferred on the basis of evidence on the record that the driver of bus No. UPB 5035 was negligent in driving and it resulted into the death of the deceased Mohd. Asfaq and some other persons. The appellant completely failed to point out any evidence to come to a conclusion different, from what was arrived at by the Tribunal. We are, therefore of the opinion that the Tribunal was justified in drawing the conclusion that there was a dear negligence on the part of the driver of bus No. UPB 5035 and due to this negligence the said collision occurred.

8. Now coming to the compensation awarded in the present case, the Tribunal found, which is not in dispute even before us, that Mohd. Asfaq deceased was a teacher in a school at Sadabad and was getting Rs. 488/- per month, including dearness allowance as salary. It is also not in dispute that the deceased was 35 years old at the time of death. The Tribunal calculated compensation by accepting the span of life at 60 years. Out of the sum awarded 2/3rd was said to be the amount which the deceased was spending on the claimants for their maintenance. The compensation was awarded by multiplying the figure of Rs. 325/-, which is 2/3rd amount of the total salary, by 12, which come to Rs. 3,900/- and then multiplying this by 25 it was computed at Rs. 97,500/-. This sum, since it was paid in Jump sum a deduction of 33% was allowed and that figure worked out at Rs. 65,500/-. It is well settled by plethors of authorities that when a lump sum payment is made a deduction is reasonable and is done. We do not find any error in arriving at this amount by the Tribunal. Out of this figure since Rs. 9,000/- was paid as ex gratia compensation, a decree was passed for Rs. 56,000/-. The finding recorded by the Tribunal on facts and circumstances of the case is justified. Nothing has been shown that the Tribunal committed any error in applying the said principle while computing the compensation. Thus, we find both the issues were rightly decided by the Tribunal and the award of compensation was just and proper.

9. The claimants also filed cross objection against the said judgment of the Tribunal wherein it was contended that the award of compensation on the facts and circumstances of this case is liable to be enhanced.

10. One of the grounds of attack was that the finding of the Tribunal that the deceased was spending 1/3rd of his income on himself was not correct. In fact, he was spending 1/6th on himself. No evidence Ms been shown by the claimants

to sustain that the deceased was spending only 1/6th on himself. Thus, this contention of the claimants is not sustainable. The Tribunal has relied on a decision given in the case *Mrs. Neelima Arora v. Union of India and Ors.* 1977 ACJ P. 528 in which this Court held that the deceased would be deemed to have been spending 1/3rd of his salary on himself. In the absence of any evidence that the deceased was spending only 1/6th on himself and in view of the aforesaid decision relied upon by the Tribunal we do not find that any error was committed by the Tribunal in recording the finding that the deceased was spending 1/3rd on himself. The second ground of attack in the cross-objection was that the Tribunal could not have granted 33% deduction for lump sum payment. This contention is devoid of any merit. It is well settled that when a lump sum payment is made 33% deduction may granted and the same finding has been recorded even in the aforesaid case of *Mrs. Neelima Arora v. Union of India and Ors.* (supra). Thus, even this contention of the claimant is devoid of any merit.

11. No other point was pressed by the claimant. Both, the appeal and the cross objection are devoid of any merits and are liable to be dismissed.

12. In the result, both the appeal and the cross-objection are hereby dismissed. The judgment and decree dated 20th July, 1978, passed by the Tribunal are confirmed. However, in view of the aforesaid facts and circumstances, costs on parties.