
(2013) 03 AHC CK 0285

In the Allahabad High Court

Case No : First Appeal from Order No. 596 of 2013

U.P. State Road Transport Corporation, Azamgarh	APPELLANT
Vs	
Pushpa Devi and Others	RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 97 ALR 872

Hon'ble Judges : Rakesh Tiwari, J;Anil Kumar Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari and Anil Kumar Sharma, JJ.—Heard learned Counsel for the appellant and perused the impugned award. This First Appeal From Order arises out of judgment and award dated 26.11.2012 and its decree dated 3.12.2012 passed by M.A.C.T./District Judge, Azamgarh in M.A.C.P. No. 318 of 2009, Pushpa Devi and others v. U.P.S.R.T.C. Azamgarh through its Regional Manager and another.

2. The accident is said to have taken place on 20.6.2009 at about 10.00 a.m. at Kasba Kandhrapur, Azamgarh. The FIR of this incident was lodged by Prem Nath against bus driver on the same day at about 3.20 p.m. at police Station Kandhrapur, Azamgarh which was registered as case crime No. 567 of 2009, under sections 279, 304A, I.P.C. Motor Accident Claim Petition No. 318 of 2009, Pushpa Devi and others v. U.P.S.R.T.C. Azamgarh and another u/s 140/166 of the Motor Vehicles Act was filed by the claimants-respondent Nos. 1 to 7 claiming compensation of Rs. 19,98,000/- with interest. The claim petition was contested by the appellants.

3. On perusal of the evidence and after hearing the Counsel for the parties M.A.C.T./District Judge, Azamgarh by the impugned judgment and award dated 26.11.2012 awarded a sum of Rs. 3,91,000/- as compensation alongwith simple interest. The appellant is aggrieved by the aforesaid award has prayed for setting

aside the award.

4. The contention of the learned Counsel for the appellant is that FIR was lodged by one Prem Nath alleging that mother of Jagdish, namely, Ramawati was bitten by snake, she was being taken by him on motorcycle to hospital and on the way the aforesaid accident had taken place by rash and negligent driving of bus No. UP-50 F/4002. On account of which Subhash Chand and Ramawati were seriously injured and they died while taken to the hospital. The accident is said to have been witnessed by P.W. 1 Pushpa Devi and P.W. 2 Prem Nath but according to the Counsel for the appellant neither P.W. 1 Pushpa Devi nor P.W. 2 Prem Nath are the eye-witness of the accident. He has appended the statement of P.W. 1 and P.W. 2 made by them before the M.A.C.T.

5. The next argument of the learned Counsel for the appellant is that there was no negligence of the driver of the bus aforesaid which was being driven slowly by its driver and the accident has occurred due to negligence of Subhash Chandra who was driving the motorcycle having two pillion riders in rash and negligent manner. It has come on record that aforesaid persons were going on two separate motorcycles. The perusal of the statements of P.W. 1 and P.W. 2 show that both the witnesses had deposed before the Tribunal that they were taking the injured to the hospital who died on the way just within 2-3 hours of the accident and FIR was lodged by P.W. 2 in this regard. P.W. 1 has stated that she has seen the accident and she had narrated this fact as has been told to her by other persons. This do not make her statement merely a hearsay statement. Happening of the accident is one thing and she would be talking about it is other thing. Moreover, the appellant's Counsel has relied upon the statement of D.W. 1 which has not been appended alongwith this appeal and even site-plan has also not been appended.

6. For all the reasons stated above, appeal sans merit and is accordingly dismissed. The Registry is directed to remit the statutory deposit to the concerned Tribunal within four weeks