
(2009) 02 DEL CK 0112
In the Delhi High Court
Case No : FAO No. 103 of 2003

U.P. State Roadways Transport Corporation	APPELLANT
Vs	
Sukh Pali and Others	RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0112

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : S.K. Srivastava, for the Appellant; Vasdev Lalwani and Jai Bir Sharma, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha, J.—The appellant has assailed the award dated 1st November, 2002 passed by the learned Tribunal whereby the learned Tribunal has awarded the compensation of Rs. 8,00,000/- to respondents No. 1 to 3.

2. The appellant is the owner and respondent No. 4 is the driver of UP Roadways Bus bearing No. UP-33-N-1064 which hit the Maruti Car bearing No. DDC-686 on 4th February, 1998 on G.T. Road near Bank of India, Secunderabad. Late Jagdish Parshad was driving the car who received grievous injuries and died on the spot.

3. Deceased Jagdish Parshad was survived by his mother aged 60 years, two minor children aged 13 and 11 years at the time of the accident, who filed the claim petition before the learned Tribunal against the driver (respondent No. 4) and the owner (the appellant) of the offending bus claiming the compensation of Rs. 15,37,400/-.

4. The appellant and respondent No. 4 contested the petition on the ground that the deceased was responsible for the accident as he came on the wrong side of the road and dashed into the bus and, therefore, no compensation was payable to respondent Nos. 1 to 3.

5. At the trial, PW ? 1 Dhiraj Singh deposed that he was traveling with the deceased in the car and the accident occurred due to the rash and negligent driving of the driver of the bus. PW-1 lodged the FIR ? Ex.PW1/1. He further deposed that there was no traffic going ahead of the bus.

6. Smt. Sukh Pali appeared as PW-2. She is the mother of the deceased. She proved the age, income and other dependents of the deceased. The deceased had divorced his wife during his lifetime. PW-2 proved the decree of divorce ? Ex.PW2/1. She further proved that the deceased was employed with the Delhi Police and was drawing a salary of Rs. 4,922/-. The income certificate was proved as Ex.PW2/2. PW-2 also proved the driving licence, date of birth of the children and post-mortem report as PW2/4, PW2/6 and PW2/7 respectively.

7. The appellant produced two witnesses. The driver appeared as RW-1 and deposed that he was driving the bus at a slow speed and on the correct side of the road and the car suddenly came on the wrong side, i.e., extreme right side and on seeing the car coming towards the wrong side, RW-1 took the bus towards Kaccha Patri to avoid the accident but despite that the accident occurred. RW-1 further deposed that he took the bus to the left and applied the brakes but the accident could not be avoided due to the rash and negligent driving of the driver of Maruti car. RW-1 produced the copy of the site plan marked A. The appellant produced second witness-RW2 who is employee of the appellant and he visited the spot after the accident and prepared the site plan-Ex.RW2/1. He also produced the photographs of the accident site.

8. The learned Tribunal held the driver of the bus to be rash and negligent. The learned Tribunal held the site plan prepared by the police to be correct according to which the driver of the bus was negligent. The site plan prepared by the police clearly shows that the car was on the left side of the road and the bus which was coming from the opposite direction came to its right side and hit the car. The learned Tribunal did not accept the site plan prepared by the appellant to be correct.

9. I have examined both the site plans. The site plan prepared by the police appears to be correct. On the other hand, the site plan prepared by the appellant does not inspire confidence. First of all, the place of the accident has not been correctly shown. As per PW-1 who was travelling in the car and the site plan prepared by the police, the bus came on its right side to hit the car which was on the left side of the road whereas the site plan filed by the appellant shows the accident on the extreme left side of the bus. Secondly, the site plan prepared by the police has been prepared by an independent investigating agency whereas the site plan filed by the appellant has been prepared by RW-2 who was not present at the time of the accident and he is not an expert in preparing the site plan. I, therefore, agree with the reasons given by the learned Tribunal that the accident occurred due to the rash and negligent driving of the bus by respondent No. 4.

10. The second ground of challenge in this appeal is that the award of the Tribunal is on a higher side and the multiplier should not have been more than 6. The deceased was aged 34 years at the time of his death. He was working as a Head Constable with The Delhi Police and drawing a salary of Rs. 4,922/- per month which has been proved by Ex.PW2/2. The learned Tribunal deducted the personal allowances of Rs. 160/- and held his salary to be Rs. 4,762/- per month. Taking the future prospects into consideration, the average gross monthly salary was worked out at Rs. 7,143/- per month [(Rs. 4,762/- + Rs. 9,524)/2]. The deduction of 1/3rd, that is, Rs. 2,381/- was made towards the personal expenses of the deceased and the dependency of the claimants was held to be Rs. 4,762/- per month. The annual dependency was calculated at Rs. 57,144/- (Rs. 4,762/- x 12). The learned Tribunal applied the multiplier of 14 and arrived at a figure of Rs. 8,00,016/- which was rounded to be Rs. 8,00,000/-. The learned Tribunal awarded the interest @9% per annum on the said compensation.

11. The appellant's argument that the multiplier of 6 should have been adopted is absolutely misconceived and unsustainable. As per the Second Schedule of the Motor Vehicles Act, the appropriate multiplier in this case would have been 17. The learned Tribunal has applied a lower multiplier. However, since the claimants have not come up in appeal, the higher multiplier cannot be applied. I, therefore, uphold the multiplier of 14 applied by the learned Tribunal to compute the compensation payable to the claimants. The Tribunal has also not awarded any compensation towards the loss of love and affection, funeral expenses and loss of estate but again since the claimants have not come up in appeal, no amount can be awarded on this account to the claimants.

12. No other ground has been urged in the present appeal.

13. The appeal is devoid of merits and is, therefore, dismissed.

14. The appeal is dismissed with costs.