
(2009) 10 AHC CK 0257
In the Allahabad High Court
Case No : F.A.F.O. No. 3037 of 2009

U.P.S.R.T.C.

APPELLANT

Vs

Smt. Saroja Devi and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2010) 6 AWC 6165

Hon'ble Judges : S.P. Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Advocate : Lallan Verma, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Rajesh Chandra, JJ.—We have heard Shri Lallan Verma, learned Counsel for the Appellant and perused the record filed with the appeal.

2. The present appeal has been filed against the judgment and order/award dated 29.5.2009, passed by the Motor Accidents Claims Tribunal, Etawah in Motor Accident Claim Petition No. 397 of 2008 filed by the claimant-Respondent Nos. 1 and 2 u/s 163A of the Motor Vehicles Act, 1988 claiming compensation on account of the death of Jitendra in an accident which took place at about 11.40 p.m. on 9.6.2008, wherein Bus bearing Registration No. U.P.-93-E-7847 belonging to the Appellant and driven by the driver of the Appellant hit the said Jitendra Kumar, resulting in injuries to the said Jitendra Kumar and his consequent death.

3. It was, inter alia, averred in the claim petition that the said Jitendra Kumar was going from his house to sell water on a "thela" inside the Bus Stand at about 11.40 p.m. on 9.6.2008. When the said Jitendra Kumar was crossing Nebal Road, the aforesaid Bus in question came and crushed the said Jitendra Kumar. The said Jitendra Kumar died while being taken to the District Hospital, Etawah for

treatment. First information report against the driver of the aforesaid Bus in question was lodged in the night on the same day, and the same was registered as Case Crime No. 274 of 2008 under Sections 279 and 304A of the Indian Penal Code. The said Jitendra Kumar was aged 18 years at the time of the accident, and he used to carry on the business of selling water on "thela" at the Roadways Bus Stand wherefrom he used to earn Rs. 100 per day. Accordingly, compensation amounting to Rs. 4.93,500 was claimed.

4. The Appellant contested the claim petition by filing written statement. It was, inter alia, averred that no accident as alleged in the claim petition, took place ; and that a forged claim has been presented by the claimant-Respondent Nos. 1 and 2.

5. Inder Singh (Respondent No. 3, father of the deceased Jitendra) impleaded as the opposite party in the claim petition, filed his written statement substantially accepting the averments made in the claim petition.

6. The Tribunal framed the following Issues in the said case:

1. Whether at about 11.40 O'clock in the night of 9.6.2008. Roadways Bus No. U.P.-93-E-7847 hit the said Jitendra on the Road (Nebal Road) from the Bus Stand "tiraha" to Sabitganj which resulted in injuries to the said Jitendra causing his death?

2. To what amount of compensation are the claimant-Respondent Nos. 1 and 2 herein entitled?

7. The claimant-Respondent Nos. 1 and 2 filed various documents. However, no document was filed on behalf of the Appellant or the Respondent No. 3 (i.e., the opposite parties in the claim petition).

8. As regards the oral evidence, Saroja Devi (P.W. 1) and Arvind Kumar (P.W. 2) were examined on behalf of the claimant-Respondent Nos. 1 and 2 while the Appellant examined Virendra Singh (D.W. 1).

9. Issue No. 1 was decided by the Tribunal in the affirmative in favour of the claimant-Respondent Nos. 1 and 2. It was held that the Roadways Bus in question, namely, Bus No. U.P.-93-E-7847 was involved in the accident which caused injuries to the said Jitendra on account of which the said Jitendra died.

10. The Tribunal referred to the statement of Arvind Kumar (P.W. 2) who was an eye-witness of the accident. In his statement, the said Arvind Kumar stated that when after finishing his Job at about 11.40 p.m. on 9.6.2008, he was coming from Nebal Road Bus Stand towards Katra Bal Singh, he saw that as soon as the said Jitendra Kumar reached the road, the driver of the aforesaid Roadways Bus No. UP-93-E-7847 driving rashly and negligently hit the said Jitendra who was standing on the road-side, and as a result, the said Jitendra was seriously injured. The said Jitendra was taken to the District Hospital, Etawah where he died after some time.

11. The driver of the aforesaid Bus in question, namely, Virendra Singh was examined on behalf of the Appellant as D.W. 1. In his cross-examination, the said Virendra Singh admitted the involvement of the aforesaid Bus in question in the accident.

12. Further, the documentary evidence, which was brought on record, included "panchayatnama" and post-mortem report.

13. In view of the oral and documentary evidence led in the case before the Tribunal, we are of the opinion that the involvement of the aforesaid Bus in question in the accident which resulted in the death of the said Jitendra, is fully established, and the Tribunal was correct in recording the finding on Issue No. 1 in the affirmative in favour of the claimant-Respondent Nos. 1 and 2.

14. As regards Issue No. 2, the Tribunal did not accept the version of the claimant-Respondent Nos. 1 and 2 that the deceased Jitendra had been earning Rs. 100 per day. Instead, the Tribunal adopted Rs. 15,000 per year as the notional income of the deceased Jitendra for computation of compensation.

15. The age of the deceased Jitendra at the time of the accident was taken to be 15 years on the basis of the age of the claimant-Respondent No. 1, that is, the mother of the deceased Jitendra.

16. 1/3rd of the notional income of Rs. 15,000 was deducted towards personal expenses of the deceased Jitendra, and accordingly, Rs. 10,000 per year was taken as the dependency of the claimant-Respondent Nos. 1 and 2 on the income of the deceased Jitendra.

17. As the age of the deceased Jitendra was taken to be 15 years at the time of the accident, multiple of 15 was adopted by the Tribunal.

18. Compensation was accordingly computed as $10,000 \times 15 = 1,50,000$. Rs. 2,000 was awarded towards funeral expenses, and Rs. 2,500 was awarded towards loss of estate. Accordingly, the Tribunal awarded Rs. 1,54,500 with interest @ 6% per annum from the date of presentation of the claim petition till the date of actual payment.

19. It is submitted by Sri Lallan Verma, learned Counsel for the Appellant that the Tribunal erred in accepting Rs. 15,000 per year as the income of the deceased Jitendra.

20. Having considered the submission made by Sri Lallan Verma, we find ourselves unable to accept the same.

21. As noted above, the claim petition was filed by the claimant-Respondent Nos. 1 and 2 u/s 163A of the Motor Vehicles Act, 1988.

Section 163A is reproduced below:

163A. Special provisions as to payment of compensation on structured formula basis.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.--For the purposes of this Sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the official Gazette, from time to time amend the Second Schedule."

22. Sub-section (1) of Section 163A thus, inter alia, provides that the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-section (2) of Section 163A, inter alia, provides that in any claim for compensation under Sub-section (1) of Section 163A, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

23. It will thus be noticed that the liability for payment of compensation u/s 163A of the Motor Vehicles Act. 1988 arises in case the death or permanent disablement is caused due to accident arising out of the use of motor vehicle. Negligence is not required to be pleaded or established in case the claim for compensation is made u/s 163A of the Motor Vehicles Act, 1988. What is required to be established is that the vehicle in question was involved in the accident, and the death or permanent disablement took place on account of such accident.

24. Compensation in a claim petition filed u/s 163A is to be determined on the basis of the Second Schedule to the Motor Vehicles Act. 1988. Item No. 6 of the Second Schedule deals with the "notional income for compensation to those who had no income prior to accident".

25. Clause (a) of item No. 6 deals with non-earning persons, and provides that in case of non-earning persons, the notional income would be taken to be Rs.

15.000 per annum in cases of "fatal and disability in nonfatal accidents".

26. It will thus be noticed that even when the deceased was a non-earning person. Rs. 15.000 per annum is to be taken as his notional income for determination of compensation. The Tribunal having rejected the version of the claimant-Respondent Nos. 1 and 2 regarding the income of the deceased being Rs. 100 per day, adopted Rs. 15,000 per annum as the notional income of the deceased Jitendra. In our view, the Tribunal has not committed any error in adopting the minimum notional income as provided in the Second Schedule for determination of compensation on account of the death of the said Jitendra in the aforementioned accident.

27. As regards the finding on the age of the deceased Jitendra at the time of the accident, the Tribunal has pointed out that as per the identity card issued by the election commission, the age of the claimant-Respondent No. 1 (mother of the said Jitendra) was recorded as 22 years as on 1.5.1995, and accordingly, the age of the claimant-Respondent No. 1 at the time of the accident was 35 years. In her cross-examination, the claimant-Respondent No. 1 stated that her marriage took place about 20-22 years ago, and her age at the time of her marriage was 15 years. Thus, according to her own statement, her age at the time of the accident was 35-37 years as her marriage took place 20-22 years ago according to her own statement. The age of the deceased Jitendra was, therefore, rightly taken to be 15 years by the Tribunal. Accepting the age of the deceased Jitendra as 15 years at the time of the accident, the multiplier of 15 was adopted by the Tribunal as per the Second Schedule to the Motor Vehicles Act, 1988. The Tribunal, in our view, has not committed any error or illegality in computing the compensation.

28. An amount of Rs. 2,000 has been awarded in respect of funeral expenses and an amount of Rs. 2,500 has been awarded in respect of the loss of estate, and the same are in accordance with the Second Schedule to the Motor Vehicles Act. 1988.

29. In view of the above discussion, we are of the opinion that the award given by the Tribunal does not suffer from any error or illegality. The appeal filed by the Appellant lacks merits, and the same is liable to be dismissed at the admission stage itself.

30. The appeal is accordingly dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.

The amount of Rs. 25.000 deposited by the Appellant while filing the present appeal will be remitted to the Tribunal for being adjusted towards the amount payable under the impugned award.