(2011) 07 AHC CK 0082

In the Allahabad High Court

Case No : F.A.F.O. No''s. 677 and 547 of 2009

Uttar Pradesh Road Transport Corporation APPELLANT

Vs

Smt. Mithlesh Kumari RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 5 AWC 4673

Hon'ble Judges : Satish Chandra, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dr. Satish Chandra, J.—Both these appeals have been filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 27.2.2009, passed by the Motor Accident Claims Tribunal/Additional District Judge-Court No. 2, Unnao in M.A.C. No. 72/2006 where a compensation of Rs. 1,72,000 (Rupees one lacs seventy two thousand) was awarded in favor of the claimants-respondents along with interest.

2. The brief facts, in narrow compass, are that on 23rd of March, 2005, deceased Shailendra (hereinafter referred to as ''the deceased'' for short) was travelling in U.P.S.R.T.C. Bus No. 32T/6546 from Lucknow to Bashiratganj. at the midnight when he was alighting at Bashiratganj, suddenly the driver has started the Bus and due to jerk, the deceased has fallen down and was crashed by the Bus. He died on the spot. The deceased was earning Rs. 3,000 (Rupees three thousand only) per month from M/s. Deep Wines. He was aged about 25 years, but in the absence of the income proof, the learned Tribunal has taken the notional income of Rs. 15,000 (Rupees fifteen thousand only) per annum and applied the multiplier of 17 and finally, the compensation was awarded for Rs. 1,72,000 (Rupees one lacs seventy two thousand only). Not being satisfied, both the parties have filed appeals before this Court.

3. With this background, the learned counsel for the appellant (U.P.S.R.T.C.) submits that there was no Bus bearing No. U.P.-32T/6546 in the fleet of U.P.S.R.T.C. He further submits that some Samrendra alias Tinku. who informed about the accident and death of the deceased, was also travelling in the same Bus, so there is every possibility that the ticket produced by the respondents belongs to Tinku. According to him, the learned Tribunal has failed to appreciate that even in the charge-sheet dated 25.6.2006, the police authorities have mentioned the Bus No. U. P. 32 T/6546, which cannot be denied and ignored by the learned trial court and cannot be resumed by the Court that the number of the Bus was U.P.-32Z/6546. No source was disclosed to mention the Bus number.

4. On the other hand, learned counsel for the opposite parties submits that the learned Tribunal has wrongly taken the notional income of Rs. 15,000 (Rupees fifteen thousand only) per year which is too meager. He prays that the compensation may be enhanced.

5. After hearing both the parties and having perusal of the records, it is an undisputed fact that on 23rd March, 2005, the deceased died in the midnight when he was alighting at Bashiratganj Bus Stop. The submissions of the learned counsel for the appellant (U.P.S.R.T.C.) is that the said Bus number is not in the fleet of the U.P.S.R.T.C. but fact remains that a co-passenger Tinku was also travelling by the same Bus. From the deceased''s pocket a ticket number of the U.P.S.R.T.C. bearing No. GXG-1142697 (Exhibit-21 Kha) was found. Further, the driver Raj Bahadur Singh got released the bus from the police custody after depositing the bonds of Rs. 20,000. Two surety of Ram Singh and Surendra have also furnished bonds of Rs. 20,000 (Rupees twenty thousand only) each for the release of the driver separately. Thus, the U.P.S.R.T.C. bus was involved in the accident. Regarding the bus number which was noted down wrongly, it appears that there is a dispute whether it was a ''T'' or ''Z'' but fact remains that all other figures except ''T'' or ''Z'' are same. Without going to the technicalities, from the entire evidence it is proved that the U.P.S.R.T.C. Bus in question was involved in the accident by which the deceased died on the spot.

6. In view of the above, we find no reason to interfere with the impugned award/ order passed by the learned Tribunal where it was held that the appellant (U.P.S.R.T.C.) is responsible for paying the damages on the death of deceased Shailendra on 23.3.2005.

7. Regarding the cross-appeal filed by the claimants, it may be mentioned that Hon''ble Supreme Court in the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, laying the principles posited :

Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e. on account of injury the claimant may not be able to walk, run or sit : (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship. discomfort, disappointment, frustration and mental stress in life.

8. In the instant case, keeping in view the peculiar facts and circumstances of the case, the Tribunal has awarded a lump-sum compensation of Rs. 1,72,000 (Rupees one lacs seventy two thousand) only. The deceased Shailendra was aged about 25 years. Since no proof of income was submitted, the notional income was taken at the rate of Rs. 15,000 (Rupees fifteen thousand only) per annum, but, as per the ratio laid down in the case of Laxmi Devi and others v. Mohammad Tabbar and another, 2008 (2) TAC 394 : 2008 (3) AWC 2346 (SC), the notional income should not be less than Rs. 3.000 (Rupees three thousand only) per month.

9. Accordingly, in case the income of the deceased is assessed at the rate of Rs. 3,000 (Rupees three thousand only) per month and l/3rd is deducted in lieu of personal expenses, the net income shall be Rs. 2,000 (Rupees two thousand only) per month, i.e. Rs. 24,000 (Rupees twenty four thousand) only per year. Since the deceased was aged about 25 years, so the multiplier of 17 will apply under Schedule II of the Motor Vehicles Act. Thus, the compensation will come to Rs. 4,08,000 (Rupees four lacs eight thousand) only. In addition, the claimants are also entitled for 2,000 (Rupees two thousand) only as funeral expenses; Rs. 2,500 (Rupees two thousand five hundred) only for loss of Estate, and Rs. 5,000 (Rupees five thousand) only as loss of consortium. Thus, total compensation comes to Rs. 4,17,500 (Four lacs seventeen thousand and five hundred). The claimants-respondents are entitled to get it from U.P.S.R.T.C.

10. Accordingly, the Appeal No. 677 of 2009 filed by the appellant (U.P.S.R.T.C.) is dismissed; and Appeal No. 547 of 2009 filed by the claimants-respondents is allowed. The impugned award dated 27.2.2009, passed by the Motor Accident Claims Tribunal, Unnao is accordingly modified. The claimants-respondents are entitled to the compensation of Rs. 4,17,500 (Rupees four lacs seventeen thousand five hundred) only in terms of the impugned award. Appeal for the enhancement of the compensation is allowed. The claimants-respondents shall also be entitled for the interest as rightly observed by the learned Tribunal in its impugned award/order.

11. The registry of this Court is directed to remit the amount deposited in this Court, if any, to the concerning Tribunal, who will proceed in terms of the above

observations and according to the impugned award pertaining to the above-mentioned amount.

No cost.

