
(2013) 03 AHC CK 0264

In the Allahabad High Court

Case No : First Appeal from Order No. 677 of 2013

Uttar Pradesh State Road Transport Corporation

APPELLANT

Vs

Amardeep Mishra and Another

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Motor Vehicles Act, 1988 — Section 166

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2013) 4 ALJ 292 : (2013) 3 AWC 2820

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

Bench : Division Bench

Advocate : S.K. Mishra, for the Appellant; H.C. Mishra and R.K. Singh Gaharwar, for the Respondent

Final Decision : Dismissed

Judgement

1. This first appeal from order has been filed by the UPSRTC through its Managing Director, Head Office, UPSRTC-Lucknow/owner of the bus No. UP-78 BN 1791. The appellant has challenged the validity and correctness of the award dated 20.12.2012 passed by MACT/Addl. District Judge, Court No. 3, Jhansi in MACP No. 67/2010, Amardeep v. UPSRTC. By means of the aforesaid award the Tribunal has allowed the claim petition of the claimants awarding a sum of Rs. 5,16,800/- with 7% simple interest from the date of presentation of the claim petition till its actual date of payment. The claim petition was preferred by Amar Deep Mishra against the UPSRTC u/s 166 of Motor Vehicles Act saying that on 15.04.2009 he had gone to Lucknow for participating in marriage along with his relatives Chanchal and Bindeshwari. On 18.04.2009 at about 9.30 p.m. when he was returning from Jhansi by bus No. UP-78 BN 1791 the driver of the bus was driving it in a very rash and negligent manner, due to which the bus fell in a pit. Many passengers along with him in the bus were injured. The appellant also suffered grievous injuries in his back bone. Smt. Bindeshwari Mishra suffered a fracture in her hand and their belongings were scattered. The appellant received

medical treatment at Medical College, Jhansi and he also underwent treatment from a Neurologist, Eye Specialist etc. and ultimately referred to Delhi for treatment, where he was treated in AIIMS and operated on 14 & 15th May, 2009 and he is still under treatment of AIIMS, New Delhi.

2. It appears that FIR of the accident was not registered by the police hence his relatives moved an application u/s 156(3), Cr.P.C. Pursuant to the order passed by the Court the case crime No. 21/2010, under sections 279 and 338, IPC was registered against Brijesh Kumar the driver of the bus bearing registration No. UP-78 BN 1791.

3. It was claimed by the appellant in the petition that due to the injuries he suffered 65% disability as doctor has found that he was suffering from "Paraplegia", lie also claimed that he was doing his own business in which he was earning about Rs. 1,50,000/- per year and Rs. 1,00,000/- per annum from agriculture. He also claimed that he had already spent about Rs. 5,00,000/- on his treatment and about Rs. 4,00,000/- would also be spent in near future as he has suffered permanent disability due to the injuries suffered in the aforesaid accident. The appellant in support of his claim had filed ITRs and PAN card etc.

4. The claim was contested by the appellant UPSRTC through Managing Director. It was claimed by the appellant before the Tribunal that claimant-respondent was even not among the passengers on the said bus making the journey, therefore, his claim is not sustainable in the eyes of law. It was also stand of the appellant that driver of the bus was competent and authorized to drive the bus and driving the same with utmost care and the accident as alleged has not been caused due to his negligence. Regarding "Paraplegia" it was stated that it may be caused due to various reasons including Tuberculosis of spinal cord and upholding the appellant to be responsible by the said problem by the Tribunal is not sustainable as this was not caused in the accident and in any case no documentary evidence has been filed by the claimant in support of his contention that he has suffered the aforesaid deceased in the accident.

5. In the aforesaid background the Tribunal by the impugned award held the appellant to be liable for payment to the claimant who had suffered 65% disability due to "Paraplegia", which also caused permanent disablement. The appellant was earning about Rs. 3,000/- per month and applying the multiplier of "17" on his age between 30 - 35 years of age, calculated compensation of Rs. 3,97,800/- in addition to other expenses, total amounting to Rs. 5,16,800/-.

6. The contention of the learned counsel for the appellant is that the Tribunal has not applied its judicial mind while passing the impugned award dated 20.12.2012 as Tribunal has failed to consider the evidence on record and adoption of multiplier of "17" is not justified in the facts and circumstances of the case, as such the amount awarded is excessive and disproportionate, particularly when there is no evidence to connect the injuries of the claimant with the alleged jerk received by him in the journey on the bus.

7. The contention of the learned counsel for the appellant is that claimant was not a passenger of the bus is against the findings as well as evidence on record. It has been specifically recorded by the Tribunal that not only the claimant but other passenger had also received injuries. The appellant was a passenger in the bus bearing registration No. UP-78 BN1791 involved in the accident, which was being driven in a rash and negligent manner by its driver. The wheels of the bus had gone into a pit causing a severe jerk which caused "Paraplegia" in the spine of the appellant. The appellant did not file any contra evidence or material or even produced any witness to prove that the claim of the appellant was false. Per contra the claimant has filed medical bills regarding his treatment right from Medical College, Jhansi where he was provided first treatment. There is sufficient evidence to connect the medical condition of the claimant that the alleged jerk received by the claimant in his journey on the bus. Had the driver not been driving the bus in rash and negligent manner the jerk would not have been caused by injuring the spine of the claimants. As regard the multiplier is concerned the appellants age was about 32 years, therefore, multiplier of "17" was justified.

8. The permanent disability of the claimant to the extent of 65% is also based on cogent, reliable, oral and documentary evidence.

9. The alleged agricultural income and the ITR for the year 2009-10 has been discarded by the Tribunal. In the absence of proof of income of claimant, his monthly income of Rs. 3,000/- has been taken which is not excessive or arbitrary. For all the reasons stated above, the appeal sans merit and is accordingly dismissed.