
(2019) 05 UK CK 0177

In the Uttarakhand High Court

Case No : Appeal from Order No. 584 Of 2015

Uttar Pradesh State Road Transport Corporation

APPELLANT

Vs

Yashoda Devi And Others

RESPONDENT

Date of Decision : 15-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Sections 140, 166
Indian Penal Code, 1860 — Section 279, 338, 427

Citation : (2019) 05 UK CK 0177

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Monika Pant, D.C.S. Rawat

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The present Appeal from Order arises out of the judgement and award dated 8th September 2015, as rendered by the learned Motor Accident Claim Tribunal / Additional District Judge, Kotdwar District Pauri Garhwal, Yashoda Devi and another v. Uttar Pradesh State Road Transport Corporation and another. By virtue of the award in question, which is under challenge, the learned Motor Accident Claim Tribunal had awarded the compensation to the tune of Rs. 7,53,720/- to the claimants/ respondents, which is the subject matter of challenge in the instant Appeal from Order at the behest of the appellant on various grounds, which has been narrated in the body of the Memorandum of Appeal.

2. The precise case, as involved in the instant case is that it was the case of the claimant/respondent before the Court below that while invoking the jurisdiction under Sections 166/140 of the Motor Vehicles Act, 1988 before the Tribunal concerned, she has claimed the compensation of Rs. 21,25,000/- along with interest accruing on it. Precisely, factually the case was further that it was on 12th October 2014 when the deceased Vimal who was pillion rider and was going

on a motorcycle, bearing registration No. UK 07 AR5725 from Kangri to Haridwar, his motorcycle met with an accident with the Bus of the Corporation, which was owned by respondent No. 1, bearing No. UP No. 21-N-9260 which was moving from Haridwar towards Najibabad.

3. It is the case of complainant/respondent before the Tribunal that at about 2:30 p.m., when the victim of the accident reached near about Chandi Pul, Haridwar, the bus in question colluded against the motorcycle resulting into the grievous injuries on the person of rider of the vehicle Mr. Bhagat Singh, and Mr. Vimal, who was riding as a pillion rider suffered with the grievous injuries. It is the case of the claimants that looking to the gravity of injuries, which has been suffered by the deceased Mr. Vimal initially he was provided with the treatment at CMI Hospital, Dehradun, then he was referred to Doon Hospital and ultimately to the Government Hospital at Kotdwar, where on 18th October 2014, he succumbed to his injuries on account of the accident in question.

4. As per the pleadings raised in the claim petition, it is an admitted case that late Mr. Vimal, was unmarried and was of 28 years of age, on the date of accident. According to the pleadings further it was contended that late Mr. Vimal, was profitably engaged in an agricultural work and was having a dairy and was also indulged in imparting tuitions. As a consequence to the aforesaid engagements, he used to earn about Rs. 14000/- per month and on account of his untimely death, the claimants, who are the parents of the deceased Vimal had contended that they have lost the main bread winner of the family and hence they have claimed that considering the age of the deceased, his life expectancy, probable spurt in income of the deceased which was to happen in near future and from various allied expenses which were incurred during the course of the treatment and in conducting the funeral, the claimants have raised a claim of Rs. 21,25,000/- by way of compensation.

5. The claim petition, as preferred by the claimant was opposed by respondent No. 1 by filing a written statement paper No. 11 [k, apart from denying claim petition allegations and the quantum of claim raised by the claimants, it was contended by the appellant who was the respondent No. 1, before the learned Motor Accident Claim Tribunal. That at the time when the accident has chanced, one Mr. Moolchand Sharma was driving the vehicle and at the time of the accident it was contended in the pleadings that the vehicle which belonged to the appellant was being driven by Mr. Moolchand Sharma with utmost caution and care as per the rules and no traffic rules were violated or any such violation have been committed by him which ever contributed to the occurrence of the accident on 12th October 2014 by the Bus No. UP 21-N-9260 which was driven by him. It was contended that rather the rider of the Motorcycle had ridden the Motorcycle in rash and negligent manner.

6. It was further pleaded by the appellant that the driver of the bus or the appellant cannot be harnessed with the liability to pay the compensation for the reason that it was rather the motorcycle which colluded against the bus from the

wrong side of the vehicle and on account of the collusion. the vehicle i.e. the motorcycle in question, got badly damaged since being crushed by the movement of the bus in question. The claim petition of the respondent was also opposed by the written statement submitted by the driver of the vehicle, who contended in his written statement filed as paper number 16 (kha), that though he admits that the accident did occurred on 12th October 2014, but the responsibility of the same cannot be attributed to him, because while he was taking the bus from Haridwar to Najibabad, the motorcycle, which was coming from the opposite direction was being driven rashly and negligently by its rider which has resulted into the accident at Chandi Pul. Thus the cause of the accident was not due to his negligence of the bus driver, but rather on account of the negligence of the driver of the motorcycle.

7. The opposite party No. 3 i.e. the owner of the motorcycle bearing number UA07AR 5725, which was involved in the accident had too oppose the claim petition by filing a written statement paper number 18 kha, wherein besides accepting the fact of the accident in the additional pleadings raised by the claimants, he has submitted that on the date of the accident, the motorcycle was being driven by him along with all the valid documents and with utmost precaution and the accident was caused as a consequence of the rash and negligent driving of the driver of the bus in question. On the basis of the pleadings raised by the parties to the proceedings, the learned Motor Accident Claim Tribunal had framed as many as three issues for determination of the dispute and for resolving the controversy, which are quoted hereunder:-

6. उभय पक्षों के अभिवचनों के आधार पर निम्न वाद बिन्दु विरचित किये जाते हैं:-

(1) क्या दिनांक 12.10.2014 को श्री विमलसिंह मोटर साईकिल संख्या यूके-07AR-5725 में पीछे बैठकर श्यामपुर - कांगड़ी से हरिद्वार की ओर आ रहा था तो हरिद्वार से नजीबाबाद जा रही बस संख्या यूपी-21एन-9260 के चालक ने उक्त बस को अत्यन्त तेजी व लापरवाही से चलाते हुए गलत दिशा में आकर में समय 2.30 बजे दोपहर स्थान चण्डीपुल के बीच में मोटर साईकिल संख्या यूके-07AR-5725 पर टक्कर मार दी, जिससे उक्त मोटर साईकिल पर सवार विमलसिंह के गम्भीर चोटें आयी और उसका विभिन्न अस्पतालों में इलाज चला तथा दिनांक 18.10.2014 को उक्त दुर्घटना में आयी चोटों के उपचार के दौरान राजकीय संयुक्त चिकित्सालय, कोटद्वार में विमलसिंह की मृत्यु हो गयी?

(2) क्या दुर्घटना के दिन प्रश्रुगत वाहन के समस्त कागजात मय चालक लाइसेंस वैध एवं प्रभावी थे?

(3) क्या याचीगण कोई क्षतिपूर्ति पाने के अधिकारी हैं, यदि हाँ तो कितना व किस पक्ष से?

8. The claimants in support of their contentions, had produced the oral testimony of PW1, Jaipal Singh, PW2, Shiv Charan, apart from it also produced various other documentary evidences were also adduced by the claimant, for example; the copy of the FIR paper number 7 kha, the post mortem report of the deceased Vimal, the documents pertaining to the registration and insurance of the motorcycle in question and the original family register as paper number 22 ga. Besides this, claimants have also submitted various bills and receipts of expenditures, which have been incurred in providing the medical facilities and treatment to the deceased late Vimal before he succumbed to his injuries, which

was placed on record as paper number 28 ga.

9. On the other hand, the defendant/respondents to the claim petition i.e. the appellant herein, had produced the witnesses by way of DW1, Moolchand Sharma i.e. the driver of the vehicle and other documents by submitting a list of documents paper number 13ka, pertaining to the validity of the licence of driving held by DW1 and also all the documents pertaining to the fitness of the vehicle i.e. the bus in question and the communications made by the conductor of the bus with the opposite party No. 1 that is appellant herein. The opposite party No. 3 by way of an evidence, has produce himself as DW2, Bhagat Singh before the Court below.

10. The learned Motor Accident Claim Tribunal, while dealing with issue No. 1 had come to the conclusion that so far as the fact of the accident dated 12th October 2014 is concerned, is a fact which stands admitted by both the parties to the claim petition and also the facts pertaining to the injuries which have been caused to the rider of the motorcycle and injuries suffered by the pillion rider Vimal, which later resulted to the death of late Mr. Vimal, who was the pillion rider. In the argument, it was contended by the appellants that the cause of the death of the son of the claimants was not proved beyond doubt for the reason that the claimant no. 1, who had appeared in the witness box as PW1 has made a categorical statement that she is not the witness of the accident and hence she was not in a position to make any statement as to who was responsible for the accident and on whom the liability could be fixed. Whereas, on the other hand, the prosecution witness Mr. Jaipal, who appeared as PW2, he submitted his affidavit in examination-in-chief and a list of documents by way of paper number 7 kha, which contained the copy of the First Information Report and on scrutiny of the same, the learned Motor Accident Claim Tribunal had come to the conclusion that as per the averments made in the FIR, the opposite party No. 3 Mr. Umesh Singh had lodged an FIR at Kotwali which was registered as Case Crime No. 658 of 2014 under Sections 279, 338, 427 IPC.

11. The defendant/appellant's witness DW1 i.e. the driver of the vehicle, Mr, Moolchand Sharma had also admitted the fact that the accident did chanced and he was arrested from the spot, but the narration of the story as made in the claim petition is not tenable, because it was rather the rider of the vehicle, who had contributed in the accident due to rash and negligent riding of the motorcycle, resulting into the death of Mr. Vimal. The learned Motor Accident Claim Tribunal, after considering the rival contentions and the statements in particular that of DW1 and that of PW1 had recorded the findings to the effect that the accident was caused on account of rash and negligent driving of the driver of the bus. Consequently, on appreciating the evidence adduced by the parties, while recording the findings on issue No. 1 the learned Motor Accident Claim Tribunal came to the conclusion that as per the site plan of the accident, as well as, on scrutiny of the statement of PW2 and DW1, where the factum of the accident stands accepted and proved. It shows that the accident was caused due

to rash driving of the bus by DW1, as the same could be visualised from the scrutiny of the site plan of the accident.

12. Looking to the documentary evidences on record, the learned trial Court came to the conclusion that it was the driver of the bus Mr. Moolchand Sharma, who was held out to be responsible for driving the vehicle in a rash and negligent manner and consequently, it was held that since the vehicle in question i.e. the bus was not insured with the Insurance Company, if at all, any liability is required to be settled by the learned Motor Accident Claim Tribunal that would be required to be met with by present appellant. The learned Motor Accident Claim Tribunal, while considering the issue No. 2, pertaining the validity of the documents of the vehicle involved in the accident had come to the conclusion that as far as both the vehicles are concerned, for example; the motorcycle involved in the incident that is UK07AR 5725 and even from the registration of the document, the licence of the rider of the vehicle Mr. Bhagat Singh, it shows that on the scrutiny of the document, learned Motor Accident Claim Tribunal on scrutiny of documents filed by the parties came to the conclusion that both the vehicles were being driven with all the relevant papers as were required to be carried under law by the two vehicles involved on the date of the accident. Hence, from the conclusion, which has been drawn, it is no one's case that the two vehicles were not involved in the accident and further the accident did not chance on 12th October 2014.

13. But the question which emanated for determination before the learned Motor Accident Claim Tribunal concerned was pertaining to the extent of liability, which could be harnessed upon the appellant No. 1 and paying of the compensation, as would be admissible to the claimant under the provisions of Motor Vehicle Act, 1988. The learned Motor Claim Accident Tribunal, while computing the total salary drawn by the claimant, which was calculated as to be Rs. 4500/- per month and on being multiplied with annual income, it had arrived at Rs. 54000/- had contented that this income as depicted and taken as the basis for determining the compensation was on a lower side, but the same ought to be determined on the basis of the principles, as laid down in the case of *Sarla Verma & Ors vs Delhi Transport Corp. & Anr.* reported in 2009 (III) SCC 708 (SC), as was considered by the learned Motor Accident Claim Tribunal.

14. The learned Motor Accident Claim Tribunal, based its findings on one of the judgements reported in a 2014 SAR (CIVIL) 404, *Syed Sadiq etc. v. Divisional Manager, United India Insurance Company* which was dealing with the aspect as to what would be the impact and the manner with which the amount of compensation could be determined in relation to the deceased person who was unmarried at the time of the accident and also with regard to the aspect that when the deceased, for whom the claim has been raised by the defendants, in case he was engaged in an unorganised sector and the income as determined in the claim if it cannot be proved by him, in what manner the income of the deceased would be calculated. In the ratio as laid down in the case of *Syed Sadiq (Supra)*, the learned Motor Accident Claim Tribunal has made a deduction of 50%

of the amount of the total income which had accrued to the deceased person on the ground that the same must have been utilized by the deceased on his own and the balance 50% was left as to be treated as to be dependency of the claimants.

15. After making the aforesaid 50% deduction, the annual income of the deceased was calculated as to be Rs. 4500/- x 12 i.e. Rs. 54000/- per annum and since for the purposes of determining of the compensation as compared to the age becomes a very prime factor to be considered, the learned Motor Accident Claim Tribunal has placed reliance for the said purpose on a judgement reported in SVV 2012 (4) 248 (SC), Amrit Bhanu Shali & Ors vs National Insurance Co. Ltd. & Ors which has held that as far as the claim, which is required to be determined would be based upon the age of the dependents of the deceased as it has got no relation of its calculation with regard to the age of the claimant since he being unmarried, then the age to be calculated is of the claimants. The learned Motor Accident Claim Tribunal, while applying the multiplier of 17 had determined the compensation on the basis of notional income of the deceased holding it as to be Rs. 27000/-after making 50% deduction. The total income thus was derived as Rs. 4,59,000/- which was held out to be payable to the claimants of the deceased late Vimal Kumar.

16. The learned Motor Accident Claim Tribunal has considered the future prospects of increase in the income of the deceased, for which the amount, which was determined has been shown to be a sum of Rs. 2,29,500/- thus the total income was calculated as to be Rs. 6,88,500/-payable to the claimants. The learned Motor Accident Claim Tribunal also added a sum of Rs. 10,000/- to the total awarded amount, which was determined to have been paid in the cremation of the deceased Vimal Kumar and ultimately, the compensation which was held out to be payable to the claimant to the tune of Rs. 7,08,500/-.

17. The learned Motor Claim Accident Tribunal considered the receipts of the medical treatment, which was conducted at the behest of the claimants at various centres and they have claimed that a sum of Rs. 1,00,000/- was spent on getting the treatment of the deceased Vimal Kumar at various stages, but the learned Motor Accident Claim Tribunal, while considering the list of documents produced by way of paper number 22 (ga) had came to the conclusion that the claimant have only been able to prove that a sum of Rs. 45,220/- which was proved by production of the bill and other vouchers were shown to be payable in addition to the determination of compensation made by the learned Motor Accident Claim Tribunal. Hence, ultimately after adding the aforesaid amount which was spent on the medical treatment, the total amount of compensation which was determined to be payable as to be a total sum of Rs. 7,53,720/- to the claimants.

18. Under the aforesaid backdrop and considering the impact of the ratio of the law as propounded by the judgements quoted therein alone, the learned Motor Accident Claim Tribunal has awarded a total of sum of Rs. 7,53,720/- and while

concluding the same, it has recorded the findings that the accident has chanced due to the rash and negligent driving of the vehicle by Mr. Moolchand Sharma, who is shown to be the driver of the bus belonging to opposite party No. 1 and accordingly the learned Motor Accident Claim Tribunal has, applied the multiplier of 17 as per the Schedule contained under the Motor Vehicle Act, 1988.

19. After having gone through the evidence on record and after hearing the learned counsel for the parties and considering the statements of Mr. Moolchand Sharma, in particular, who admits that the accident did occurred but he tried to shift upon the responsibility with the rider of the motorcycle had utterly failed to prove by any independent eyewitness that the motorcycle rider was being driven by him rashly or negligently by the rider of the motorcycle and thus the amount of compensation as was awarded by the learned Motor Claim Accident Tribunal to the claimant was absolutely just and appropriate, which does not call for any interference by this Court. Accordingly, the Appeal from Order fails and the same is dismissed, affirming the quantum of award as directed by the learned Motor Accident Claim Tribunal.

20. On conclusion of the judgement, the learned counsel for the appellant submits that the interest, which has been awarded by the learned Motor Accident Claim Tribunal in para 28 of the judgement it has directed to pay the interest at the rate of 9% from the date of filing of the petition till the date of the award. This Court is of the view that looking to the directives which has been issued by the RBI Circulars from time to time, the interest rate which has been awarded by the learned Motor Accident Claim Tribunal seems to be on a higher side as it should commensurate to the interest as payable by the bank rates thus the interest, which has been levied @ 9% is being modified only and the claimants would be entitled to receive the interest @ 6% from the date of the application till the date of the actual payment being made to the claimants.

21. Subject to the above limited modification in the interest rate levied. The impugned award stands modified only to that limited extent otherwise the Appeal from Order is dismissed. However, there would be no order as to cost.