

(2008) 11 DEL CK 0020

In the Delhi High Court

Case No : M.A.C. App. No. 459 of 2005 and C.M. No. 8041 of 2005

Uttar Pradesh State Road Transport Corporation (U.P.S.R.T.C.)	APPELLANT
Vs	
Rakesh Tayal, Sh. Anil Kumar and Subhash Chand	RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ILR Delhi 219 Supp

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Neha Goyal, for the Appellant; K.S. Bawa, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By this common judgment, I shall dispose of the above two appeal filed by the U.P. State Transport Corporation.

2. These two appeals have been filed u/s 173 of the Motor Vehicles Act, 1988 (for short as "Act") against the impugned judgment dated 21st February, 2005 passed by the Tribunal vide which it disposed of two petitions, one filed by Rakesh Tayal and the other by Smt. Shobha Tayal, both injured.

3. Brief facts of this case are that the Respondents Rakesh Tayal and Smt. Sobha Tayal, husband and wife, on 30th April, 2003 at about 1.15 p.m. near Chapraula at Ghaziabad (U.P.) met with an accident. Both of them were travelling in Maruti car bearing No. DL-6C-4175 from Dadri to Delhi. It is alleged that Respondent No. 2, Anil Kumar, came from the opposite side driving UP Roadways Bus bearing No. UP-14G-3778 rashly, negligently at a fast speed and hit their car. Due to the impact, both the injured sustained grievous injuries.

4. The Appellant is the registered owner of the bus as well as employer of the Respondent No. 2, whereas Respondent No. 3, Subhash Chander is the owner of the car.

5. Vide impugned judgments, the Tribunal awarded compensation of Rs. 1,59,300/- to injured Rakesh Tayal and Rs. 86,500/- to Smt. Shobha Tayal, along with interest @ 6 % p.a. from the date of filing of the petition till realization.

6. It has been contended by the learned Counsel for the Appellant that the Tribunal erred in concluding that the accident had taken place due to fault of the bus driver, when not even one independent eye witness has alleged that the accident occurred due to sole negligence of bus driver. Further, the claimant had hit the bus on the right side near the rear wheel and as such the claimant is liable for contributory negligence.

7. Other contention is that the Tribunal was wrong in awarding compensation of Rs. 25,000/- towards loss of amenities for a period of five months, since there is no proof to substantiate the evidence, that he was bed ridden for a period of eight months.

8. On the other hand, it is argued by learned Counsel for claimants that the accident took place due to rash and negligent driving on the part of bus driver and site plan clearly corroborate this fact also.

9. Negligence is nothing but a failure to observe precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Not only commission of an act but also an omission to do something which a reasonable man would do or is obligated to do amounts to negligence. Therefore, negligence does not always mean absolute carelessness, but also includes a failure to observe the degree of care and precaution and vigilance duly required under the circumstances which justly warrant. Negligence is a relative and comparative term. No rigid formula and no mathematical ratio could be laid down as to what constitutes negligence under particular circumstances of the accident, but to determine what an act would amount or would not amount to negligence, the test would be whether a prudent and reasonable man would cause damage. In other words, not only an act but also an omission to do an act which the circumstances warrant from a reasonable man's point of view and which the law obliged would constitute negligence.

10. Contributory negligence has been explained by the Apex Court in *The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another*, as under:

To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable

care, have avoided the consequence of the other's negligence. Whichever party could have avoided the consequence of the other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have the power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.

11. In the present case, PW2 Rakesh Tayal testified, that he was driving the car at a normal speed of 40-45KMPH on the extreme left side of the road and the UP Roadways bus came from the opposite side driven at reckless speed and hit his car while overtaking a local TSR. He testified that the bus hit him from little behind the front portion tyres of its driver's side.

12. Anil Kumar as RW1, the driver of the bus in his examination in chief stated that he was not rash and negligent in causing the accident. It was the driver of the maruti car who felt asleep while driving and came on the wrong side of the road and dashed against the bus, on the right rear side of the bus.

13. RW2 the conductor of the bus stated in his testimony that the driver of the bus was not negligent as he was driving carefully and at a slow speed on the correct side of the road. He stated that it as the driver of the maruti car who was at fault as something went wrong with his steering or he felt asleep and thus struck against the middle portion of the bus on the right side.

14. Though the testimony of RW1 is corroborated by the testimony of RW2 but both the driver and conductor were not specific in their written statement, as to the manner and circumstances in which the accident occurred and for the first time, RW1, Anil Kumar, driver of the bus came with the version that driver of Maruti Van was at fault as he had gone to sleep, while driving the car, which came on the wrong side of the road and dashed against the bus on the right rear side.

15. As per the site plan, it is clear that it was the bus driver who was at fault and in the process of overtaking caused the accident.

16. Thus, the contention of contributory negligence by the Appellant is rejected.

17. Regarding the excessive compensation on account of pain and suffering and loss of amenities, in a plethora of cases the Apex Court and various High Courts have held that the emphasis of the courts in personal injury and fatal accidents cases should be on awarding substantial, just and fair damages and not mere token amount. In cases of personal injuries and fatal accidents, the general principle is that such sum of compensation should be awarded which puts the injured or the claimants in case of the fatal accidents matter, in the same position as he would have been, if accident had not taken place.

18. In examining the question of damages for personal injury, it is axiomatic that pecuniary and non-pecuniary heads of damages are required to be taken in to account. In this regard the Supreme Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, has classified pecuniary and non-pecuniary damages and has held that:

Compensation must be "just" and it cannot be a bonanza.

19. The Apex Court in *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 incapable 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.

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20. PW2 has testified that he was bed ridden for a period of about eight months. As per CT Scan/USG report from Maharaje Agarsen Hospital, New Delhi, claimant Rakesh Tayal sustained fracture of roof of acetabulum and also fracture of right inferior pubic ramus. There was also a small infra-articular fracture fragment in the right hip joint with mild posterior pillar of right acetabulum.

21. The Tribunal held on this point as under;

Though there is no medical prescription to substantiate the said evidence, having regard to the nature of injuries, it could be safely said that Petitioner could not

have been able to walk, stand, move around freely for a period of about 3-4 months. The injuries to the acetabulum and pubic ramus must have rendered him incapable of enjoying essential amenities of life thereby depriving him of all the pleasures of life. I, therefore, award him a sum, of Rs. 25,000/-towards loss of amenities of life.

22. Thus, having regard to the nature of injuries, the Tribunal rightly awarded compensation of Rs. 50,000/-on account of pain and suffering and Rs. 25,000/-on account of loss of amenities and I, do not find any illegality or infirmity in the impugned judgment of the Tribunal.

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23. It is argued by learned Counsel for Appellant that compensation of Rs. 25,000/- on account of pain and suffering awarded to the claimant is arbitrary and excessive, as the claimant was bed ridden only for one day.

24. The claimant, Shobha Tayal sustained fracture of Shaft of humerus with internal fixation. She was hospitalized from 30.04.2003 to 03.05.2003 and was operated upon during hospitalization.

25. Apart from fracture, claimant sustained injuries on her legs and abrasions on parts of her body. Thus, keeping in view, the nature of injuries, the Tribunal has rightly awarded compensation of Rs. 25,000/- on this count.

26. The compensation awarded by learned Tribunal to both the injured in these cases is just, fair and equitable and I do not find any infirmity in the impugned judgment.

27. Under these circumstances, both the appeals are hereby dismissed.

28. No order as to costs.

29. Trial court record be sent back.

30. Copy of this judgment be placed in MAC App. No. 465/2005.