
(2013) 07 AHC CK 0056
In the Allahabad High Court
Case No : F.A.F.O. No. 3277 of 2011

Uttarakhand State Road Transport Corporation	APPELLANT
Vs	
Abdul Qayum and Another	RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2014) 2 ALJ 153 : (2013) 101 ALR 62 : (2014) 1 AWC 59

Hon'ble Judges : Yogesh Chandra Gupta, J; Satya Poot Mehrotra, J

Bench : Division Bench

Advocate : M.M. Sahai, for the Appellant;

Final Decision : Dismissed

Judgement

Yogesh Chandra Gupta, J.—Heard Sri M.M. Sahai, learned counsel for the appellant, learned standing counsel and perused the record.

2. By means of the instant appeal the appellant has challenged the Judgment and order dated 5.7.2011 passed by the learned Motor Accident Claims Tribunal/ Additional District Judge, Court No. 1, Saharanpur (herein after referred to as "the Tribunal") in M.A.C.P. No. 174 of 2010.

3. For the purposes of the appeal, facts in brief may be stated thus; that on 16.6.2010 at 10.30 a.m. one Smt. Salma, while on the way on foot, to village Fatehpur Bhado, Saharanpur, in front of the shop of one Manoj, was dashed from behind, by rashly and negligently driven Bus No. U.K. 07/PA 320 owned by Uttarakhand State Road Transport Corporation due to which Smt. Salma succumbed to the injuries on the spot. Her husband and daughter namely; Abdul Qayyum and Km. Arzu aged about one month (at the relevant time) the claimants, herein respondent Nos. 1 and 2, filed application in the Tribunal under Sections 166 and 140 of the Motor Vehicles Act, 1988 (in short "the Act") against the Uttarakhand State Road Transport Corporation, herein the appellant, and The Oriental Insurance Company Ltd., Dehradun claiming Rs. 21,30,000 as compensation and Rs. 50,000 as interim relief in respect of the death of Smt.

Salma and on the amount so awarded, an interest @ 12% from the date of filing the application. It was stated by the claimants, that the dead Smt. Salma was a hale and hearty young lady of 22 years, who had the expertise in domestic work including knitting and weaving work and she was the only bread earner for her husband and the only child. At the time of her untimely death she was earning six to seven thousand rupees per month from her domestic work including knitting and weaving, which was beneficial for her husband and the only child. Arzu, Due to the sudden demise of Smt. Salma, her business was abandoned and there is no one to look after the entire family which caused heavy mental and economic loss to the family.

4. The learned Tribunal after going through the evidence, oral and documentary-made available by the rival parties, arrived at the conclusion that the fatal accident, in which the deceased succumbed to injuries, happened due to rash and negligent driving of the aforesaid bus. Since no definite evidence was given in support of the monthly/yearly income of the deceased, the learned Tribunal, keeping in mind the law as annunciated in the case of Arun Kumar Agarwal and others v. National Insurance Company Ltd., 2010 (2) ACCD 1081 : 2010 (4) AWC 3954 (SC), found it appropriate to assess income of the deceased on the notional basis as provided in the II Schedule, annexed to the Act. It, accordingly, determined the income of the deceased, Salma, as Rs. 15,000 per year, which the deceased could fetch per year. It was further of the view that the victim would have incurred 1/3rd of the income towards her maintenance, if she would have been alive and thus assessed the yearly loss to the claimants @ Rs. 10,000 per year and applying the multiplier of 15, determined the compensation payable to the claimants at Rs. 1,50,000 and on the said amount an interest @ 6% per annum was also awarded by the learned Tribunal to the claimants from the date of filing of the said application. The learned Tribunal also awarded a sum of Rs. 5,000 for the loss of the consortium and a sum of Rs. 2,000 towards funeral expenses of the deceased. It further directed that from the total amount of compensation so calculated, an amount of Rs. 82,000 shall be paid to the husband, claimant No. 1 as compensation and remaining amount of Rs. 75,000 payable to Km. Arzu, daughter of the deceased, shall be deposited in a Fixed Deposit Scheme in any nationalized Bank till she attains adulthood and that shall be paid to her after the said period.

5. As regards, the liability of payment of compensation to the claimants, the learned Tribunal held that the bus-in-question was, of course, insured with the Oriental Insurance Company but it was being run without valid route permit and without valid driving licence, indicating clear violation of the terms of the said insurance policy of the said insurance company, accordingly, the liability of payment of the compensation laid solely on the Uttarakhand Transport Ltd. and not on the said insurance company, therefore, it directed the appellant-Uttarakhand State Road Transport Corporation to pay the aforesaid compensation to the claimants accordingly. Being aggrieved by the aforesaid order, this appeal has been filed by the appellant.

6. Learned counsel for the appellant fortified his arguments by submitting that the bus-in-question was being driven in a slow speed following the traffic rules and the claim petition has been filed on wrong facts. In fact, as soon as the driver of the said bus passed the tractor trolley, being ahead of it, a scooterist tried to overtake the tractor trolley and in the process he lost the balance of the scooter and collided with the tractor trolley, dashing the victim from behind therefore, in the incident there was no fault of the bus driver. Learned counsel for the appellant submitted that this aspect of the matter was not taken into account while passing the order impugned, therefore, the order impugned is bad in law. In furtherance of his argument, the learned counsel for the appellant submitted that as the appellant was having protection of Section 66 of the Motor Vehicles Act and the said Bus was rightfully being driven on a nationalised route, therefore, production of permit of the Bus was not at all necessary and the appellant has wrongly been fastened with the liability to make payment of compensation to the claimants. It was next submitted that as the deceased was having no income, therefore, the proceeding initiated on the basis of notional income was illegal, thus the impugned order passed by the Tribunal is bad in the eyes of law. It was further submitted by the learned counsel for the appellant that as the impugned award is against the weight of oral and documentary evidences available on the face of record, therefore, it is wholly illegal and erroneous and is liable to be set aside.

7. Per contra, learned standing counsel erected his castle of arguments by submitting that statements of P.Ws. 1, 2 and 3 categorically reveal that they are the eye-witnesses of the occurrence and they had seen the deceased standing at the road side and the said Bus rashly going towards Dehradun dashed her from the wrong side. It was further submitted that D.W. 1, driver of the said Bus, has also admitted the date, time and place of the occurrence but denied that it happened due to his rash and rough driving and cooked up entirely a different story to save his skin inserting a scooter and tractor trolley in it, of which he himself failed to describe the necessary details. In furtherance of his statement, he also admitted that he was nabbed by the police immediately within ten minutes of the accident and is also being prosecuted for the said accident in court of law. Learned standing counsel further submitted that from the site plan it is clear that the Bus was moving on the right side instead of left, which clearly indicates that it was on the wrong side, against the traffic rules. Post mortem examination report of the deceased establishes that her on the spot death was caused due to ante-mortem injuries, shock and haemorrhage. It was lastly submitted that the deceased was only about 20-25 years of age at the time of her ill-fated death, therefore, the award passed by the Tribunal is the minimal one, which cannot be said to be excessive in any way. It was further submitted by him that the bus-in-question was being driven against the terms of the insurance policy of the said insurance company, therefore, it was the appellant and not the said insurance company to make the payment of compensation to the claimants.

8. From the record and the judgment and order impugned, it is established that at the relevant time the bus-in-question was being plied rashly, negligently, without route permit and its driver was also not having valid driving licence while carrying passengers in the said bus. This fact further finds support from the ground "D" of the grounds of appeal that no route permit was filed in the Tribunal. The submission is that since the said bus was owned by the Uttarakhand Transport Ltd., the appellant was having protection of Section 66 of the Act and the said bus was rightfully being driven on the national route, therefore, production of permit of the said bus was not at all necessary. Since the bus-in-dispute was being plied for commercial purposes for carrying passengers, in our view, the case does not fall under the provisions of Section 66(3) of the Act and, as such, no protection u/s 66 of the Act can be extended to the appellant for driving the said bus for commercial purposes. In this view of the matter, we do not find any substance in the arguments advanced by the learned counsel for the appellant.

9. Having perused the impugned judgment and order and the evidence as well as considering the submissions made by the rival parties and having regard to the facts and circumstances of the case, especially the fact that on the date of occurrence the driver of the said Bus was not having valid driving licence and route permit and specially finding that the amount of compensation, calculated by the learned Tribunal, is in no way excessive, we find that the Judgment and order dated 5.7.2011 has been passed by the Tribunal with all the prudence and is completely in accordance with law, therefore, it requires no interference by this Court and thus the judgment and order, dated 5.7.2011 passed by the Tribunal, is upheld.

10. The instant appeal has no merit and is, accordingly, dismissed.