

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th July, 2012

+ **FAO 837/2003**

U.P. STATE ROADWAYS TRANSPORT CORPN

..... Appellant

Through: Mr. S.K. Srivastava, Adv.

versus

SHAHNAZ & ORS.

..... Respondents

Through: Mr. J.S. Kanwar, Adv. with
Mr. Mahinder Malhotra, Adv.

+ **MAC.APP. 203/2012**

SHAHNAZ & ANR

..... Appellants

Through: Mr. J.S. Kanwar, Adv. with
Mr. Mahinder Malhotra, Adv.

versus

UP STATE ROAD TRANSPORT CORPORATION & ORS

..... Respondents

Through: Mr.S.K.Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Cross-Appeals (FAO 837/2003 and MAC APP.203/2012) arise out of a common judgment dated 01.05.2003 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹3,30,000/- was

awarded for the death of Abdul Rehman, who died in a motor vehicle accident which occurred on 13.03.1998.

2. During inquiry before the Motor Accident Claims Tribunal (the Claims Tribunal), it was claimed that on the night of 13.03.1998 at about 1:30 A.M., the TSR driven by deceased Abdul Rehman was going towards Telco Point. A bus No.UP-75-B-9204 driven by its driver Karim Khan came from the opposite direction at a fast speed and hit the TSR. The TSR driver (the deceased) suffered injuries which proved fatal.
3. For the sake of convenience U.P. State Roadways Transport Corporation, Appellant in FAO No.837/2003 shall be referred to as 'UPSRTC' whereas Appellants in MAC APP.203/2012, who have filed Cross Objections, shall be referred to as the 'Claimants'.
4. During inquiry before the Claims Tribunal, it was claimed that the deceased was earning ₹4,500/- per month by his driving a TSR and thus, a compensation of ₹10 lacs was sought.
5. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of the driver of bus No. UP-75-B-9204. The Claims Tribunal took the minimum wages of a skilled worker to compute the loss of dependency.

6. It is contended by the learned counsel for the UPSRTC that there was no negligence on the part of the driver of bus No. UP-75-B-9204 as the bus was stationary at the time of the accident and the TSR driver rammed into it. It is urged that even if, the Claimants case is accepted, it was a case of head on collision and thus, there was contributory negligence on the part of the deceased.
7. On the other hand, it is urged by the learned counsel for the Claimants that from testimony of PW-4 Const. Rajender Kumar, an eye witness to the accident it was established that there was culpable negligence on the part of the driver of UPSRTC.
8. The finding on negligence reached by the Claims Tribunal, according to the learned counsel for the Claimants is well reasoned and does not call for any interference. It is urged that the compensation awarded is too meager and inadequate as the deceased's income should have been taken as ₹4500/- per month and addition of 50% ought to have been made towards the inflation/future prospects.
9. It is stated that there were seven dependents, even if father is not considered as financially dependent, there were six dependents on the deceased and there should have been deduction of one-fourth of the deceased's income towards the

personal and living expenses instead of one-third taken by the Claims Tribunal.

NEGLIGENCE

10. The Claims Tribunal dealt with the issue of negligence as under:-

“15. Ex. PW-3/A is the copy of the relevant FIR No. 110/98 u/s. 279/337 IPC registered at PS-Kalyanpuri in respect of the impugned accident. As per this FIR accident took place at about 1.30 a.m. and it was reported without any delay on the same night of 13.3.98. This FIR has been registered on the basis of statement of PW-4 Ct. Rajender of PS-Kalyanpuri. This circumstance clearly indicate that Ct. Rajender of PS-Kalyanpuri. This circumstance clearly indicate that Ct. Rajender was actually present near the spot of accident at the relevant time.

16. In order to prove their claim, petitioners have examined Ct. Rajender as PW-4. He has categorically stated that on the night of 13.3.98 at around 1.30 a.m., he was on patrol duty and was going from the side of Ghazipur red light towards Telco point. In the meanwhile, he saw a TSR going towards the Telco point on the one way road. One bus no. UP-75B-9204 came at a fast speed from the opposite direction and hit the TSR. Consequently, TSR was damaged and the driver sustained injuries. He was taken to hospital in PCR Van. Ct. Rajender Kumar has categorically stated that the accident took place due to negligent driving on the part of bus driver whose name was revealed as Kasim Khan.

17. Involvement of offending bus in the impugned accident is admitted by the respondents. However, according to them at the time of accident, offending bus was standing on the road side near Telco office with

parking lights on and TSR driver rashly and negligently hit the stationary bus. In order to prove this allegation, Kasim Khan driver of the bus has appeared as RW-2 and stated to that effect.

18. I am not inclined to believe the version of RW-2 Kasim Khan firstly because he is an interested witness. Secondly, Kasim Khan has stated that the bus left Anand Vihar terminal at 1.00 a.m. in the light and he stopped the bus near Telco on kachha portion on the left side of the road. He has also stated that the parking lights of the bus were on and the conductor was distributing the tickets. Aforesaid explanation of RW-2 Kasim Khan do not inspire confidence because there was no cogent reason for the driver to stop the bus near Telco office immediately after proceeding with the trip from ISBT Anand Vihar. Learned counsel for respondents have argued that the bus was stopped in order to enable the conductor to distribute tickets to the passengers. I am not inclined to accept this explanation. Had the version of respondent no. 1 being correct, he could easily have examined the bus conductor or any of the passengers to corroborate said version. Respondents have not examined any such witness. Therefore, under the circumstances, I am not inclined to believe the version of RW-2 respondent Kasim Khan. Further, PW-4 Ct. Rajender Singh is a natural witness who was present at the time of accident on patrol duty. He has no relation whatsoever with the deceased or the claimants. Otherwise also he has deposed in a natural manner and his version finds corroboration from the FIR Ex. PW-3/A which was recorded immediately after the accident on the basis of his statement wherein the similar facts are recorded. Further PW-4 Ct. Rajender Singh has withstood the test of cross examination. Therefore, I find no reason to disbelieve him. Believing the version of Ct. Rajender Singh, I conclude that the deceased Abdul Rehman sustained injuries in an accident caused due to

rash and negligent driving of offending bus by respondent No. 1.”

11. Thus, the finding on negligence is well reasoned. It is not believable that a driver would stop the bus in the middle of the road at dead of night simply on the ground that the Conductor was issuing the tickets. Normally, the tickets are issued by the Conductor while the bus is moving. Even otherwise, if the bus was stationary in the middle of the road at the dead of night it would be considered to be sole negligence of the bus driver and not the TSR driver. Moreover, the UPSRTC could have examined the bus conductor or any of the passengers of the bus to prove this fact. In the absence thereof, I find no reason to disbelieve PW-4 Const. Rajender Singh, who was a natural and independent witness as far as this accident is concerned.
12. It is thus, established that the accident took place because of the culpable negligence on the part of driver of UPSRTC bus.

QUANTUM

13. In the Claim Petition, the Claimants averred that the deceased was earning ₹5,000/- per month by plying a TSR. Shahnaz, the deceased widow stated that the deceased used to give her ₹4,500/- per month for household expenses. The Claimants also examined Farid, another TSR driver who deposed that the deceased used to ply the TSR and might be earning ₹200/- to ₹250/- per day.

14. This accident took place in the year 1998 i.e. 14 years back. Admittedly, the deceased was not paying any income tax. Any income beyond ₹40,000/- per annum was subject to income tax. In the circumstances, I would assume the deceased's monthly income to be ₹3125/- @ ₹125/- per day by plying a TSR for 25 days.
15. The deceased was aged about 35 years at the time of the accident. (Per: Postmortem report). In *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, the Supreme Court held that addition of 30% in the income should also be made where there was no evidence of future prospects and the victim/deceased was a self-employed or a person having fixed income. Similarly, there should have been a deduction of one-fourth towards the personal and living expenses instead of one-third taken by the Claims Tribunal. (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121).
16. The loss of dependency thus comes to ₹5,85,000/- (3125/- + 30% x 3/4 x 12 x 16).
17. I would further make a provision of ₹25,000/- towards loss of love and affection and ₹5,000/- each towards loss of consortium, loss to estate and funeral expenses. The overall compensation comes to ₹6,25,000/-.

18. The compensation is thus enhanced from ₹3,30,000/- to ₹6,25,000/- which shall carry interest @ 7.5 % per annum from the date of filing of the Petition till its payment.
19. UPSRTC is directed to deposit the enhanced compensation along with interest with UCO Bank, Delhi High Court, New Delhi within six weeks.
20. On deposit, 10% of the enhanced compensation along with proportionate interest shall be payable to each of the Respondents No.2 to 5 (children of the deceased) Amir Sohail, Sheeba, Shahrukh Khan and Razia; 20% of the enhanced compensation along with proportionate interest shall be payable to Smt. Sharifan, mother of the deceased and rest 40% of the enhanced compensation along with proportionate interest shall be payable to Smt. Shahnaz, the deceased's widow, Respondent No.1.
21. 50% of the amount shall be released to the Respondents/Claimants on deposit and rest 50% of the compensation to be held in fixed deposit for a period of five years in case of children (Respondents No.2 to 5). In case of mother Smt. Sharifan, and Shahnaz, (the Respondent No.1), the fixed deposit shall be for a period of two years.
22. Both the Appeals stand disposed of in above terms.

23. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JULY 18, 2012

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