

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

Date of decision: 1st November, 2012

+ **MAC. APP. 658/2007**

DELHI TRANSPORT CORPORATION Appellant
Through: Mrs. Avnish Ahlawat, Advocate

versus

SMT. SHAKEELA PARVEEN & ORS. Respondents
Through: Ms. Shantha Devi Raman, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The sole question raised for determination in the instant Appeal is whether deceased Zamil suffered death in an accident arising out of use of motor vehicle, that is, DTC bus No.DL-1P-9753
2. The facts of the case are not very much in dispute. Joginder Singh, the driver of the DTC bus was driving the bus from ISBT to Anand Vihar. Some passengers boarded the bus from Shastri Park, Seelampur and Bihari Colony. At about 7:00 A.M., the bus reached near Jagat Puri when the driver heard an alarm that money has been removed from the pocket. The driver also noticed that somebody had placed a knife at his neck. Thereafter, the person (who had held the knife on the driver's neck) commanded the driver to stop the bus. He heard people saying in the rear of the bus that a person had been stabbed. At Karkari Mor (turning), four boys who were armed with knife alighted from the bus. The driver took the bus to Patparganj Bus Depot. A call was made to the police. The

police reached the bus depot where driver Joginder Singh made a statement to the IO on the basis of which FIR No.24 was recorded in Police Station Krishna Nagar.

3. Deceased Zamil was removed to SDN hospital where he was declared brought dead. A Claim Petition was filed by the Respondents No.1 to 4 against the Appellant DTC claiming compensation of ₹7,50,000/-. During inquiry before the Claims Tribunal the Respondents (the Claimants) tried to set up a case that since the bus was taken to Patparganj Depot instead of nearest hospital deceased Zamil died on account of profuse bleeding from the injuries inflicted by the robbers. The fact that the deceased was not taken to the hospital even after the alleged robbers alighted from the bus is not disputed. In fact, it is an admitted case of the parties and formed part of the FIR lodged by Joginder Singh, the driver of the DTC bus.
4. On appreciation of evidence, the Claims Tribunal while relying on *Rita Devi & Ors. v. New India Assurance Company Limited & Anr.* 2000 (5) SCC 113 held that this accident had arisen out of use of a motor vehicle. Since it was a Petition under Section 163-A of the Motor Vehicles Act, 1988 (the Act), the Claims Tribunal accepted the deceased's income as ₹40,000/-, deducted one-third towards personal and living expenses and applied the multiplier of 18 as given in the second Schedule to compute the loss of dependency. The Claims Tribunal awarded overall compensation of ₹5,10,000/-.
5. It is urged by the learned counsel for the Appellant that in *Rita Devi* the compensation was awarded as the victim was covered as a workman

under the Workmen's Compensation Act, 1923. Thus, it is urged that the reliance on *Rita Devi* is misplaced.

6. Mr. Avnish Ahlawat, learned counsel for the Appellant places reliance on the report of House of Lords in *AXN & Ors. v. John Worboys (1) Inceptum Insurance Company Limited (2012) EWHC 1730 (QB)* decided on 25.06.2012 where a taxi driver used to commit rape and rob unwary female passengers who hired the taxi. A number of Claim Petitions were filed against the insurer of the taxi on the ground that bodily injuries were suffered by the victims arising out of use of vehicle on a road. The House of Lords held that the essential character of the journey in question was the use of the vehicle for a criminal purpose and held that the bodily injuries were not suffered by the Claimants "*arising out of the use of the vehicle on a road or other public place within the meaning of RTA 1988, Section 145 (3)(a).*" The judgment cited does not support the Appellant's case. Moreover, the judgment would not be relevant in view of the authoritative pronouncement of the Supreme Court in *Rita Devi*.
7. In *Rita Devi* one Dasarath Singh was the driver of an auto rickshaw owned by Lalit Singh. On 22.03.1995 some unknown passengers hired the auto rickshaw from a rickshaw stand. The said auto rickshaw was stolen and dead body of driver Dasarath Singh was recovered by the Appellants on the next day. The auto rickshaw was never recovered. A Claim Petition was filed by the legal heirs of deceased Dasarath Singh for claim of compensation under the Motor Vehicles Act. The Claims Tribunal allowed the Claim Petition on the ground that there was an agreement between the vehicle owner and the Insurance Company to

compensate the employer of the vehicle. The statutory liability was fastened on the Respondent Insurance Company to pay the compensation.

8. On an Appeal, the Gauhati High Court (Kohima Bench) in M.A. (F) No. 8 (K) 96 took the view that there was no motor accident as contemplated under the Act. The High Court further held that it was a case of murder and not of an accident. The Appeal was accordingly allowed and the judgment and the award made by the Claims Tribunal was set aside. The legal representatives of the deceased auto rickshaw driver preferred an Appeal before the Supreme Court. The Supreme Court relying on *Challis v. London and South Western Railway Company (1905) 2 KB 154* and *Nisbet v. Rayne & Burn, (1910) 1 KB 689* drew distinction between the felonious act which accidentally results in death and a murder simpliciter. It was laid down that if the dominant intention of the felonious act is to kill any particular person then such killing is not accidental murder but a murder simpliciter. While if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder. Paras 10 and 14 of the report are extracted hereunder:-

“10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and

the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

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14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty bound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.”

9. In *Rita Devi* a contention was sought to be raised which is vehemently urged before me that an Insurance Company may be liable to pay the compensation in respect of death of an employee due to a motor vehicle as this would be an employment injury which was negated by the Supreme Court in Para 15. Para 15 of *Rita Devi* reads thus:-

“15. Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word “death” and the legal interpretations relied upon by us are with reference to the definition of the word “death” in the Workmen's Compensation Act the same will not be applicable while interpreting the word “death” in the Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends that on the facts of this case no proximity could be presumed between the murder of the driver and the stealing of the autorickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely,

the Motor Vehicles Act and the Workmen's Compensation Act are in any way different. In our opinion, the relevant object of both the Acts is to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence the judicially accepted interpretation of the word "death" in the Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word "death" in the Motor Vehicles Act also."

10. A similar question fell for consideration before the learned Single Judge of this Court in *United India Insurance Company Limited v. Kanshi Ram & Ors.* 2006 ACJ 492. In the said case, Sohan Lal who was working as a driver with the transport company (owner of the truck) was murdered by the second driver of the truck and goods loaded in the truck were stolen. The learned Single Judge while relying on *Rita Devi* held that no evidence was led by the Appellant Insurance Company to suggest that the dominant purport of Jeet Singh (the second driver) was to kill Sohal Lal and not to commit theft. The Appeal preferred by the Appellant United India Insurance Company Limited in that case was thus dismissed.
11. The present case is squarely covered by the report of the Supreme Court in *Rita Devi* and a judgment of this Court in *Kanshi Ram*.
12. Turning to the facts of this case, admittedly the robbers wanted to rob the passengers. There was an alarm that pocket of a passenger has been

picked. Possibly either there was some resistance or an objection to the act of robbery by the deceased which led to his stabbing by the robbers. Thus, the act of committing robbery was the felonious act intended by the robbers and the act of stabbing or causing death was originally not intended and the same was caused only in furtherance of the act of robbery. Thus, there is no escape from the conclusion that the death of Zamil in the instant case was accidental arising out of the use of bus No. DL-1P-9753.

13. Thus there is no error or infirmity in the impugned judgment. The Appeal is devoid of any merit; the same is accordingly dismissed.
14. Fifty percent of the compensation amount was deposited in pursuance of the order dated 07.11.2007 passed by this Court. Rest of the compensation shall be deposited by the Appellant DTC within six weeks.
15. By order dated 21.08.2008 25% of the award amount was disbursed in favour of the Claimants. Rest of the amount of compensation already deposited and to be deposited shall be disbursed/held in fixed deposit in terms of the order passed by the Claims Tribunal.
16. The statutory deposit of ₹25,000/- shall be refunded to the Appellant.
17. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 01, 2012

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