

**Court No. - 6**

**Case :-** FIRST APPEAL FROM ORDER No. - 412 of 2010

**Appellant :-** Union Of India Through The General Manager  
North Eastern

**Respondent :-** Mohyuddin And Ors.

**Counsel for Appellant :-** Anil Srivastava, Mahendra Kumar  
Misra

**Counsel for Respondent :-** Satendra Nath Rai, U.P.S.  
Kushwaha

**Hon'ble Rajnish Kumar, J.**

1. Heard, Shri Mahendra Kumar Mishra, learned counsel for the appellant and Shri Satendra Nath Rai, learned counsel for the respondent-claimant.

2. There is consensus among learned counsel for the parties that in regard to the accident involved in this appeal, a bunch of appeals the leading of which is Cross Objection No.31 of 2009; Smt. Sadkun and Others Vs. Union of India and Others, have been dismissed by means of the judgment and order dated 30.04.2012, which on reproduction reads as under:-

*"Heard learned Counsel for the parties.*

*On the last occasion, when the case was listed, today's date was fixed, in presence of all parties including Mr. Brijesh Kumar Shukla, learned Counsel for Union of India, but today he is not present and is reported to be on sanctioned leave. As per provisions of Chapter 6 Rule 15 of Allahabad High Court Rules, 1952, with regard to any case being part heard or specifically fixed, cases in which more than one counsel appears for the same party, cases which are not mentioned in list given by the Advocate, cases which are already on the list, misc. cases matters, cases filed prior to 1993 and date fixed and peremptorily listed cases, the leave sanctioned to the Advocates is not available to them and it is the duty of the Counsel for the parties to be present on the date fixed when case is fixed specifically on their requests. Here, in the batch of cases, so many Advocates are appearing. Therefore, we proceed to hear the case finally.*

*Brief facts of the case are that on 30.5.2001 at 13.50 hours, an accident between passenger Train No.175 UP and Bus No.UGP 4138 took place at unmanned railway crossing No.149/C at KM 160/6 situated at the outskirts of Village Bhallia Bujurg. It is said that deceased persons were going to attend the marriage of one Md. Ahmad, S/o late Jahangeer from village Bhallia Bujurg to Village Nausargulria with number of passengers by bus. As said above, an accident took place between the bus and the train and a number of claim petitions were filed before the Motor Accident Claims Tribunal and on different dates, arraying therein the owner of the bus, i.e. UGP 4138, Rizwan Ahmad, S/o Mohd. Irfan, driver of the bus, who was driving the vehicle, at the relevant time, Munne Khan, S/o Abdullah Khan through Rizwan Ahmad, owner of the bus, National*

*Insurance Company Limited and Railway authorities including driver of the said train as respondents. All the claim petitions were allowed and the National Insurance Company and Railways were directed to pay compensation, in the ratio of 60% and 40% respectively alongwith interest as provided in the impugned judgments and orders.*

*Mr.U.P.S. Kushwaha, learned counsel for the Insurance Company submits that on the date of accident, i.e. 30.5.2011, an FIR was lodged by Raza Hussain, uncle of bridegroom, Mohd. Ahmad, at 3.30 p.m. at Case Crime No. 115/01, under Sections 279, 337, 338 and 304-A IPC, PS Haiderabad, District Lakhimpur Kheri. In the said case, charge sheet has also been filed. According to him, charge sheet was submitted against one Satya Prakash alias Monu, driver of bus No.UGP 4138.*

*Further, he states that during the course of investigation, it has come to light that the driver of the bus left the bus on the railway track intentionally as a consequence whereof the passengers of the bus were killed by collision with the train. Since the occurrence in the present case, as evident from the charge sheet filed by the police was a murder and not an accident, the Motor Accident Claims Tribunal has no jurisdiction to hear the case. Further, he states that under Section 168 of Motor Vehicles Act, the Tribunal is statutorily bound to specify the amount to be paid by the owner, driver and insurer. Therefore, all three parties are necessary in the proceedings. Since Satya Prakash alias Monu, driver of bus No. UGP 4138 is not a party in the proceedings, the impugned judgments and awards are illegal. His next submission is that there was no evidence on record to prove that Munne Khan was driving the bus No.UGP 4138 at the time of accident. Therefore, Driving License of Munne Khan was an irrelevant document and the Tribunal has committed an irregularity in exercise of its jurisdiction in holding that the driving license of the driver of bus was valid at the time of accident. Mr. Rajendra Jaiswal and other learned counsel for the claimants submit that while allowing the claim petition, the Tribunal has not correctly determined the compensation amount in the award and further not awarded the interest and compensation from the date of institution of the claim petition, whereas it has been awarded from the date of award. Further, the provisions of second schedule of Section 163-a of the Motor Vehicles Act has not been properly considered. Therefore, the claimants are entitled for Rs.6,50,000/- with 18% interest from the date of institution of the claim petitions.*

*Considered the submissions made by the learned counsel for the parties and perused the impugned judgments and awards. The trial in a criminal case and the proceeding before the Tribunal under Motor Vehicles Act are governed under the provisions of different law and the findings recorded by the police while recording statement under Section 161 CrPC or while filing charge-sheet is not a substantive evidence. It is settled law that the contents in the First Information Report or the statement recorded under Section 161 CrPC are not a substantive evidence. It shall always be incumbent on the concerned party that while relying upon such statement, he or she should also prove the same like other evidence in accordance with the provisions contained in the Evidence Act. The burden was on the appellants Insurance Company and Railways to prove by cogent and trustworthy evidence that the vehicle was being driven by Satya Prakash alias Monu and not by Munney Khan, who was arrayed as respondent in the claim petition by the claimants and during the course of hearing, his*

statement was also recorded where he admitted that he was driving the vehicle in question on the said date. Without any corroborative evidence, the contents of the charge sheet or the statement recorded under Section 161 CrPC or the First Information Report may not be taken as substantive evidence. Moreover, the contents of Section 161 CrPC or the charge sheet are the statement given before the police and lacks evidentiary value unless proved in accordance with law. Accordingly, submission of Mr. U. P. S. Kushwaha to treat the contents of statement recorded under Section 161 CrPC or the charge sheet or the First Information Report as substantive evidence in the case in hand before the Tribunal seems to be misconceived and not sustainable.

However, in order to ascertain the real fact, this Court also summoned the owner, Rizwan and driver Munney Khan of bus No.UPG 4138 respectively and in compliance of the order dated 23.4.2012, they were present and given their statements, which are as under:-

"Sri Rizwan, S/o Mohd. Irfan, R/o Unchi Bhoor, Gola Gokharnath, Lakhimpur Kheri, stated on oath that he is the owner of bus No. UGP 4138, which met with an accident on a railway crossing No. 149/C at KM 160/6 with train No.175 UP on 30.5.2001 at 13.50 hours. The said bus was rented out for carrying barati from village Bhallia Bujurg to village Nausargulria and he had charged Rs.3,000/- for the same. Necessary permit was also issued by the competent authority. At the time of accident, Sri Munney Khan, S/o Abdulla Khan was driving the bus, which met with an accident on the fateful day. Sri Munney Khan is employed and was being paid Rs.2,500/- per month. He further stated that he was working as Driver on the said bus for the last ten years prior to the date of accident. He specifically stated that Sri Munney Khan was driving the vehicle and not Satya Prakash. When a question was put to him that as Sri Munney Khan did not turn up on account of his daughter's death on the said date, in reply, he stated that Sri Munney Khan was driving the vehicle and it is wrong to say that the vehicle was being driven by Satya Prakash. The said allegation is wholly absurd and without any basis."

"Sri Munney Khan, S/o Abdullah Khan, R/o Mohalla Idgah, Lakhimpur Kheri, stated on oath that he was driving the bus No. UGP 4138, which met with an accident on a railway crossing No.149/C at KM 160/6 with train No.175 UP on 30.5.2001 at 13.50 hours. It is correct that his daughter had expired, He further stated that on the fateful day, he was driving the bus which met with the accident. He stated that he got certain injuries for which he was treated by a local doctor."

From the statement of Munney Khan, it is clear that he was driving the bus. The statement of Munney Khan has fully been corroborated by the driver of the bus. Thus, Munney Khan was driving the bus on the fateful day and this fact has also been duly supported by the owner of the bus. We have carefully gone through the impugned judgment and in our view findings on the issue of as to who was the person driving the bus, the award of compensation and the negligence are the findings of fact and we do not find any cogent and convincing reason to disagree with the well reasoned order of the Motor Accident Claims Tribunal. The Tribunal has awarded interest at the rate of 6% per annum on the amount of compensation. It is a discretionary relief granted by the MACT and, in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate.

*In view of the above, we do not find any illegality or infirmity in the impugned judgments and awards. Consequently, all the First Appeal From Orders filed by the Railways Department and National Insurance Company are dismissed. Similarly, the Civil Revisions filed by the National Insurance Company having no force are also dismissed. The cross objections filed by the claimants for enhancement of compensation are also dismissed in view of the fact that the findings recorded by the Tribunal, with regard to determination of compensation did not suffer from any perversity and are perfectly just and require no interference by this Court. Looking into fact that the criminal proceedings are pending disposal, right to recovery granted to the Insurance company shall be subject to ultimate outcome of criminal proceedings."*

3. In view of above and consensus among learned counsel for the parties, this appeal is also **dismissed** in terms of the aforesaid judgment and order dated 30.04.2012.

4. The amount deposited before this Court, if any, in this appeal alongwith the lower court record shall be remitted to the concerned tribunal forthwith and in any case within a period of four weeks from today, which shall be adjusted in payments to claimant-respondents under the impugned judgment and award.

**Rajnish Kumar, J.)**

**Order Date :- 7.8.2024**

Haseen U.