

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal from Order No. 121 of 2020

Uttar Pradesh State Road Transport Corporation Appellant

Versus

Smt. Sushma Mittal and Others Respondents

Present:-

Ms. Monika Pant, Advocate for the appellant, through video conferencing.
Mr. Nivesh Bahuguna, Advocate for the claimants.
Mr. Sachin Panwar, Advocate for the performa respondent.

JUDGMENT

Hon'ble Ravindra Maithani, J.

The instant appeal is preferred against the judgment and award dated 12.12.2019, passed in Motor Accident Claim Petition No. 79 of 2019, Smt. Sushma Mittal and others v. Harendra Singh and others ("the claim petition"), by the court of Motor Accident Claim Tribunal/First Additional District Judge, Rishikesh, District Dehradun ("the Tribunal").

2. Ashok Kumar Mittal ("the deceased") died in a road accident on 21.03.2019. The respondent nos. 1, 2 and 3 ("the claimants- claimant no.1 is the wife of the deceased and claimant nos. 2 and 3 are the children of the deceased") filed the claim petition seeking compensation. According to the claim petition, on 21.03.2019, at 12:45 pm, when the deceased was riding on a scooter bearing Registration No. UP 08-6354 ("the scooter"), and returning to his residence, near Khand Gaon Railway Track, a bus owned by the appellant bearing Registration No. UP 11 T 6461 ("the bus") driven by the respondent no.4 in a rash and negligent manner hit the scooter from behind, due to which the deceased sustained grievous injuries. He was taken to AIIMS, Rishikesh, where he was declared brought dead. As per the claim petition, the deceased was 45 years of age and was hearing Rs. 20,000/- per month, at the relevant time.

3. The appellant did file objections to the claim petition, and denied the averments. In fact, according to the appellant, the accident did not take place due to any act of the bus, instead, two scooters, bearing Registration Nos. UK 08 6354 and UK14 E 2382, were being run in a very fast speed. They tried to overtake the bus, and in that process, they hit each other and the deceased sustained injuries.

4. Based on the pleadings of the parties, the following issues were framed in the claim petition.

- (i) Whether on 21.03.2019, at about 12:40 pm, near Khand Gaon Railway Track, Police Station Rishikesh, District Dehradun, the driver of the bus bearing Registration No. UK 11 T 6461, while driving it in a rash and negligent manner, hit the scooter bearing Registration No. UP 08-6354 from the wrong side, due to which the scooter rider, Ashok Kumar Mittal, died?
- (ii) Whether the accident took place due to contributory negligence of the scooter bearing Registration No. UP 08-6354? If so, its effects?
- (iii) To what relief, if any, the claimants are entitled to?

5. The parties lead their evidence in the claim petition. On behalf of the claimants, Claimant –Smt. Sushma Mittal, as PW1, as PW2, Varun Mittal and PW3 Jitesh Kumar were examined.

6. On behalf of the appellant, DW1, Arvind Kumar, who was the conductor of the bus at the relevant time has been examined. Parties also filed their documents in support of their pleadings.

7. On issue nos. (i) and (ii), the Tribunal held that the accident took place due to rash and negligent act of the driver of the bus. Accordingly, while deciding the issue no. (iii), compensation has been awarded. It is impugned.

8. Learned counsel for the appellant submits that the impugned judgment and award is bad in the eyes of law; the accident did not take place due to any act of the bus driver, instead, two scooters, which were running in a very fast speed, in process of overtaking the bus, collided to each other, and the deceased sustained injuries in that process, and he died; it has been pleaded so by the appellant and DW1, Arvind Kumar, who was the conductor of the bus, has also stated about it. Hence, it is argued that it is a case of contributory negligence.

9. Learned counsel for the claimants submits that the accident did not take place due to any contributory negligence of the deceased; the deceased was not hit by any scooter, instead, it is the driver of the bus, who hit the scooter from behind; in fact, the deceased was riding on a separate scooter and his son, PW2, Varun Mittal, was riding on another scooter. He also argued that had both the scooters been collided, PW2, Varun Mittal would have also sustained any injuries, which he did not. His scooter did not collide with any other vehicle; after the accident, when the father of the PW2, Varun Mittal, was declared dead and his cremation was done, thereafter, promptly the FIR was lodged against the driver of the bus, who had chosen not to appear in the claim petition, and in this FIR, chargesheet has also been submitted. The site plan was prepared by the Investigating Officer, which also shows the place of incident revealing that it is the bus, which hit the scooter driven by the deceased from behind. It is also argued that the impugned judgment

and award is not bad in any manner, and the appeal deserves to be dismissed.

10. It is the pleaded case of the claimants that the deceased was riding the scooter when he was hit from behind by the driver of the bus while driving the bus in a rash and negligent manner. PW1, Sushma Mittal, is the wife of the deceased. She was not present at the place of incident. She is not expected to speak about the genesis of the accident, which allegedly took place on 21.03.2019, when the deceased died.

11. PW2, Varun Mittal, is the son of the deceased, who was riding on a separate vehicle on the date of incident. He has categorically stated that at the time of incident, the driver of the bus drove the bus in a rash and negligent manner and hit the scooter driven by his father from behind, due to which the deceased sustained injuries, and when taken to hospital, he was declared brought dead.

12. The Tribunal has considered the statement of PW2, Varun Mittal.

13. On behalf of the appellant, DW1, Arvind Kumar, has been examined, who was the conductor of the bus. According to him, the accident took place due to collision between two scooters, and the bus has not contributed for the accident. In his cross-examination, DW1, Arvind Kumar, has stated that two scooters collided and one of them fell in front of the bus, though it did not hit the bus. DW1, Arvind Kumar, also states in his cross-examination that he does not have any document to reveal that he had informed about this fact to police at any point of time.

14. Fact remains that PW2, Varun Mittal, has categorically stated that the driver of the bus did hit the scooter driven by the deceased from behind. The driver of the bus did not appear before the Tribunal. He had chosen to remain absent. He was the person to tell as to whether the bus did hit the scooter or not, because if the

statement of DW1, Arvind Kumar, is to be considered, according to him, after collision between the two scooters, once scooter fell in front of the bus, does it mean that thereafter the bus hit it, or did the bus stop suddenly? The best person to speak about it was the driver of the bus. But he did not appear before the Tribunal.

15. The statement of PW2, Varun Mittal, gets corroboration from the police investigation. The FIR was lodged. In fact, the inquest report of the deceased reveals that at the time of inquest also, it was told to the police that the accident took place due to hitting by the bus. The Investigating Officer has also prepared the site plan revealing as to how the scooter was hit from behind. The driver of the bus was chargesheeted.

16. In these proceedings for compensation, the standard of proof is not beyond reasonable doubt. It is preponderance of probabilities.

17. The claimants have been able to prove that the accident took place due to rash and negligent driving of the bus, which hit the scooter driven by the deceased from behind. The deceased sustained injuries, and subsequently he died. No other point has been raised on behalf of the appellant.

18. In view of the forgoing discussion, this Court does not see any reason to interfere with impugned judgment and award. Accordingly, the appeal deserves to be dismissed.

19. The appeal is dismissed.

(Ravindra Maithani, J)
16.04.2026

Ravi Bisht