

\$-15

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

Decided on: 27th May, 2015

+ **MAC.APP. 1169/2013**

**UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION**

..... Appellant

Through: Ms. Garima Prashad, Advocate
with Mr. Shadab Khan,
Advocate

versus

GAURAV AGARWAL

..... Respondent

Through: Mr. Vinod Sharma, Advocate
with Mr. Hitesh Bhardwaj,
Advocate

**CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL**

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 28.10.2013 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.3,72,187/- was awarded

in favour of the Respondent for having suffered grievous injuries in a motor vehicular accident which occurred on 16.03.2008.

2. There is twin challenge to the impugned judgment. It is urged by the learned counsel for the Appellant that the accident occurred on account of sole negligence of the Respondent. In any case, there was at least contributory negligence on the part of Respondent. It is also stated that the compensation awarded is exorbitant and excessive.
3. On the other hand, the learned counsel for the Respondent argues that negligence on the part of the Appellant's driver (Gajender Singh) was sufficiently established. The compensation awarded is also just and reasonable.

NEGLIGENCE:

4. I have the Trial Court record before me. The learned counsel for the Appellant contends that the Respondent was overtaking another vehicle and in that process, he struck against the Appellant's bus bearing no.UP-11-T-0373 and thus, there was

no negligence on the part of the Appellant's driver. In support of his contention, the learned counsel for the Appellant refers to the Affidavit Ex.R1W1/1 of its driver Gajender Singh.

5. I have perused the record. Of course, bus driver Gajender Singh has testified in the Affidavit that the accident occurred as the driver of Wagon-R car bearing no.UP-14-W-9081 was driving the vehicle at a high and uncontrollable speed and while overtaking another vehicle, he hit the front side of the Wagon-R with the bus. But the record speaks to the contrary. The testimony of the Respondent(claimant) is corroborated by the site plan prepared by the police in case FIR No.23/2008 registered against the Appellant's driver which shows that the Appellant's bus had travelled to the wrong side of the road and caused the accident. So much so that testimony of PW-1 as to the manner of the accident *i.e.* the Appellant's bus came at a fast speed in a rash and negligent manner while hitting another vehicle, was not even challenged in the cross-examination. Only a vague suggestion was given that the accident was caused on account of Respondent no.1's own negligence. On analysing

the evidence of PW-1 and RW-1, it is amply clear that it was Gajender Singh, the Appellant's driver, who was responsible for causing the accident. The finding on negligence reached by the Claims Tribunal is well reasoned and logical. The same is accordingly affirmed.

QUANTUM OF COMPENSATION:

6. It is urged by the learned counsel for the Appellant that the award of compensation of Rs.80,000/- towards pain and suffering, Rs.10,899/- towards attendant charges and Rs.39,250/- towards future medical expenses is on the higher side.
7. Immediately after the accident, the Respondent was removed to Yashlok Nursing Home, Roorkee. After first aid, he was referred to Delhi and was admitted in Sir Ganga Ram Hospital on 17.03.2008. He was discharged from the hospital on 31.03.2008. Details of the fracture and the injuries suffered is referred to in para 14 of the impugned judgment, which is extracted hereunder:

“14. I have gone through the material on record. The treatment record dated 16.03.2011 issued by Yashlok Hospital shows that the petitioner suffered fracture left pelvic. The CT report dated 17.3.2008, issued by New Delhi Scan Research Institute shows that petitioner suffered posterior dislocation of the right hip joint, fracture of right femoral head with displaced bony fragment, comminuted fracture involving right posterior acetabulum rim with displaced bony fragments. The investigation summary of Sir Ganga Ram Hospital shows that the petitioner was admitted on 17.3.2008 and was discharged on 31.3.2008.....”

8. From the nature of injuries suffered, the period of admission in the hospital and the period of confinement at home, the award of compensation of Rs.80,000/- towards pain and suffering and Rs.10,899/- towards attendant charges for three months cannot be faulted.
9. With regard to medical expenses, a certificate for removal of plate from the left humerus was placed on record by the Respondent and the same was dealt with by the Claims Tribunal and in para 16 of the impugned judgment it was held as under:

“16.....The petitioner has also placed on record a

certificate issued by Doctor O.N. Nagi, Director Joint Replacement Centre, Sir Ganga Ram Hospital, New Delhi to the effect that petitioner required removal of the plate from left humerus and the estimated cost shown to be 39,250/-.....”

10. Thus, the award of Rs.39,250/- towards future treatment cannot be faulted.
11. In view of the foregoing discussion, it is noted that the appeal is frivolous. The same is accordingly dismissed with cost of Rs.50,000/-. Rs.25,000/- already deposited by the Appellant as statutory amount along with interest shall be paid to the Respondent and shall be treated part of the cost.
12. By an order dated 17.12.2013, execution of the award was stayed subject to deposit of the entire awarded amount and 80% of the amount was ordered to be released to the Respondent in terms of the orders passed by the Claims Tribunal. Balance amount shall be released in favour of the Respondent in terms of the orders passed by the Claims Tribunal forthwith.
13. The balance cost shall be paid to Respondent no.1 within six weeks.

14. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MAY 27, 2015
pst