

\$~R-126

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

Date of Decision: 31.05.2016

+ **MAC.APP. 74/2008 & CM Nos.1679/2008 &1681/2008**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through None

versus

RAVISH CHOPRA

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent was traveling on the pillion of scooter bearing registration No.DL 4SG 5524 (scooter) driven by his friend Sonu on 17.05.2003. At about 3 PM, when the scooter had reached GT Road near Shyam Lal College, there was a collision involving it with bus bearing registration No.UP 15 A 1868 (bus) of Uttar Pradesh State Road Transport Corporation (UPSRTC) resulting in both the first respondent and Sonu (scooter driver) falling down and suffering injuries. Two accident claim cases were filed on 17.01.2004, one (suit No.419/2004) by Uttam @ Sonu and the other (suit No.420/2004) by the first respondent (claimant). In both the claim cases, besides UPSRTC, its employee (driver) Rahimuddin were impleaded as respondents on the averments that the accident had been caused due to negligent driving of the bus by the latter.

2. The tribunal clubbed both the above mentioned cases and held inquiry and thereafter by common judgment dated 26.09.2007 upheld the case about negligence on the part of the bus of UPSRTC. It, however, also held Sonu, the scooter driver, to be guilty of contributory negligence to the extent of 25%. Compensation in the sum of ₹1,18,040/- was awarded in favour of the first respondent and UPSRTC was directed to pay the same with interest. Compensation was also assessed in favour of Sonu but UPSRTC was directed to pay only 75% of the said amount on account of contributory negligence.

3. The appeal at hand was filed by UPSRTC, *inter alia*, raising the issue that owner and insurer of the scooter had not been impleaded as parties, the liability should have been fastened against the scooterist and that there is no reason why similar benefit of contributory negligence was not accorded in the case of the first claimant.

4. On 23.03.2009, it was submitted before the Court that the appeal had been filed on the ground that the insurer (first respondent) was guilty of contributory negligence and therefore, the liability of the appellant should be restricted to 75%. It was also submitted that quantum of compensation was also challenged. The Court noted the substance of the proceedings recorded till then and thereby indicating that the appeal had not been diligently pursued. On 29.04.2009, it came to the notice of the Court that corresponding appeal (MAC.APP.17/2008) arising out of award in favour of Sonu had been disposed of by this Court on 11.01.2008. The file of the said connected appeal was called for and the appellant was directed to confirm whether the award had been satisfied or not. By order dated 18.05.2009, notice was issued on the appeal on the limited ground as to whether the

appellant was entitled to recover 25% of the awarded amount from the joint tort-feasor. By the same order, the appellant was directed to deposit the awarded amount with interest with the tribunal which was given liberty to release it to the claimant (first respondent). The first respondent, however, would not appear in spite of service of notice. The appeal was admitted by order dated 09.04.2010. Thereafter, no one has been appearing for the appellant whenever the appeal is taken up.

5. A copy of the order dated 11.01.2008, in MAC.APP.No.17/2008 is available on record. It shows the appeal against the award in favour of Sonu was dismissed, upon the contention of UPSRTC that his liability should have been fastened to the extent of 50% having been repelled.

6. No one has appeared for the appellant in spite of matter being called out and kept in wait. This appeal is now the oldest appeal on board of this Court. There is no reason to defer it yet again.

7. In the facts and circumstances, the contention raised in the appeal on which limited issue notice was issued cannot be accepted. For purposes of the first claimant, it was a case of composite negligence.

8. Thus, the appeal is unmerited and dismissed.

9. Statutory deposit, if made, shall be refunded only upon satisfaction that the award has been satisfied.

10. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

(R.K. GAUBA)
JUDGE

MAY 31, 2016
VLD