

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2313 of 2015 (O&M)

Date of Decision: 12.12.2017.

Uttarakhand Transport Corporation

.....Appellant

Versus

Gurmeet Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Jaiswal, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for the respondent No.1.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 27.11.2014 passed by the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal').

The present appeal has been filed by the owner of the offending bus i.e. Uttarakhand Transport Corporation and the only issue raised and pressed in the appeal is qua the contributory negligence of the claimant.

On 30.11.2011, claimant Gurmeet Singh aged 30 years was going on his motor cycle bearing registration No.PB-10-DC-7331. He was being followed by his cousin Baljit Singh on a separate motor cycle. At about 8:00 p.m. near Atarsar Gurudwara, VPO Kanech, PS Sahnewal, District Ludhiana, the motor cycle of the claimant met with an accident with bus bearing registration No.UA-07M-7764.

As a result of the accident, the claimant suffered injuries and was taken to the hospital. FIR No. 244 dated 2.12.2011 was registered. As a result of the accident, the claimant suffered 30% permanent disability qua

1988 (for short 'the Act') was filed. The Tribunal awarded a sum of Rs. 8,08,521/- alongwith interest at the rate of 7.5% per annum. The Tribunal held that the accident occurred due to rash and negligent parking of the bus.

I have heard learned counsel for the parties and perused the paper book and the record.

The grievance of the appellant in the present case is that the Tribunal has erred in holding that the accident occurred due to negligent parking of the bus. He contended that the bus was parked on the left side on the kacha portion of the road and it was due to rash and negligent driving of the motor cycle that the accident occurred. His grievance is that the Tribunal has not considered the statement made by the conductor of the bus who deposed as RW1.

Learned counsel for the respondent No.1-claimant (Gurmeet Singh) argued that it was duly proved that the bus was parked in the middle of the road and neither parking lights were on nor the blinkers were on. He contended that there was no piece of evidence to prove the fact that the motor cycle was being driven rashly and negligently. He further relied upon the cross-examination of RW1 and stated that he was ignorant of the fact whether parking lights were on or not.

The only issue which survives in the present appeal is the contributory negligence, as the challenge to the quantum by the appellant failed at the stage of notice of motion itself.

From the reading of the award and perusal of the record, two things are evident; firstly that apart from self serving statement of the claimant, no other witness was produced to prove the negligent parking of the bus. It is important to note that though it was claimed that the cousin of

the appellant namely Baljit Singh was accompanying him along on a separate motor cycle yet for the reasons best known, he never appeared before the Tribunal.

The second fact is that the Tribunal while deciding the issue of negligence has gone by the fact that the driver of the bus has not appeared to deny or to explain the manner of accident. The Tribunal never took in consideration the statement of the conductor of the bus.

From the perusal of the statement of RW1 and its cross-examination, it is clear that the driver could not appear as his kidneys have failed and he was on dialysis. The conductor was there in the bus. He has reiterated the stand taken in the written statement that the bus was parked on the left side, on the kacha portion of the road. But at the same time in his cross-examination, he admitted that he was sitting at the rear seat and had not seen the speed at which the motor cycle was being driven. He further stated that he was not aware whether the parking lights were on or not.

The other side of the coin is that the claimant stated that the bus was parked in the middle of the road and parking lights were not on. He was cross-examined but even in his cross-examination no such statement was made which would make his examination-in-chief as doubtful.

In such circumstance, it would not be appropriate to exonerate appellant, as the involvement of the vehicle is not in doubt. It has not come on record that while parking the bus, the parking lights or the blinkers were on. It remained a dispute whether it was parked on the left side of the road on the Kacha portion or partially on the kacha portion or in the middle of the road.

Be that as it may, it cannot be expected that at around 8:00 p.m.

with the head light of the motor cycle, the claimant was not able to sight the bus at all. In such circumstance, some percentage of contributory negligence has to be attributed to the claimant also. Further the Tribunal erred in ignoring the statement made by RW1, the conductor of the bus simply on the ground that the driver of the bus had never appeared. It was stated that his kidneys have failed and he was under treatment. If there was any doubt the Tribunal could have asked for further evidence.

Hon'ble the Apex Court in case of Raj Rani and others Versus Oriental Insurance Co. Ltd. and others Civil Appeal No. 3317-3318 of 2009, decided on 6.5.2009, where the accident occurred because of a stationery truck with Maruti car in the same manner as in the present case, it was held that the contributory negligence should be 50:50.

In the facts of the present case, without touching the amount awarded under various head, the only amount awarded for compensation of permanent disability of Rs.4,28,400/- is reduced to 50% as it is held that there was contributory negligence of 50:50 of the bus and the claimant. The award dated 27.11.2014 is modified to the extent that the amount awarded of Rs. 8,08,521/- is reduced to Rs. 5,94,321/-.

There was a stay by this Court on compensation beyond Rs. 5,00,000/-. The claimant would be entitled to the balance amount alongwith interest at the rate as awarded by the Tribunal. The interest shall be payable from the date of filing of the claim petition till realization of the amount.

12.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No