

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

+ **FAO No. 283/2007**

% **18th July, 2017**

D.T.C. Appellant

Through: Ms.Avnish Ahlawat and
Ms.Palak Rohmetra, Advocates

versus

SUBHASH CHAND & ANR. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employees Compensation Act, 1923 impugns the judgment of the Employees Compensation Commissioner dated 10.04.2007 by which the claim petition filed by the respondent no.1/driver has been allowed and he has been granted compensation of Rs.1,74,593/- along with interest at 12% per annum. I may note that penalty under Section 4-A of the Employees Compensation Act has not been imposed upon the appellant.

2. The facts of the case are that the respondent no.1 filed the subject claim petition before the Employees Compensation Commissioner pleading that he was employed with the appellant/Delhi Transport Corporation (DTC) as a driver with badge no.15486. It is pleaded that on 01.04.1997 when the respondent no.1 was on duty in bus no. DL-IP-9852 on Delhi-Agra Route, and when the bus had reached after 14 kms from Aligarh, the kamani (bus rod spring) of the bus broke and the bus, therefore, hit a tree resulting in an unfortunate accident. Many passengers also got injured in the accident, who along with respondent no.1 were taken to the hospital at Aligarh. After remaining at Aligarh for one day, respondent no.1 was brought to Delhi. He remained admitted for 60 days in Safdarjung Hospital. As a result of the accident respondent no.1's right leg and hip portion, which were badly smashed due to the accident, could not be cured. Respondent no.1 was 40 years at the time of the accident and was getting salary of Rs.5,000/- per month. Respondent no.1 prayed for compensation of Rs.2,54,304/- to be granted to him along with penalty and interest.

3. The appellant filed a written statement pleading that respondent no.1 was a bad driver having poor past record and the accident had occurred on account of the bus being driven at a high speed, negligently and rashly. It was pleaded that the respondent no.1 hence lost control over the steering which resulted in the bus colliding with the tree and hence the accident. It was further pleaded that the respondent no.1/driver was reimbursed his medical bills as per rules. The appellant hence prayed for the compensation petition to be dismissed.

4. The issue with respect to whether or not respondent no.1 was guilty of negligence resulting in the accident of the bus has been dealt with by the Employees Compensation Commissioner in paras 6 (a) to 6 (e) of the impugned judgment, which paras read as under:-

“6. I have perused the material available on record very carefully and my findings on the issues framed as above are as under:-

ISSUE NO.(I)

(a) The claimant/workman has stated in the claim petition that on 01.04.1997 when he was on duty in Bus No.DL-IP-9852 from Delhi to Agra, due to some technical fault, the Kamani of the bus was broken and the said bus got struck off with a tree, 14 Kms away from Aligarh, resulting in serious injuries to him along many other passengers. The claimant/workman along with injured passengers stated to have been admitted in hospital at Aligarh for one day and thereafter the claimant is stated to have been shifted to Safdarjung Hospital at New Delhi where he remained in Hospital for sixty days. The claimant has further stated that his right leg and hip portion could not be cured and his right leg which was badly smashed was operated at Sharma Nursing Home at Yamuna Vihar, Delhi but he could not be cured.

The claimant has also stated that he has suffered the injuries resulting in damage of his right leg and hip portion in the course and out of his employment with the Respondent and therefore, prayed that the Respondent be directed to pay him compensation amounting to Rs 2,21,004/- along with Rs 20,000/- on account of expenditure on treatment and Rs 10,000/- on account of special diet.

(b) The contention of the Respondent Management is that the claimant/workman was driving the said bus at a very high speed on 01.04.1997 negligently, rashly and without obeying the prescribed limit of speed and hence the petitioner/driver lost his control over the steering of the said Bus which collided with a tree, resulting in death of one passenger-namely Sh. Gauri Shanker Sharma S/o Sh. Kunj Lal. According to the Respondent Management, the accident took place due to absolute rashness and negligence on the part of claimant workman and therefore, they are not liable to pay any compensation to him.

(c) The claimant/workman filed his evidence by way of affidavit (Exbt.WW1/1A) which is corroborative of the claim petition. He was cross-examined by the Counsel of the Respondent but nothing adverse was extracted.

(d) Sh. R.S. Minhas, Depot Manager in G.T.K. Depot and Sh. Madan Pal Singh, T.I., B.B.M. Depot-II filed their evidences on behalf of Respondent Management by way of affidavits, which are Exbt. as RW1/A and RWII/A. They were cross-examined by the Counsel of the claimant. Both the Respondent witnesses have stated in their cross-examination that they did not record the statement of any of the eye-witnesses although they visited the accident spot and the hospital where the injured were admitted Sh. R.S. Mihas, the Respondent evidence, has also stated that he did not remember as to whether he visited the accident spot in the morning, afternoon or evening. He could not even tell as to whether he recorded the statement of the conductor on duty at the time of accident. Both the witnesses have admitted that their reports were prepared in the office and not on the accident spot. Sh. R.S. Minhas(RW1) admitted in cross-examination that he was not aware of the reason for breaking of the front Road spring of the Bus. He has further stated that front Road spring of the bus could be broken by sudden application of break. The reason of the accident in question, according to RW1 is combined with high speed, sudden application of break and breaking of road side spring of the bus. **Last para of the accident report prepared by RW1 and filed along with his evidence by way of affidavit suggests that one tractor driver arrived driving his tractor on his wrong side in front of the bus and to avoid this accident the claimant/driver had taken his bus towards his right side.** The report further suggests that the driver's considerable high speed, road undulant surface, suddenly arriving of tractor ahead of the bus, sudden application of break and breakage of road spring caused the vehicle uncontrollable and all these circumstances were responsible for this

accident. Accordingly this report, there were about sixty passengers travelling in the bus and about 40 passengers sustained minor/major injuries, out of them one passenger died. It is, therefore, clear that still about 20 passengers remained unhurt. The RW1 did not bother to record statement of any of the passengers including the conductor, who were alone the eye-witnesses to the accident and were in a better position to explain the circumstances leading to the accident. There is nothing on record to suggest that any domestic inquiry against the claimant workman was conducted on account of negligence on his part while driving the bus, leading to the accident. According to the Respondent Management damage to the tune of Rs.1,30,000/- was caused to the bus due to this accident but there is nothing on record to show that the said amount or any portion thereof has ever been recovered from the claimant workman. In the facts and circumstances discussed above, to my mind, if the driver/claimant would have been negligent in performing his duty at the time of accident, casualties would have been more than one as one of the important circumstances of the accident as detailed in the report of RW1 is that one tractor from wrong side suddenly appeared before the bus which was being driven by the applicant/workman and if there would have been any negligence on the part of the claimant workman/driver, there would have been more casualties than one only including the driver of tractor who appeared suddenly before the bus from wrong side but the claimant workman/driver saved them on the cost of his remaining life on baisakhis.

(e) In view of the above, discussions and the facts and circumstances of the accident, the claimant/petitioner/workman met on 01.04.1997, while driving the bus No.DL-1P-9852 of the Respondent Management, I hold that the accident in question did not occur due to the negligence on the part of the claimant workman/driver but more casualties seems to have been avoided by him due to his alertness and experienced driving.”

(emphasis added)

5. A reading of the aforesaid paras show that in the report prepared by the witness of the appellant, namely Sh. R.S. Minhas/RW-1, it was found that in the last para of the report given with respect to the accident by Sh. R.S Minhas/RW-1 with his evidence by way of affidavit, that the accident had occurred on account of one tractor driver driving his tractor on the wrong side and thus coming in front of

the bus, and to avoid an accident, the respondent no.1/driver had taken his bus towards right side. The report thereafter concludes that because of respondent no.1's high speed and the sudden arriving of the tractor, the accident occurred. The Employees Compensation Commissioner also notes that no departmental proceedings were initiated against respondent no.1 for his alleged negligence. Accordingly, the Employees Compensation Commissioner has held that it cannot be held that respondent no.1 was guilty of negligence. Respondent no.1 was hence entitled to the statutory compensation and, therefore, claim petition was allowed for a sum of Rs.1,74,593/- along with interest at 12% per annum.

6. I find no illegality or perversity in the aforesaid finding and conclusion of the Employees Compensation Commissioner because the witness of the appellant Sh. R.S. Minhas RW-1 himself gave his report that the main cause of the accident was on account of the tractor being driven on wrong side of the road coming in front of the bus being driven by respondent no.1. Accordingly, the Employees Compensation Commissioner has rightly held that the respondent no.1

was not guilty of negligence and was entitled to statutory compensation.

7. A first appeal under Section 30 of the Employees Compensation Act lies if a substantial question of law arises. If the Employees Compensation Commissioner arrives at a conclusion on the basis of the evidence on record, there cannot be said to have arisen a substantial question of law, because arriving at a conclusion from the evidence on record falls in the realm of the jurisdiction of the Employees Compensation Commissioner.

8. No substantial question of law arises. The appeal is accordingly dismissed.

JULY 18, 2017
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VALMIKI J. MEHTA, J