

\$~R-236 to R-238

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

Decided on: 20th September, 2017

+ MAC APPEAL No. 541/2010

UPSRTC Appellant

Through: Mr. Shadab Khan for Ms.
Garima Prashad, Adv.

versus

PARVEEN Respondent

Through: None.

+ MAC APPEAL No. 584/2010

UPSRTC Appellant

Through: Mr. Shadab Khan for Ms.
Garima Prashad, Adv.

versus

ZAHIR HUSSAIN Respondent

Through: None.

+ MAC APPEAL No. 590/2010

UPSRTC Appellant

Through: Mr. Shadab Khan for Ms.
Garima Prashad, Adv.

versus

MASTER SHANNE ALI Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondents in these three connected appeals were travelling together in van bearing registration no. DL 3CM 0771 (the van) from Delhi to Bareilly on the night of 14.10.2003. It is stated that at about 0430 hours in the area between Shahjaad Nagar and Gharora in UP, the van developed some mechanical problem due to which it had to be parked on roadside. It is at that stage that bus bearing registration no. UP 14 2680 (the bus), concededly of the appellant Uttar Pradesh State Road Transport Corporation (UPSRTC), came from the rear side and hit against the stationary van, causing injuries to all the said three persons.

2. Three accident claim cases (suit nos. 244, 247 and 245 of 2009 respectively) were instituted on 01.02.2010 seeking compensation. The Tribunal held inquiry and thereafter, by common judgment dated 12.03.2010, accepted the case of the claimants about they having suffered injuries in a motor vehicular accident due to negligent driving of the bus by its driver, employee of the appellant. Compensation in each case was awarded, the liability to pay having been fastened on the appellant with interest @ 8 % per annum.

3. These appeals seeking to assail the said common judgment governing the three claim cases were filed and are pressed on the common ground that there was no accident involving the bus and that

the story has been falsely created, it being pointed out that there was no corresponding police case registered.

4. It is noted that in the claim cases of Parveen and Zahir Hussain, they appeared as their own witnesses while (PW-2 and PW-1 respectively), in the case of child Shanne Ali, his father Dabir Hussain (PW-3), appeared as a witness in addition to one Nazir Hussain (PW-2). The appellant, by its written statements, had joined issue by pleading that the case was unfounded, the averments basically being to deny the facts alleged in the petitions. It was, also, added that the bus was on its route from Delhi to Lucknow. The driver of the bus Ganga Prasad (RW1) was examined by the appellant only in the claim case of Zahir Hussain, he deposing on the strength of his affidavit (Ex.RW-1/A). In the said affidavit, he stated that the bus was bound from Delhi to Lucknow and that it had reached Sitapur where it had developed some defect due to bursting of the diesel pipe and, thus, was taken for repairs adding that no accident took place with the bus between Delhi and Sitapur. — Noticeably, when Zahir Hussain appeared as his own witness (PW-1) in his claim case, it was suggested to him that the bus was in a depot since it was under repairs, this in an effort to show that the bus was not even plying on the relevant date and time. Such suggestion was given apparently against own pleadings of the appellant and shows the stand taken in the written statement in poor light. No proof of the repairs arranged for the bus, or the cause thereof, has been submitted in support. Going by the preponderance of probabilities, the repairs could also have been in

the context of damage to the body of the bus that may have been suffered due to collision against the van.

5. For the foregoing reasons, this Court declines to interfere with the finding on the question of involvement of the bus and negligence on the part of its driver.

6. In the context of claim of child Shanne Ali, exception has also been taken to the inclusion of Rs. 1,00,000/- in the award on account of loss of studies. Having perused the record, this Court finds no substance in this plea as well. The evidence of the father (PW-3) of the said claimant shows loss of one year of studies. The award on this account, therefore, cannot be grudged.

7. No other ground was pressed at the hearing.

8. The appeals are dismissed.

9. By order dated 09.09.2010, in each of these appeals, the appellant had been directed to deposit the entire awarded amount and from out of such deposits, 50% (fifty percent) was allowed to be released to the respective claimants. The balance retained in deposits shall also now be released to the claimants in terms of the impugned judgment.

10. The statutory deposits shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 20, 2017

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