

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1730 of 2018 (O&M)

Date of Decision: **August 17, 2018**

UP State Road Transport Corporation

---Appellant

Versus

Bala and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.S.K. Verma, Advocate for
the appellant-UPSTRC.

HARINDER SINGH SIDHU, J.

The owner – Uttar Pradesh State Road Transport Corporation has filed the present appeal challenging the award dated 22.11.2017 of the Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 14.10.2016 in the area of Village Sarai, falling within the jurisdiction of Police Station Sadar Palwal a vehicular accident took place involving UP Roadways bus No.UP-85AJ-9016 (herein for short 'the offending vehicle'), wherein, Dharminder lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the parents of Dharminder, the Tribunal assessed the notional income of the deceased at Rs.9000/- per month, deducted 50% towards his personal expenses, applied multiplier of 18 (deceased aged 18 years). The loss of dependency was

assessed at Rs.972000 (4500x12x18). Rs.25,000/- towards 'funeral and transportation expenses' and Rs.28,000/- under the head of 'loss of love and affection' were also awarded. A sum of Rs.15,000/- was awarded towards medical expenses. In all, compensation of Rs.10,40,000/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – owner has contended that the Tribunal has erred in holding that the accident was caused due to rash and negligent driving of the offending bus. He has also referred to the written statement filed by the appellant before the Tribunal, where a specific stand was taken that no accident took place with the offending vehicle and that a false case had been registered involving the vehicle. It is also contended that the deceased was driving the motorcycle without having any valid driving license to drive the same, as he was below 18 years at the time of the accident. Further, it is argued that the Tribunal has awarded excessive compensation as the notional income of the deceased was taken as Rs.9000/- per month, which is on higher side.

To prove the issue of negligence, the claimants had examined Sunil Kumar as PW2, who had allegedly seen the accident. He deposed by way of affidavit Ex.PW-2/A that the accident was caused due to rash and negligent driving of the offending bus bearing Reg.No.UP-85AJ-9016. There was nothing in his cross-examination which would raise any doubt about his testimony. Further, FIR was registered against the driver of the offending bus, which was investigated and its driver Liyakat Ali – respondent No.3 was charge-sheeted for causing the accident. While appearing as RW1 Liyakat Ali also admitted that he was facing trial in the

criminal case for causing the accident. It also came in evidence that Liyakat Ali never made any complaint to any higher police authority regarding his false implication in the case.

It is well-settled that requirement of proof in a MACT case is not so stringent as in criminal case. The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial and motor accident has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as is required to be done in a criminal trial. It has been stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Accordingly, the finding of the Tribunal on the issue of rash and negligent driving of the offending bus by respondent No.3 is affirmed.

The other argument on behalf of the appellant that since the deceased, who was below 18 years, was driving the motorcycle without having a valid driving license, therefore, he was also negligent in causing the accident, is also without merit. Mere non-holding of a driving license cannot be a ground to draw an inference that the driver of a vehicle was negligent in driving. Such a driver may have committed an offence under the Motor Vehicles Act, but that by itself is not sufficient to conclude that the accident was result of contributory negligence on his part, once the negligence on the part of the driver of the offending vehicle has been proved

by oral as well as documentary evidence.

The Delhi High Court in **Reliance General Insurance Company Ltd. v. Smt. Bilkish (Delhi) 2013(8) R.C.R.(Civil) 336** considered this question and observed:

"11. The learned counsel for the petitioners rebutted the said arguments by saying that merely because the deceased was driving the motorcycle without driving licence it does not ipso facto lead to the conclusion that he contributed to the very cause of accident.

*12. I have heard the parties at length. The Hon'ble Supreme Court of India in a judgment in **Sudhir Kumar Rana Case v. Surinder Singh, Civil Appeal No. 332/08 decided on 06.05.2008. (2008) 12 SCC 436 : (AIR 2008 SC 2405)** have categorically laid down the law in Para No.9, which is reproduced as under:*

"9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

13. In view of the judgment of Hon'ble Supreme Court of India, I do not find any force advanced by the learned counsel for the Insurance Company in his plea regarding the contributory negligence of the deceased and hence the same stands rejected.

14. The deceased Shahrukh was not so small that he could not handle a two wheeler at all. Of course, as per the law driving licence to drive a two wheeler with gear could be issued to a person who is not less than 18 years of age, but unless some evidence was produced by the Appellant Insurance Company to say that there was some negligence on the part of deceased Shahrukh, it could not be said that there was contributory negligence."

The accident had occurred in October, 2016. As per communication dated 21.10.2016 from the Labour Commissioner, Haryana to All Deputy Labour Commissioners in the State of Haryana, the minimum wages for a unskilled labour were Rs.8070.44 paise per month. The

deceased was an able-bodied person and, thus, his notional income could be

assessed accordingly. But at the same time, it needs to be noted that the Tribunal has not awarded any increase on account of future prospects, which as per the settled law, would be 40% in this case. In other words, even if the notional income of the deceased is reduced from Rs.9,000/- to Rs.8070.44 paise per month, after the increase of 40% on account of future prospects, it would come to Rs.11,298.61 paise, which is much higher than Rs.9,000/-. Hence, on this score also, no interference is called for.

Accordingly, there is no merit in the appeal.

Dismissed.

It is made clear that this order has been passed on an appeal filed by the UP State Road Transport Corporation, owner of the offending vehicle, without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

August 17, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No