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

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Decided on: 11.10.2019

+ **MAC.APP. 745/2018**

U.P STATE ROAD TRANSPORT CORPORATION Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates.

versus

SARASWATI BISHT & ANR

..... Respondents

Through: Mr. Manish Sangwan, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 44828/2019

1. This application seeks restoration of the appeal.
2. For the reasons mentioned in the application, it is allowed.
3. The appeal is restored to its original number and seniority.
4. The application stands disposed-off.

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5. This appeal impugns the award of compensation dated 17.05.2018 passed by the learned MACT in MAC No. 168/2016 on the ground that the injury caused to the claimant was entirely on account of her own negligence.

It is the appellant's case that the claimant, alongwith some 150 other passengers, had simultaneously tried to board the bus, which was reversing in the bus-bay, and in the process her leg came under the rear wheel of the reversing bus. The impugned order has dealt with the issue as under:

“7. By the testimony of PW1 Saraswati Bist, it has duly proved that on 30.04.2015, at about 08.20 AM, at Counter No. 133, ISBT Anand Vihar, Delhi, she was waiting for a bus to go Udham Nagar, Uttrakhand when suddenly the offending vehicle bearing No. UP-DT 7732 being driven by Respondent No. 1 caused this accident while driving in rash and negligent manner and she fell down and rear wheel of the bus ran over her right leg. It is further proved that she informed 100 number and her family members removed her to Max Hospital by ambulance where her MLC was prepared, it is further proved that the police lodged an FIR No. 442/15 u/s 279/338 IPC with PS Madhu Vihar against the driver/Respondent no. 1. Driver has been chargesheeted in this case. Police have filed a DAR which comprising of statement of injured which has corroborated that the Respondent No.1 not only caused this accident but also apprehended at the spot alongwith Offending vehicle. FIR was lodged on the basis of the statement of injured in which the which the number of offending vehicle was duly disclosed. Police prepared the site plan which has proved the spot of the accident. The offending vehicle was subjected to mechanical inspection after its seizure and Mechanical Inspection Report has also proved the fresh damage to the offending vehicle which was possible during accident. The offending vehicle was duly seized during the investigation. As such, petitioner has proved the rash and negligent driving of the offending vehicle and casing this accident by the Respondent No.1. The

offending vehicle was owned by the respondent No. 2 which is vicariously liable for the act of its driver.

8. Ld. Counsel for Respondents has argued that this accident took place by the fault of the injured as she tried to board the vehicle during the process of reversing the vehicle by the respondent No. 1 with the help of conductor to park at counter, due to it was not fault of the respondent in causing this accident. However, Respondent No. 1 was well aware being a professional driver of this route that the passengers usually try to board such interstate bus in this manner in order to secure their seats and was supposed to take all due care and caution while reversing the bus to keep away the passengers but he did not take any such precaution which resulted into sustaining injuries by the PW1 during accident. In fact, the accident took place by the rash and negligent driving of the offending vehicle by Respondent No. 1. Injured has proved that this accident was caused by the Respondent No 1 by his rash and negligent driving of the offending vehicle and this Issue No. 1 is decided in her favour and against the Respondents.”

6. What emanates from the above is that the accident immediately was intimated to the police, that it was caused by the rash and negligent driving of the offending bus. A site plan and the DAR were so prepared.

7. The learned counsel for the appellant submits that the testimony of the conductor remains unrebutted to the fact that he was in the rear of the bus and was exhorting the passengers to move away so that the bus could first be parked in the bus-bay and thereafter the passengers could board the bus.

8. Be that as it may, what is to be kept in mind is that when a bus is being reversed to be parked in a bus-bay, especially when there are over 150 people allegedly milling around it, it would have been prudent and indeed

the duty of the bus driver to be extra cautious as to not reverse the bus into a crowd of people allegedly lunging at it. In any case, nobody could have boarded the bus or attempted to board it when the only entry into the bus was through its single door which was closed. The passengers could have endeavoured to get into the bus only when its door was opened, after it had been properly parked into the bus-bay. Surely, the vehicle was reversed into a crowd of people and this reversing resulted in injury to the claimant, this nature of driving is rash and negligent. The Court finds no reason to interfere with the impugned order.

9. The appeal is accordingly, dismissed.

10. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' fund of Delhi High Court.

OCTOBER 11, 2019

AB

NAJMI WAZIRI, J

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