



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

Date of decision: 04th OCTOBER, 2023

IN THE MATTER OF:

+ **MAC.APP. 627/2013**

U P ROADWAYS THROUGH ITS REGIONAL MANAGER

..... Appellant

Through: Mr. Shadab Khan, Advocate.

versus

SMT PONNAM GANDOTRA

..... Respondent

Through: Mr. Shrey Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant/Uttar Pradesh State Road Transport Corporation (UPSRTC) seeks to challenge the Judgment dated 31.01.2013 passed by the Motor Accident Claims Tribunal (MACT), Rohini, Delhi in Petition No.804/09/10.

2. Shorn of details, the facts leading to the filing of the instant appeal are that on 09.04.2009 at about 10:30 PM, the deceased - Rajesh Kumar Gandotra boarded a U.P. State Road Transport Corporation (UPSRTC) bus bearing No. UP 15 AT 3953 from Anand Vihar to Modinagar Bus stand. It is stated that when the bus stopped at the Modinagar bus stand, the deceased de-boarded the bus. However, as the deceased was crossing the road in front of the bus, the driver drove the bus, running over the deceased. It is stated that, thereafter, the deceased was taken to Modi Nagar Hospital where doctors declared him brought dead. It is stated that, thereafter, an FIR



bearing No.154/2009 was registered in respect of the said accident at Police Station Modi Nagar under Sections 279/304A of IPC.

3. It is stated that at the time of the accident, the deceased was 45 years of age and was working with M/s Manohar Filaments Pvt. Ltd, B-59, GT Kamal Road Industrial Area, Delhi and was drawing a salary of Rs.13,100/- per month and bonus since 04.07.2007. A claim for compensation was made against the UPSRTC by filing Petition No.804/09/10 before the Motor Accident Claims Tribunal (MACT). Since the vehicle had not been insured, the Appellant/UPSRTC contested the claim of compensation for payment of compensation under the Motor Vehicles Act, 1988. The Motor Accident Claims Tribunal, Rohini, Delhi *vide* Judgment dated 31.01.2013 directed a payment of Rs.20,07,472/- to the claimants as compensation to be paid by the Appellant/UPSRTC.

4. It is this Judgment dated 31.01.2013 passed by the Motor Accident Claims Tribunal, Rohini, Delhi, which is under challenge in the present appeal.

5. Heard learned Counsel appearing for the Parties and perused the material on record.

6. A perusal of the material on record discloses that on 09.04.2009 at about 10:30 PM, the deceased - Rajesh Kumar Gandotra, boarded a UPSRTC bus from Anand Vihar to Modinagar Bus stand. The deceased is a resident of Modipon Colony, Modi Nagar, Ghaziabad, UP. Material on record further discloses that when the bus reached the Modinagar bus stand, the deceased and PW-3 alighted from the bus. However, as they were crossing the road in front of the bus, the driver started the bus and ran over the deceased, thereby killing him. The Ex.PW3/1 is the complaint given to



the police and PW-3 has proved the documents. The evidence of PW-3 discloses that he and the deceased, who is the brother-in-law of PW-3, were going to Modi Nagar at about 10:30 PM by a UPSRTC bus and when PW-3 and the deceased getting down from the bus, the accident took place. PW-3 states that deceased was taken to the hospital where he was declared brought dead. There is nothing in the cross-examination which shakes the credibility of PW-3 who is the eye witness to the accident.

7. It is pertinent to mention here that the defence taken by the Appellant/UPSRTC is that no accident took place on that date which is belied by the PW-3 and the FIR which was lodged at the instance of PW-3. The version given by the conductor of the bus that no accident took place cannot be accepted in view of the statement of PW-3, the FIR and the cases which have been registered against the driver of the bus.

8. PW-2 is the General Manager of M/s Manohar Filaments Pvt. Ltd. where the deceased was working. It is stated in the evidence of PW-2 that the deceased was working with the said company as Maintenance In-charge and was drawing a salary of Rs.13,100/- per month and was also getting a yearly bonus. The appointment letter of the deceased was also produced and exhibited by PW-2 who was the General Manager of M/s Manohar Filaments Pvt. Ltd. where the deceased had been working. Nothing has been brought on record which disputes this fact.

9. The Motor Accident Claims Tribunal, on the basis of material before it, has calculated the compensation to be paid to the deceased which reads as under:

1) <i>Loss of dependency</i>	-----	<i>Rs.19,07,472/-</i>
2) <i>Funeral charges</i>	-----	<i>Rs.10,000/-</i>



3) Loss of estate	-----	Rs.10,000/-
4) Loss of consortium	-----	Rs.10,000/-
5) Loss of love, company and affection etc.	----	Rs.1,00,000/-
6) Loss of gratuitous services	-----	Rs.20,000/-
Total		= Rs.20,57,472/-

Vide order dt. 27.4.2011, the petitioners were granted Rs.50,000/- as interim award, hence the said amount is deducted from the sum of Rs. 20,57,472/- which comes to Rs.20,07,472/-.

10. The aforesaid calculation has been done as per Section 163(a) of the Motor Vehicles Act, 1988, read with Second Schedule.

11. Learned Counsel for the Appellant/UPSRTC has submitted that the present case is a case of contributory negligence inasmuch as the deceased was trying to cross the road from the front side of the vehicle. However, there is nothing on record to demonstrate that it is a case of a contributory negligence. The bus hitting the deceased is a tell-tale sign of the fact that the driver of the bus had started the bus at such a speed which was sufficient to kill the deceased even before reaching the hospital. Further, it is pertinent to note that the deceased is survived by his widow, two daughters and his father.

12. The contention of the Appellant/UPSRTC that no accident took place at all is belied by the facts of the present case. The deceased and PW-3 were merely attempting to cross the road in front of the bus after alighting from the same, when the bus started and ended up hitting the deceased, thereby injuring him to such an extent that he succumbed to his injuries even before reaching the hospital.



13. It is well settled that the proceedings under Motor Vehicles Act, 1988 are civil in nature and have to be decided on the basis of preponderance and probabilities. Further, the standard of proof in Motor Vehicles Claims has been succinctly explained by a Judgment of this Court in case of ICICI Lombard General Insurance Co. Ltd. vs. Rajinder Kumar Chopra and Others etc., **2018 SCC OnLine Del 8845** wherein this Court after placing reliance on a number of judgments of the Apex Court has observed as under:

"122. Standard of proof in Motor Accident Claims

123. The proceedings under Sections 168 and 169 of the Motor Vehicles Act are of civil nature and have to be decided on the basis of preponderance of probabilities. In motor accident claims, the claimants are not required to prove the case as it is required to be done in criminal trial. The claimants were merely to establish their case on the touchstone of preponderance of probability and not beyond reasonable doubt. The relevant portion of the aforesaid judgments is given below.

124. In Bimla Devi v. Himachal Road Transport Corporation, (2009) 13 SCC 530, the Supreme Court held as under:—

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus 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."

(Emphasis supplied)



125. *In Kusum Lata v. Satbir, (2011) 3 SCC 646, the Supreme Court held as under:—*

“9. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

10. Reference in this connection may be made to the decision of this Court in Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2010) 1 SCC (Cri) 1101], in which the relevant observation on this point has been made and which is very pertinent and is quoted below : (SCC p. 534, para 15)

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus 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.”

126. *In Bimla Devi v. Satbir Singh, (2013) 14 SCC 345, the Supreme Court held as under:—*

“10. In claim cases, it is difficult to get witnesses, much less eyewitnesses, thus extremely strict proof of facts in accordance with provisions of the Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to those cases, but it may not be construed that a complete go-by is to be given to the Evidence Act. 11.....The Motor Vehicles Act is a social piece of legislation and has been enacted with the intent and object to facilitate the claimants/victims to get redress for the loss of family member or for injuries at an early date. Thus, it is desirable to adopt a more realistic, pragmatic and liberal approach in



these matters. In claims cases, it is difficult to get witness, much less eyewitness, thus extremely strict proof of facts in accordance with the provisions of the Evidence Act may not be adhered to religiously. Some amount of flexibility has to be given to those cases, but it may not be construed that a complete go-by is to be given to the Evidence Act.”

(Emphasis supplied)

127. In Ranu Bala Paul v. Bani Chakraborty, (1998) 3 Gau LR 32, the Gauhati High Court held as under:

“8.....In deciding a matter Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of pre-ponderance of evidence, but in a claim before the Motor Accident Claims Tribunal the standard of proof is much below than what is required in a Criminal case as well as in a Civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive or decide things necessary to be decided for awarding compensation. But the Tribunal is not expected to take or to adopt the nicety of a civil or of a criminal case. After all, it is a summery enquiry and this is a legislation for the welfare of the society. In case N.K.V. Bros. (P) Ltd. Petitioner v. M. Karumai Ammal, Respondents reported in (1980) 3 SCC 457 : AIR 1980 SC 1354, the Supreme Court pointed out that the Accidents Tribunal must take special care to see that innocent victims do not suffer and person liable do not escape liability merely because of some doubt and some obscurity there. The court should not succumb to niceties, technicalities and mystic maybes.



The Court is bound to take broad view of the whole matter that is what was not done in the instant case.”

(Emphasis supplied)

128. Section 114 of the Indian Evidence Act, 1872

129. Section 114 of the Evidence Act deals with the rebuttable presumptions. Section 114 recognizes the general power of the Court to raise inferences as to the existence or non-existence of unknown facts on proof or admission of other facts. The source of such presumptions is the common course of natural events, human conduct and public or private business.

130. Section 114 of the Indian Evidence Act is reproduced hereunder:

“Section 114 - Court may presume existence of certain facts.-

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

131. The Section merely states the principle, and the several illustrations appended to it are taken from the important presumptions relating to innocence, regularity and continuity, which were recognized at common law. The illustrations are by no means exhaustive; nor are the presumptions illustrated therein obligatory in the sense that the Court must raise them or conclusive in the sense that no evidence in rebuttal is admissible. The illustrations (e) and (g) to Section 114 provide that the Court “may presume” the following facts:—

“(e) That judicial and official acts have been regularly performed;



xxx xxx xxx

(g) That evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it;”

132. *The above illustrations are followed by the following caveat:—*

“The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it.”

133. *The above caveat is illustrated by following explanatory comments which can be conveniently called “counter illustrations”:—*

“As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances;”

xxx xxx xxx

“As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;”

134. Sir James Fitzjames Stephen, while introducing the Bill relating to the Indian Evidence Act stated in regard to Section 114 as follows:—

*“The effect of this provision is to make it perfectly clear that **Courts of Justice are to use their own common sense and experience in judging the effect of particular facts, and that they are to be subject to no particular rules whatever on the subject.**”*

(Emphasis supplied)

135. *The word ‘common course’ in Section 114 qualifies not only natural events but also the words*



'human conduct' and 'public and private business'. As to what is 'common course of natural events, human conduct and public and private business' depends upon the common sense of the Judge acquired from experience of worldly and human affairs.

136. *The subject of presumptions is closely allied to the subject of burden of proof. When the burden of proof of a fact is on a party, it may be said that there is a presumption as to the non-existence of that fact and where there is a presumption as to the existence of a fact, the burden of proving the non-existence of that fact is on the party who asserts its non-existence. When a presumption operates in favour of a party, the burden of proof is on the opponent, and when the burden of proof is on a party, there is a presumption operating in favour of the opponent.*

137. *Presumptions of fact are always rebuttable. In other words, the party against whom a presumption may operate has to lead evidence to show why the presumption should not be given effect to. If, for example, the party which initiates a proceeding or comes with a case to Court offers no evidence to support it, the presumption is that such evidence does not exist. And if some evidence is shown to exist on a question in issue, but the party which has it within its power, does not produce it, despite notice to it to do so, the natural presumption is that it would, if produced, have gone against it. Similarly, a presumption also arises from failure to discharge a special or particular onus.*

138. *The Judge has to call in aid not only his training and wisdom but also the experience of life to adjudge which set of evidence is more probable and which evidence is to be believed. The Judge decides who is to be believed and how much and if not, why so. He also visualizes what, in ordinary course, should*



have been the evidence but was not produced, wherefore an adverse inference ought to be drawn.

139. *The presentation of evidence and the inferences that flow from it are placed by the Judge in his (judicial) scales. The task of a Judge is to first assess the weight of the evidence including presumptions, and then place it into the respective pan (scale) hanging from the two ends of the equal arm of judicial balance.*

140. *In Izhar Ahmad Khan v. Union of India, AIR 1962 SC 1052, the Supreme Court defined presumptions to be an inference, affirmative or disaffirmative of the truth or falsehood of a doubtful fact or proposition drawn by a process of probable reasoning from something proved or taken for granted.*

141. *In Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808, the Supreme Court held that the illustrations to Section 114, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself. Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and con-flue human behaviour within straitjackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake.*



142. *Krishna Iyer, J. in Tukaram Ganpat Pandare v. State of Maharashtra, (1974) 4 SCC 544 held that Section 114 of the Evidence Act enables the Court to use common sense as judicial tool. Section 114 thus is a useful device to aid the Court in its quest for truth. While care and caution need to be exercised in drawing any presumption under Section 114, its scope is wide and it has the potential to lend a helping hand in myriad situations.*

143. *In Syad Akbar v. State of Karnataka, (1980) 1 SCC 30, the Supreme Court held that presumptions are inferences of certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the springs of human action, the usages and habits of society and ordinary course of human affairs.*

144. *In Sodhi Transport Co. v. State of U.P., (1986) 2 SCC 486, the Supreme Court held that the rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.*

145. *In State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382, the Supreme Court held that presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the Court exercises a process of reasoning and reaches a logical conclusion as the most probable position. Section 114 empowers the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court shall have regard to the common*



course of natural events, human conduct etc. in relation to the facts of the case.

146. *In M. Narsinga Rao v. State of Andhra Pradesh, (2001) 1 SCC 691, the Supreme Court held that presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.*

147. *In Limbaji v. State of Maharashtra, (2001) 10 SCC 340, the Supreme Court held that a presumption of fact is a type of circumstantial evidence which in the absence of direct evidence becomes a valuable tool in the hands of the Court to reach the truth without unduly diluting the presumption in favour of the innocence of the accused which is the foundation of our criminal law. It is an inference of fact drawn from another proved fact taking due note of common experience and common course of events. Section 114 of the Evidence Act shows the way to the Court in its endeavour to discern the truth and to arrive at a finding with reasonable certainty. The Supreme Court further held that having due regard to the germane considerations set out in the section, certain presumptions which the Court can draw are illustratively set out. They are not exhaustive or comprehensive. The presumption under Section 114 is, of course, rebuttable. When once the presumption is drawn, the duty of producing evidence to the contra so as to rebut the presumption is cast on the party who is*



subjected to the rigour of that presumption. Before drawing the presumption as to the existence of a fact on which there is no direct evidence, the facts of the particular case should remain uppermost in the mind of the Judge. These facts should be looked into from the angle of common sense, common experience of men and matters and then a conscious decision has to be arrived at whether to draw the presumption or not.

148. *In Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16, the Supreme Court held as under:*

“22....Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.”

14. The second contention raised by the Appellant/UPSRTC is that the Motor Accident Claims Tribunal ought not to have applied the multiplier of 14 as the deceased was above the age of 45 years, and therefore, multiplier of 13 ought to have been applied to the facts of the present case. This Court does not find any weight in the submission of the Appellant/UPSRTC. The Learned Motor Accident Claims Tribunal has correctly relied on a Judgment passed by the Apex Court in Sarla Verma vs. Delhi Transport Corporation and Another, (2009) 6 SCC 121 which states that when the deceased is 45 years of age, multiplier of 14 is applicable. The Apex Court in the said Judgment has observed as under:



"41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC 362] , [set out in Column (3) of the table above]; some follow the multiplier with reference to Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , 14 as per Trilok Chandra [(1996) 4 SCC 362] , 15 as per Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] , or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Trilok Chandra [(1996) 4 SCC 362]



and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

15. It is observed that the deceased was 45 years of age and was earning a meagre sum with which he was required to support a large family. This Court finds it highly deplorable that the State, instead of acquiescing to the amount of money which was directed to be paid to the deceased's family, has chosen to contest the same, to the extent that they have denied the occurrence of the accident in the first place.

16. In view of the above, this Court does not find any reason to interfere with the Impugned Judgment passed by the Motor Accident Claims Tribunal.

17. The appeal is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 04, 2023

S. Zakir