

Upsrtc Vs. Meena and ors.

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SooperKanoon Citation : sooperkanoon.com/1128555

Court : Delhi

Decided On : Feb-21-2014

Judge : Suresh Kait

Appellant : Upsrtc

Respondent : Meena and ors.

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

21. t February, 2014 % + MAC.APP. No.1273/2012 UPSRTC Represented by:
Appellant Mr. Shadab Khan, Advocate. Versus MEENA & ORS. Represented by:
..... Respondents Mr. O.P. Mannie, Advocate for Respondent Nos. 1 to 6.
CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. The present appeal is preferred against the impugned award dated 14.08.2010 whereby, the learned Tribunal has granted compensation for a sum of Rs.11,48,176/- with interest at the rate of 7.5% per annum from the date of filing of the petition till realization of the amount.

2. Learned counsel appearing on behalf of the appellant/Corporation submitted that the learned Tribunal has erred in holding that the respondents are the actual legal heirs of the deceased Gabruddin @ Jafruddin @ Mullah in absence of any documentary proof, in as much as, there is no document on record to show that the deceased Gabruddin @ Jafruddin @ Mullah was Gaffar Khan.

3. It is submitted that in the post-mortem report Ex.PW2/5, name of the deceased was mentioned as Jafruddin @ Gabruddin @ Mulla, whereas in the FIR No.37/2010 Ex.PW2/2 registered under Section 279/304-A/427 IPC, name of the deceased was mentioned as Gabruddin @ Mulla S/o Latif Khan. In the identity card Ex.PW1/1 issued by the Election Commission of India from Delhi, his name was mentioned as Gaffar Khan S/o Abdul Latif. In another identity card Ex.PW3/4 issued by the Election Commission of India from Bagpat, UP, his name was mentioned as Gaphur Khan S/o Latiph.

4. Learned counsel further submitted that the learned Tribunal has erred in holding that Gabruddin @ Jafruddin @ Mullah was Gaffar Khan, whereas, the post-mortem report, FIR and voter identity card proofs did not corroborate with the fact that Gabar Khan was Gabruddin @ Mullah.

5. Learned counsel further submitted that in the identity card issued from Delhi, age of the deceased was mentioned as 29 years as on 01.01.2008 and in the identity card issued from Bagpat, his age was mentioned as 26 years as on 01.01.2001. In the post-mortem report Ex.PW2/5 the age of the deceased is shown as 40 years at the time of the accident. The voter identity card of Gafruddin shows that he was aged 31 years at the time of the accident. Thus, age of the deceased was not proved, despite, for selection of the multiplier, the learned Tribunal has taken the age of the deceased as 31 years, relying upon the age mentioned in the voter identity card.

6. Learned counsel further submitted that while adjudicating upon the issue of rash and negligent driving by the driver of the offending vehicle, the learned Tribunal has completely ignored the evidence of its driver RW1 and erred in holding the driver guilty for the alleged accident.

7. To strengthen her arguments, learned counsel relied upon a case of Bijoy Kumar Dugar Vs. Bidyadhar Dutta & Ors. 2006 SCC342 wherein it is held that in a case of head on collision, the driver of both the vehicles are at least liable to contributory negligence in committing the accident.

8. Learned counsel for the appellant/Corporation further submitted that in the post-mortem report Ex.PW2/5 and in the identity cards the age of the deceased was not same. However, the learned Tribunal has considered the age of the deceased as 31 years, and accordingly added 30% of the actual income of the deceased towards future prospects.

9. On the other hand, learned counsel appearing on behalf of respondents/claimants while opposing the submissions of learned counsel for the appellant/Corporation has submitted that as the issue of identity of the deceased is concerned, firstly, the respondents/claimants have claimed that Gaffar Khan @ Gabarudin @ Mullah were the names of the deceased and accordingly, the said names were mentioned in the post-mortem report. In the FIR, name of the deceased is mentioned as Gabruddin @ Mulla S/o Latif Khan. In the identity cards, his name is mentioned as Gaffar Khan and Gaphur.

10. On the issues of contributory negligence, multiplier, and future prospects are concerned, learned counsel submitted that there is no merit in the instant appeal and deserves to be dismissed.

11. I have heard the learned counsels for the parties and perused the record.

12. The question before this Court is whether all the names, i.e., Zafruddin @ Gabruddin @ Mulla @ Gaffar Khan @ Gaphur are of the deceased. The deceased belonged to a Muslim community, where people generally address them as Khans and Mullahs. The name Zafruddin is known as Zafar or Zafru and Gabrudin is known as Gabar or Gabru. Moreover, the appellant/Corporation neither placed any contrary material on record nor examined any witness to prove that the claimants are not the legal representatives of the deceased. Therefore, mere bald statements make no difference in the absence of any cogent and reliable evidence.

13. Moreover, PW1, Smt. Meena, wife of the deceased proved election identity card of the deceased as Ex.PW1/1 and her election identity card as Ex.PW1/2, wherein name of the deceased has been mentioned as Gaffar Khan. Besides this, PW3 Ms.Masuman, being Former Counsellor of Ward No.7, Mohalla Idgah,

District Bagpat, UP, has categorically deposed in her evidence by way of affidavit Ex.PW3/A that the deceased Gaffar Khan @ Gabruddin @ Mullah S/o late Abdul @ Latif was her neighbour and she knew him from his birth as he was resident of her Ward.

14. Nothing adverse has come on record in her cross-examination to discredit the statement of PW1 Smt. Meena, wife of the deceased.

15. So far as the issue of age of the deceased is concerned, election identity card of the deceased Ex.PW1/1 shows his age as 29 years as on 1.1.2008 and if his age is calculated on that basis, then it comes to 31 years on the date of the accident and accordingly, the learned Tribunal has rightly applied the multiplier of 16 keeping in mind the dictum of Sarla Verma Vs. DTC and Ors. 2009 (6) SCC.

16. As regards the issue of contributory negligence on the part of the driver of the other vehicle is concerned, the accident in question had taken place on 14.05.2010 at about 1.30 PM when deceased along with one Rakesh Kumar was coming to Delhi in Tempo from Dabai (U.P.). When they reached Sadak Pusta, Village Jatpura (U.P.), a bus bearing No.U.P. 14 U9739 being driven by driver Somvir at a very fast speed in rash and negligent manner came and hit the Tempo. As a result of which, the deceased was seriously injured and succumbed to the injuries received in the accident.

17. On the issue of negligence, the learned Tribunal had framed issue No.1 on 20.05.2011, which reads as under:

Whether Sh. Gaffar Khan received fatal injuries on 14.05.2010 due to the rash or negligent driving of vehicle no.UP-14U-9739 by R1?.OPP

18. The driver of the offending vehicle had taken a stand before the learned Tribunal that he was falsely implicated in the alleged accident as no accident was occurred either due to involvement of his vehicle or on account of his rash and negligent driving. He examined himself as R1W1 and in his cross-examination, he categorically admitted that he was facing trial in case bearing FIR No.37/2010, P.S. Salempur, Bulandshahar (UP) and was released on bail in the said criminal

case. He further stated that the offending vehicle was seized by the police. Charges have been framed against him in the said criminal case by the learned Magistrate and the same is pending adjudication for prosecution evidence.

19. PW2, Rakesh Kumar, being the eye witness of the accident, narrated the manner of accident in sequence in paragraph 2 of his evidence by way of affidavit. In his cross-examination by the appellant/Corporation, he stated that he had also sustained minor injuries in the accident, however, denied the suggestion that the accident had taken place due to fault of the driver of the Tempo. Besides, the claimants have proved certified copies of the criminal case viz. site plan Ex.PW2/1, FIR Ex.PW2/2, chargesheet Ex.PW2/3, mechanical inspection report Ex.PW2/4 and the post-mortem report Ex.PW2/5 to establish the factum of accident.

20. On perusal of the record and evidence, it is not established that the driver of the Tempo was at fault in any manner, therefore, I do not find any substance in the arguments of the learned counsel for the appellant/Corporation on this issue.

21. As the issue of future prospects is concerned, keeping all the documents into view, the age of the deceased, in any manner, was less than 40 years and the learned Tribunal has added only 30% of the actual income of the deceased towards future prospects, which is rather on lower side keeping in mind the dictum of Rajesh & Ors. Vs. Rajbir Singh, 2013 (6) SCALE563 therefore, I do not find any substance in this argument also.

22. In view of the above discussion, I do not find any merit in the instant appeal. The same is accordingly dismissed.

23. Consequently, the Registry of this Court is directed to release the statutory amount in favour of the appellant/Corporation and the balance compensation amount in favour of the respondents/claimants in terms of the impugned award dated 14.08.2010 on taking necessary steps by them. SURESH KAIT, J.

FEBRUARY21 2014 Sb/jg