

Upsrtc & Anr. Vs.sandhya & Anr.

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Court : Delhi

Decided On : May-01-2017

Appellant : Upsrtc & Anr.

Respondent : Sandhya & Anr.

Advocate for Pet/Ap. : Mr. Aly Mirza, Mr. B.R. Sharma, Mr. Jai Prakash, Mr. Ram Daras

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI MAC.APP. 1033/2016 & CM No.45099/2016 Decided on:

1. t May, 2017Appellants \$~19 * % + CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI UPSRTC & ANR. SANDHYA & ANR. Through: Mr. Aly Mirza, Advocate. VersusRespondents Through: Mr. B.R. Sharma, Advocate

... RESPONDENTS

. for NAJMI WAZIRI, J (Oral) 1. The appellants have impugned the Award dated 01.08.2016 in Suit No.218/2015 on the ground that there was no negligence on the part of the driver of the bus owned by the appellants.

2. The brief facts of the case are that at 9 am on 8th May, 2015 the deceased, Mr. Jai Prakash while going towards his office on his motorcycle (bearing Registration No.DL-3S-V-4949) met with an accident with the offending bus bearing Registration No.UP-93A-T-4717. The said bus while going towards Ashram hit him

from behind causing him to fall down and suffer grievous injuries. He was taken to AIIMS Trauma Centre, New Delhi, where he expired on the same day. A FIR bearing No.1

under sections 279/337/304-A of the Indian Penal Code was registered at the New Friends Colony Police Station. The Detailed Accident Report (DAR) and the Mechanical Inspection Report were filed before the Tribunal. The latter showed fresh damages apropos the offending bus of the following nature:-

"MAC.APP. 1033/2016 Page 1 of 5 (i) Front Bumper scratched/left head light glass cracked. (ii) Left side lower body scratched. (iii) Left side front/corner quarter glass broken. (iv) Left side outside mirror damaged etc.

3. Similarly, the report regarding the Motor Cycle noted fresh damages as follows:-

"(i) Head Light Nakka Broken/ Wiser Broken/ Right Indicator damaged. (ii) Handle Bar Pressed. (iii) Left side Leg Guard pressed/scratched. (iv) Petrol Tank right side damaged etc.

4. The damage to the petrol tank of the Motor Cycle was on the right side, its handle bar was pressed and the left side leg guard was pressed/scratched. Logically if a motorcycle falls on the left side after getting hit on the right side, the damage to the offending vehicle would be on its front side. The front bumper of the offending bus was scratched and its left side head light glass was cracked, which leads to the conclusion that it is the result of an impact to a vehicle or object in front of it. Indeed other damages to the offending bus are on the left side showing thereby that it had hit the vehicle, which in this case was a motorcycle, on the latters right side. The claimants had alleged that the offending bus was being driven in a rash and negligent manner. This was supported by the evidence of PW2, Mr. Ram Daras, father-in-law of the deceased, who had deposed that he was following the deceased on his motorcycle on his way to his office. His evidence (Ex. PW2/A) reads as under:-

"2. That on 08/05/2015 deponent was going to his office on his motorcycle No.DL3 SBJ6802 His son-in-law Jai Prakash MAC.APP. 1033/2016 Page 2 of 5 (Since Deceased) was also going to his office on his motorcycle No.DL3 SAV4949and

was little ahead of the deponent. At about 09.00 AM, when we reached on Mathura Road, New Friends Colony, New Delhi, towards Ashram Chowk, a UP Roadways Bus bearing its No.UP93T4717 which was being driven by its driver in a rash and negligent manner, came from behind and hit the motorcycle No.DL3 SAV4949 of Jai Prakash with a force and dragged him along with his motorcycle due to which Jai Prakash (Since Deceased) received grievous injuries.

3. That after the accident Jai Prakash (Since Deceased) was taken to AIIMS Trauma Center, New Delhi where he died during his treatment at about 2.45 pm on the same day due to the injuries received by him in this accident. Postmortem was conducted in AIIMS Trauma Center, New Delhi. 5. In his cross-examination on 06.04.2016, he stated:-

"I am the eye-witness in this case. I was going to my office at the time of accident and I was driving my own motorcycle and the deceased was driving his motorcycle a little ahead of me. The accident took place at about 9:00 AM. The offending bus UP93AT-4717 came from the behind and hit the motorcycle of the deceased Jai Prakash from left front side of the bus. The accident took place on Mathura Road before about 1-1.5 KM from Ashram Chowk near New Friends Colony, New Delhi. It is wrong to suggest that I was not present at the spot at the time of the accident. It is wrong to suggest that accident took place due to negligence of the deceased himself. It is wrong to suggest that driver was not driving the offending vehicle in rash and negligent manner. It is wrong to suggest that I am deposing falsely. 6. In the cross-examination, no suggestion or question was raised doubting his witnessing the accident. Therefore, for the learned counsel for the appellants to state that there was no person at the time of the accident MAC.APP. 1033/2016 Page 3 of 5 when the police visited the accident site is of no consequence. It is natural that the father-in-law, who was following his son-in-law to first attend to the latter's injury and make arrangements for him to get medical help, rather than to wait for the policeman to come, whenever that may be, and record his statement. Serving human life and reducing pain or attending to an injured person especially to a victim of a motor vehicle accident should come naturally and promptly. Ram Daras cannot be faulted for yielding to this human duty. Similarly, the appellants doubt about the presence of Ram Daras at the hospital, and about his

subsequent deposition, cannot be sustained simply because the policemen did not find any such witness when they reached the hospital. Perhaps they would have found someone attending to the injured had they waited there long enough or enquired more thoroughly and promptly. The fact that Ram Daras took his injured son-in-law is not doubted, therefore all other doubts in this regard are meaningless.

7. The impugned order took the aforesaid evidence into account as well as the fact that the driver never questioned or complained of any false implication in the case. It then concluded that the cause of the accident was on the appellants bus being driven rashly and negligently. The Tribunal relied upon *Basant Kumar & Ors. Vs. Chattarpal Singh & Ors.* 2003 ACJ369M.P. (Division Bench), for the principal that the registration of the criminal case against the driver of the offending vehicle is sufficient to record the finding that the driver is responsible for causing the accident. It also relied upon the dicta of this Court in *National Insurance Company Ltd. Vs. Pushpa Rana* 2009 ACJ287 which held on similar lines that the criminal record showing the completion of investigations and issuance of charge sheet under Sections

A IPG or the certified copy of the FIR MAC.APP. 1033/2016 Page 4 of 5 along with the recovery memo or the Mechanical Inspection Report of the offending vehicle are sufficient proof of the negligence of the driver. The observations recorded in the Mechanical Inspection Report, supported by the deposition of PW2 Mr. Ram Daras establish that the bus was the offending vehicle.

8. In the circumstances, the only conclusion which the Tribunal could have arrived at is that the death of the victim Jai Prakash was on account of rash and negligent driving of the appellants bus.

9. The compensation of Rs.41,83,000/- was to be paid at the interest rate of 9% per annum within 60 days of the Award dated 01.08.2016. Thereafter, from the sixty first day, 12% interest was payable for the delayed period, which was challenged by the appellants. This does not warrant any alteration because the interest rate of 12% was payable only for the delayed payment i.e. after the sixty first day from the date of the Award. If they were so aggrieved, the appellants

could have challenged the Award earlier in time rather than wait for the 90 days statutory period, which in any case only provides the timeline for filing an appeal, there is no automatic suspension of the interest payable in that duration.

10. In view of the facts above, the Court finds no reason to interfere with the Award. The appeal and the pending application are dismissed. The amounts deposited in the Court shall be released to the beneficiaries in terms of the Award.

11. The statutory amount shall be released to the appellants. MAY01 2017/sb
NAJMI WAZIRI, J.

MAC.APP. 1033/2016 Page 5 of 5

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