

Jai Shree and ors. Vs. Amar Dev and ors.

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Court : Allahabad

Decided On : Apr-17-1987

Reported in : II(1987)ACC457

Judge : K.C. Agrawal and ;R.K. Gulati, JJ.

Appellant : Jai Shree and ors.

Respondent : Amar Dev and ors.

Judgement :

K.C. Agrawal, J.

1. This is an appeal under Section 110-D of the Motor Vehicles Act filed by the father, mother and minor daughter of Satya Pal Singh who died in an accident on 30-5-1971 at about 9.30 A.M. near Muradnagar. He was travelling by Tempo No. U.S.T.-6094 when the same collided with Bus No. U.P.S. 9941 belonging to the Roadways. The place of the accident was 2 Kilometres away from Muradnagar towards Ghaziabad. The appellants claimed Rs. 1,50,000/- as compensation, as against the Roadways and the owner of the tempo by assorting that the accident resulted due to the negligence of the drivers of the tempo as well as the bus.

2. It was alleged that the driver of the bus was negligent as he did not have control on the steering of the bus while driving it. Allegations of negligence against the driver of the tempo were also made and it was further alleged in that connection

that the tempo was out of control of the driver as it carried passengers beyond its capacity and beyond the limit prescribed by law.

3. The defendants contested the claim petition. It was urged on behalf of the Roadways that the accident resulted due to the sole negligence of the driver of the tempo. The bus was coming from Ghaziabad side on its left when the tempo driver, who had absolutely no control on his vehicle, collided in the right with the bus and the driver of the tempo did not hear the horn given by the bus driver.

4. On the pleadings of the parties, the Motor Accidents Claims Tribunal framed a number of issues. One of them was about the negligence.

5. The claimants, as well as the defendants gave their oral evidence. The oral evidence of the tempo owner consisted of Amardev (DW 1), Rohtas (DW 2), and Jai Prakash (DW 3). Jai Prakash (DW 3) was the owner of the tempo. He stated that Onkar Singh, who was the driver of the tempo, had been engaged about three months before the accident took place. Onkar Singh had a driving licence. He admitted in the cross-examination that there was a marriage in the family of Onkar Singh on 30-5-1971. DW-1 Amardev stated that he was a passenger in the tempo at the time of the accident, and that the bus was being driven rashly, whereas Onkar Singh was driving the tempo at the speed of 25 to 30 Kilometres. He stated that in front of the tempo, there was a cyclist and that the tempo driver tried to overtake him. For that purpose, horn was blown by Onkar Singh driver, but that had no effect on the cyclist. The cyclist came in the middle of the road and with a view to save him the tempo collided with the bus. He admitted that the tempo was not braked. In the cross-examination, it was admitted by this witness that the cyclist had been seen driving about 70-80 yards before. He admitted that had he been driving the tempo, he would have applied the brake. The second witness Rohtas (DW 2) was also a passenger in the tempo. He contradicted the statement of DW-1 Amardev by saying that brake was applied by the tempo driver, but as the bus had reached very near, the tempo collided with the bus. These were the witnesses produced on behalf of the tempo owner.

6. On behalf of the claimants, five persons were produced. They were: R.K. Verma (PW 1), who was an Administrative Assistant in the National Seeds Corporation,

New Delhi, where the deceased Satya Pal Singh was employed, and he stated that at the time of death the deceased was getting the salary of Rs. 423/-per month. The other witnesses were Gajraj Singh (PW-2), Albel Singh (PW-3), Tika Ram (PW-4) and Sitar Singh (PW 5). Sitar Singh (PW-5) was the father of the deceased. He could not and did not make any statement on the factum of accident. Gajraj Singh (PW-2) and Albel Singh (PW-3) both were passengers in the tempo, whereas Tika Ram (PW-4) was going on a cycle when the accident took place. Gajraj Singh and Albel Singh stated that the accident had occurred due to rash and negligent driving of both, the drivers of the tempo and the bus. The owner of the tempo, we have already noted above, tried to prove that the accident resulted due to the sole negligence of the bus driver.

7. On behalf of the Roadways, Sultan Singh (DW-4), who was the conductor of the bus in question, was produced. He stated that the bus was on its left and was not being rashly driven. The driver of the bus turned the vehicle towards left on seeing the vehicle in order to save the accident, but as the tempo was being driven negligently, it collided with the bus.

8. The Motor Accidents Claims Tribunal held that the accident resulted due to the negligence of the tempo driver, and that the bus driver tried to avoid the accident but could not do so due to rashness and negligence of the tempo driver. On this finding, the Tribunal awarded Rs. 1,08,640/- as compensation against the tempo owner and the Insurance Company, with which the tempo was insured.

9. As the claim had been dismissed as against the Roadways, the present appeal has been filed by the heirs and legal representatives of the deceased for modification of the decree as well as for the amount being awarded in its entirety. The modification sought is that the decree should have been as against the Roadways as well.

10. We have heard Sri Jagdish Prasad, learned Counsel for the appellants. He took us through the evidence of the parties and contended that the accident occurred due to the negligence of the drivers of the bus as well as the tempo and, therefore, the Tribunal should have found both of them guilty of composite negligence and awarded compensation against both.

11. After having examined the evidence, we are of opinion that the Tribunal was right in finding that the bus driver was not at all negligent and, therefore, the U.P. Roadways could not be found liable for the payment of compensation. The accident took place because the cyclist came in front of the tempo on the left side of the road and as the tempo driver wanted to cross the cyclist and the horn was not attended to by the cyclist, the driver of the tempo took it towards the right side of the road in order to overtake the cyclist. In the effort to overtake the cyclist, he collided with the bus, which was coming from the opposite direction. The blame for the accident, in the circumstances, was on the tempo driver. It has come in evidence that the bus went to its further left on the Patri which could be only because the driver tried to avoid the accident. It was suggested by the counsel for the appellant that since the driver himself had not been produced, the Tribunal should not have accepted the case of the Roadways. He submitted that even if there was no direct evidence involving the bus, the accident as was found at the spot should have been held on the basis of the circumstantial evidence, to have taken place due to the negligence of both of them.

12. In the instant case, the parties had adduced evidence, and from the evidence it was rightly concluded by the Tribunal that the bus was not responsible for the accident at all. The accident occurred due to the sole and exclusive negligence of the tempo driver. With this finding, we are in agreement. The bus being on its left, we are unable to find that the bus driver could still be held responsible despite the fact that the tempo was being taken by the driver to its right and dashed as against the bus. This was in pursuance of the effort of the tempo driver to overtake the cyclist.

13. Negligence may be said to consist in a failure to exercise due care in a case in which a duty to take care exists. In the instant case, the bus driver did whatever was expected of him at the spot. He could not have the extraordinary foresight that the tempo driver would collide with the bus, although the same was being driven by him on its left. A driver is Dot bound to fore see every extrimity of folly which occurs on the road.

14. It is only when death takes place on account of negligence of two or more persons, whether acting in concert or not, the legal representatives would be entitled to recover whole of the damages from any one of them or could sue all of them jointly in the same action. In the instant case, there is overwhelming evidence that the accident took place due to the sole and exclusive negligence of the tempo driver.

15. For what we have said above, we dismiss the appeal. No order as to costs.

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