

Sushila Devi and ors. Vs. ShaukIn Singh and ors.

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Court : Uttaranchal

Decided On : Aug-03-2004

Reported in : 2006ACJ1961

Judge : P.C. Verma and; B.S. Verma, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140, 166 and 173

Appeal No. : A.F.O. No. 832 of 2001

Appellant : Sushila Devi and ors.

Respondent : ShaukIn Singh and ors.

Advocate for Def. : R.B. Agarwal, Adv.

Advocate for Pet/Ap. : Pankaj Purohit, Adv.

Disposition : Appeal dismissed

Judgement :

P.C. Verma and B.S. Verma, JJ.

1. This appeal has been preferred under Section 173 of [Motor Vehicles Act, 1988](#), against the judgment and award dated 6.11.1998 passed in Motor Accident Claim Case No. 119 of 1995 by Mr. R.K. Rastogi, the then District Judge/Motor Accidents Claims Tribunal, Chamoli (in short 'the Tribunal'), whereby learned

Tribunal has allowed the claim petition and awarded Rs. 50,000 in favour of claimants-appellants as against opposite party Nos. 1 to 3-respondent Nos. 1 to 3 along with 12 per cent interest per annum. However, the petition was dismissed against New India Assurance Co. Ltd., opposite party No. 4-respondent No. 4.

2. Brief facts, giving rise to the present appeal, are that on 5.6.1995 Shiv Prasad, father of claimant Nos. 2 to 5 and husband of claimant No. 1 was travelling by bus No. USY 3268 belonging to opposite party Nos. 1 and 2-respondent Nos. 1 and 2 and driven by opposite party No. 3-respondent No. 3, from Pokhari to Karnprayag. The bus was overcrowded and the conductor of the said bus insisted him to ride on the roof of the bus. As soon as the bus went ahead a few kilometres from Pokhari, the driver, in Order to drop passengers at place Devarkhal, applied the brakes heavily, with the result Shiv Prasad fell down from the roof of the bus and sustained grievous injuries. He became unconscious at the spot and was brought to Pokhari Hospital, where the Medical Officer Incharge declared him dead. It is alleged that at the time of incident, the deceased was aged 41 years and was posted on the post of Beldar in the office of Executive Engineer, Construction Division, Pokhari and drawing Rs. 2,218 per month. The deceased used to spend Rs. 1,500 per month on his family. It is also alleged that had the accident not occurred, the deceased would have served the department for 17 years more and he would have spared amount of Rs. 3,50,000 to meet the expenses of his family. It is also alleged that claimants have suffered loss of consortium, love and affection, etc., due to death of Shiv Prasad. The claimants have, therefore, filed the petition for compensation worth Rs. 4,55,000 for the death of Shiv Prasad.

3. The owners of the bus, opposite party Nos. 1 and 2 contested the petition by filing joint written statement. They have admitted the fact that the death of the deceased was result of fall from the ladder of the bus. They have pleaded that the bus in question was insured with the opposite party No. 4, insurance company, therefore, the liability to pay compensation, if any, rests on it. It was also pleaded that the insurance company was informed about the accident on 14.6.1995.

4. The driver of the bus, opposite party No. 3, was served by publication in Dainik Amar Ujala, but he had not put in appearance to contest the petition, hence the

case proceeded ex parte against him.

5. Insurance company, opposite party No. 4-respondent No. 4, also contested the petition by filing written statement on the ground that the facts regarding registration of the vehicle, fitness certificate, driving licence, etc., were lacking and that vehicle was not being plied in accordance with the Rules. The insurance company has denied its liability to pay compensation.

6. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the death of Shiv Prasad occurred as alleged in para No. 23 of the petition?

(2) Whether the claimants suffered loss worth Rs. 4,55,000 due to death of Shiv Prasad?

(3) Whether the petition is not maintainable against the opposite party No. 4 as alleged in para No. 25?

(4) Whether the claimants are entitled to any relief and amount? If so, to what amount and against whom?

7. Learned Tribunal, after hearing both the parties and going through the record, came to the conclusion that there was no evidence on record worth the name to show that at the time of alleged incident, the bus was being driven rashly and negligently by its driver Dhan Singh. No eyewitness of the accident was produced before Claims Tribunal. The learned Tribunal was also of the view that the deceased was himself responsible for sitting on the roof of the bus, even if he would have been directed by the conductor to do so. Ultimately, the Tribunal found on issue No. 1 that though there were several passengers travelling in the bus, but none of them has been produced to give ocular account of the said accident to testify that the bus was being driven rashly and negligently by its driver. According to learned Tribunal, undisputedly the deceased died as a result of fall from the roof of the bus, but there was nothing on record to indicate that due to sudden and faulty application of brakes, the said accident took place. The learned Tribunal accordingly decided issue No. 1 against the claimants. On issue No. 2, the

Tribunal came to the conclusion that on the record, there is unrebutted testimony of claimant No. 1 Sushila Devi, widow of the deceased to the effect that the claimants have suffered loss to the tune of Rs. 4,55,000 due to death of Shiv Prasad. On issue No. 3, it has been held that for want of documentary evidence, it cannot be said that the driver of the bus was holding valid registration certificate, road permit, etc., therefore, the learned Claims Tribunal has absolved the insurance company from its liability to pay compensation. While answering issue No. 4, the Tribunal has observed that since the alleged accident was not a result of rash and negligent driving by the driver of the bus, therefore, claimants are not entitled to any compensation under Section 166 of the Motor Vehicles Act. However, as per provisions of 'no fault liability' under Section 140 of the Motor Vehicles Act, the learned Tribunal found claimants entitled for compensation amount of Rs. 50,000 (rupees fifty thousand) payable by opposite party Nos. 1, 2 and 3 and, as mentioned earlier, the learned Tribunal has passed the impugned order.

8. Aggrieved by the impugned judgment and award, the appellants-claimants have preferred the present appeal.

9. The appellants have assailed the impugned judgment and Order firstly on the ground that it was proved on record that the death of deceased Shiv Prasad was the result of rash and negligent driving of the bus driver and secondly, that the learned Tribunal has violated the provisions of the [Motor Vehicles Act, 1988](#) holding the owner liable to pay compensation amount.

10. We have heard the learned Counsel for both the parties and have carefully gone through the entire material on record as well as the impugned judgment and Order of the learned Tribunal.

11. We are not inclined to accept either of the contentions raised by appellants before us, firstly, because there is not an iota of evidence on record that the deceased Shiv Prasad was travelling in the alleged bus in the capacity of a valid passenger. Secondly, there is nothing on record to indicate that the deceased had paid the amount of fare for the journey to the conductor and obtained a ticket. Thirdly, it is not disputed that the deceased died as a result of fall either from the

roof of the bus or from the back side ladder of the vehicle in question and there is no evidence worth the name to lead us to an inference that at the relevant time, the bus driver was driving the bus rashly and negligently, though, according to claimants-appellants themselves the bus was overcrowded and full of passengers; but the claimants could not produce even a single person to give ocular version of the alleged accident before the Claims Tribunal. Fourthly, the learned Tribunal has rightly held that the deceased himself was responsible for riding over the roof of the bus to undertake his journey. Fifthly, the evidence of appellant Sushila Devi to the effect that the deceased Shiv Prasad died due to severe impact of sudden application of brakes by the bus driver. In her cross-examination before the learned Tribunal, she had clearly admitted that at the time of alleged accident she was at her house and she was not an eyewitness of the accident. She has also admitted that she was informed of the accident by someone; but neither she could name the said person nor has produced him for the reasons best known to her. Lastly, Tribunal has rightly awarded compensation of Rs. 50,000 to the claimants and has correctly fastened this no fault liability on the owners of the bus as provided under Section 140 of the Motor Vehicles Act. In our opinion, the impugned judgment and award does not suffer from any illegality or infirmity. Consequently, the findings of the learned Tribunal do not call for any interference.

12. Accordingly, the appeal has no merit and is liable to be dismissed.

13. The appeal is hereby dismissed. The judgment and Order under appeal is upheld. There will be no Order as to costs.