

D.T.C. Vs. Ram Kumar

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Court : Delhi

Decided On : Jul-30-1990

Reported in : I(1991)ACC164; 1991ACJ872

Judge : Mahesh Chandra, J.

Appellant : D.T.C.

Respondent : Ram Kumar

Judgement :

Mahesh Chandra, J.

1. By this order I propose to dispose of two appeals F.A.O. No. 141 of 1980 filed by D.T.C. and F.A.O. No. 309/1980 filed by Ram Kumar, injured. Both these appeals arise out of the award given by Mr. H.P. Bagchi, Judge Motor Accident Claims Tribunal whereby a sum of Rs. 56, 773.00 was awarded as compensation to the respondent-injured Ram Kumar for the injuries alleged to have suffered by him in an accident on 4th December, 1975 with D.T.C. bus. In addition the respondent-injured has been granted interest @ 6% per annum from the date of filing of the application till realisation. Both D.T.C. and Ram Kumar feeling aggrieved have come up before this court I have heard the learned Counsel for the parties and have gone through the lower court file and after giving my considered thought to the matter before me I have come to the following findings:

2. Facts in the matter are not more less disputed. It is not disputed before me that the accident took place on 4th December, 1975 in which Ram Kumar, respondent-injured having been run over by the D.T.C. bus, while alighting from the bus. It is not disputed before me that Ram Kumar, respondent was a lawful passenger of the bus. His monthly earnings were Rs. 340/- per mensem. Similarly the finding of the lower court that monthly income at the time of the accident of the respondent Ram Kumar was Rs. 540/- per mensem has not been disputed before me. The age of the injured-respondent was 46 years at the time of accident and he is alive today are other facts which have not been disputed before me by any of the parties. It is keeping in view all these facts that these appeals have to be disposed of.

3. The grievance of the learned Counsel for the D.T.C. is that it was contributory negligence of Ram Kumar which had led to the accident and as such DTC was not liable. As against it, it has been urged by the learned Counsel for the respondent Ram Kumar that the accident took place due to sheer rash negligent driving of the bus driver and as such DTC would very much be liable and it has further been submitted by the learned Counsel for the respondent injured Ram Kumar that the lower court was not justified in choosing the multiplier of 10 only after arriving at the probable age of expectancy of the injured to be about 70 years. It is further urged that the Tribunal was not correct in deducting 50% of Rs. 540/- earnings of the respondent injured for the first year and 20% for the subsequent years while arriving at the figure of compensation to be paid to the injured.

4. From the perusal of the impugned judgment I find that the question of negligence of the driver and contributory negligence of the respondent has been discussed under Issue Nos. 1 and 2. It shows that the petitioner had examined himself as P.W. 3 to give his story of occurrence and he was corroborated in all material facts in this behalf by P.W. 2 Data Ram and P.W. 4 Danesh Ram. The said Data Ram and Ganesh Ram admittedly were traveling with him in the same bus and were his colleagues at their place of work. From the perusal of the statements of these three persons it is clearly established that the accident arose due to rash and negligent driving of the driver of the DTC bus. According to them P.W.2 and P.W. 4 had alighted from the bus and it was thereafter P.W. 3 was

alighting when the bus was moved at the instance of the conductor of the bus and as a result whereof P.W. 3 fell down and was run over and as a consequence suffered an injury. There is nothing on record to suggest even remotely that the statements of these three persons were not of reliable nature. As against it statements of driver Nafe Singh as R.W. 1 and the conductor R.W. 3 Brahman Parkash stand uncorroborated more so, both of them admitted that some of the passengers had entered complaint in respect of this occurrence in the complaint book but not only the complaint book has not been produced but further also none of these persons who made entries in the complaint book has been produced for the reasons best known to the appellant-D.T.C. No amount of statement of the traffic supervisor R.W. 2 can cover this lacuna of the case of the D.T.C. There is nothing on record to suggest that any attempt was made to produce these witnesses. It is categorically brought out in para 11 of the judgment that the respondent had got down at a recognised bus stand. It is also on record to show that they were alighting from the front exit and it was the duty of the driver to ensure that last passenger alighted down before he started the bus. There is nothing else in the testimony Ram Kumar and his two other witnesses who goes to suggest that they were not speaking the truth. In the face of these facts the finding of the Tribunal that the accident took place due to rash and negligent driving of the driver of the bus and the respondent Ram Kumar had not contributed to this accident is affirmed.

5. Since the quantum of monthly income which has been arrived at Rs. 540/- per mensem has not been challenged before me by the learned Counsel for the respondent Ram Kumar, I proceed on the hypothesis that the respondent at the time of his death was earning Rs. 540/- per mensem. Taking into account this fact and further taking into account that the finding of the Tribunal that the respondent would have lived up to the age of 70 years, it has to be accepted that there was 24 years more of life for him. The accident took place in 1975. The respondent is alive even today, i.e. after about 14-1/2 years. There is nothing to suggest that in this background that a multiplier of 10 was properly chosen. The minimum multiplier in such a situation would have been 16 which is 2/3rd of 24 years of future expectant life of the respondent and I hold that the learned Tribunal has erred in making use of 10 as multiplier and instead I hold that 16 should be the multiplier in the instant

case. The annual income of Rs. 540/- works out to Rs. 6480/- and when it is multiplied by a multiplier of 16 it would out to Rs. 1, 03, 680/-. Considering the disability up to 75% and considering the compensation will be paid in lump sum I deem it just and proper to deduct 20% on these two counts and after 20% deduction the amount of compensation comes to Rs. 82944/-. In addition thereto the learned Tribunal has awarded Rs. 1153.25 on account of medical treatment, Rs. 500/- on account of special diet, Rs. 200/- on account of conveyance, Rs. 3240/- on account of past pecuniary loss and Rs. 10, 000/- on account of loss of limb/permanent disability to the extent of 75% and Rs. 6000/- on account of pain, suffering and mental agony. The finding of the Tribunal on these items has not been challenged before me by either of (he parties. Adding this amounts the total amount of compensation comes to Rs. 1, 04, 037/- which is rounded off to Rs. 1, 04, 000/-.

6. No other point has been urged before me.

7. In view of my discussion and findings above, F. A.O. No. 141 of 1990 is dismissed and F. A.O. No. 309 of 1980 is allowed to the extent that the amount of compensation is worked out and fixed and awarded at Rs. 1, 04, 000/-. It is further directed that D.T.C. shall pay interest @ 6% per annum, from the date of application till the date of realisation. DTC would be entitled to deduct out of this amount the amount which has already been paid/deposited so far by way of compensation. If any amount has been deposited the respondent would be entitled to withdraw together with interest. The balance amount be deposited within two months.