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(2012) 10 P&H CK 0201

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 2478 of 2007

U.P. State Road Transport Corporation	APPELLANT
Vs	
Smt. Lali and Others	RESPONDENT

Date of Decision: Oct. 16, 2012

Citation: (2013) 169 PLR 203 : (2013) 2 RCR(Civil) 212

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Sandeep Kotla, for the Appellant; Adish Gupta for respondents No. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.
U.P. State Road Transport Corporation-the owner of the bus bearing registration No. UP-80-T-9562, has filed the present appeal for challenging the award dated 21.2.2007 delivered by the Motor Accidents Claims Tribunal, Faridabad whereby the claim petition filed by respondent No. 1 to 4 was accepted by granting them a sum of Rs. 3,67,000/- as compensation on account of death of Dharam @ Lala by ramming of aforementioned offending vehicle in the rear of the tractor-trolly driven by aforesaid Dharam @ Lala. The appellant being owner of the offending bus and respondent No. 5 being the driver of the said bus were made jointly and severally liable to pay the compensation amount alongwith interest at the rate of 7.5.% per annum from the date of filing of claim petition till its realization. The stand of the claimants/respondents No. 1 to 4 on the one hand and of the appellant and respondent No. 5 taken in their respective pleadings was noted by the Tribunal in paras No. 2 to 4 of the impugned award, which read as under:-

2. Briefly stated the facts of the present claim petition as alleged are that on 20.9.2004 the deceased Dharam alias Lala was employed as driver whereas one Hari Kishan was employed as a helper on the tractor. On the said date they were watering the plants on

the divider at which time at about 3 P.M. the tractor was parked near the divider of the road and Dharam was sitting on the driver seat. In the meanwhile, a U.P. Roadways bus bearing registration No. UP-80-T-9562 came from the side of Ballabgarh at a very high speed and struck against the tractor from behind as a result of which the tractor fell at some distance and was broken. Dharam alias Lal also received injuries in the accident and succumbed thereto. The driver of the offending bus however, succeeded in running away from the spot after causing the accident. Hence, the present petition has been filed by the present petitioners who are the legal heirs of the deceased.

3. The respondent No. 1 appeared and filed written statement denying the allegations of the petitioners as a whole.

4. The respondent No. 2 also appeared and filed a separate written statement denying the allegations of the petitioners. However, they have admitted the employment of the respondent No. 1 as driver on the offending bus in question on the relevant date and time.

2. On the pleadings of the parties, the Tribunal had framed the following issues:-

1. Whether the accident in question took place on account of rash and negligent driving of U.P.-80-T/9562 by respondent No. 1; if so its effect? OPP

2. If issue No. 1 is proved, to what amount the petitioners are entitled to and from whom? OPR

3. Whether the petitioners have no cause of action and locus standi to file the present petition? OPR

4. Whether the petition is not maintainable? OPR 5. Relief.

3. After going through the evidence led by the parties and hearing their respective contentions, the Tribunal held that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by respondent No. 5 resulting in the death of Dharam @ Lala. The deceased was held to be earning Rs. 3000/- per month by working as a tractor driver and taking his age as 35 years at the time of the accident, the claimants were held entitled to receive compensation to the tune of Rs. 3,60,000/-. Apart from the same, they were also awarded Rs. 2000/- towards cremation charges and Rs. 5000/- to Smt. Lali, widow of the deceased, for loss of consortium. Resultantly, total amount of Rs. 3,67,000/- was awarded as compensation.

4. Learned counsel for the parties have been heard and the record perused.

5. Learned counsel for the appellant has submitted that according to the claimants, the deceased was driving the tractor to which a water tanker was attached and the water was being used for irrigating the plants grown on the road divider. It being a national highway,

the deceased was required to give proper indication and take necessary precautions for alerting the traffic coming from behind of the tractor and the water tanker being parked by the side of the road divider. As no such indication was given or precaution taken, it cannot be said that the accident had taken place only on account of the driving of the offending vehicle by respondent No. 5. Rather, deceased himself had contributed to the accident.

6. Regarding the accident, the claimants had produced PW-2 Hari Krishan who deposed that he was present at the spot as a helper attached with the water tanker on Delhi-Mathura road. The deceased was driving the tractor. The plants on the divider were being watered. At about 3.00 p.m. when the tractor was parked by the side of the divider of the road with its engine stopped and the deceased was sitting on the driver seat, suddenly the offending bus came from the side of the Ballabgarh being driven in a rash and negligent manner by respondent No. 5. He also deposed that bericators (indicators) and signals of men working on the road were put behind the water tanker attached with the tractor. During his cross-examination by the respondents in the claim petition, no suggestion was put that no such indicators/signals had been put on the back of the water tanker attached with the tractor. Once, it is established that proper indicators and signals were put behind the water tanker attached with the tractor that the men were working on the road, it was a case of rashess and negligence on the part of the driver of the offending vehicle by dashing the same in the rear of the tractor trolly. The entire fault in committing the accident lay on the head of the driver of the offending vehicle. There was no contribution by the deceased in the accident being caused. As such, it is held that the accident had taken place solely on account of the rash and negligent driving of offending bus by respondent No. 5. No other submission has been made by learned counsel for the appellant.

The appeal is without any merit and, therefore, dismissed.