

(1994) 11 AHC CK 0006

Allahabad High Court

Case No: F.A.F.O. No. 460 of 1994

U.P. State Road Transport
Corporation

APPELLANT

Vs

Naresh Pal Singh and Another

RESPONDENT

Date of Decision: Nov. 18, 1994

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173

Citation: (1995) ACJ 591

Hon'ble Judges: V.P. Goel, J; S.C. Mohapatra, J

Bench: Division Bench

Advocate: S.B.L. Srivastava, for the Appellant;

Judgement

S.C. Mohapatra and V.P. Goel, JJ.

This is an appeal by the owner of a bus which is a public sector undertaking u/s 173 of the Motor Vehicles Act, 1988, against an award in respect of injury to the body and property of the claimant.

2. On 13.12.1985 claimant drove his tractor with trolley to Kisan Sahkari Chini Mill, Sheikhpur, Budaun. Next day in the early morning at about 6 a.m. he was returning from the sugar mill back home. When he reached near Dharam Kanta of village Nabada a bus bearing registration No. UTI2889 of the appellant collided head-on with the tractor as a result of which the tractor was damaged and various injuries were caused to the body of the claimant who was shifted to District Hospital, Budaun. Thereafter, he was treated in S.N. Medical College, Agra, for about six months. As a result of the injury, leg of the claimant was shortened by 1 1/4" and the right knee became stiff for which he is not able to move the same. This permanent disability would continue with the claimant lifelong who was aged about 30 years at the time of accident.

3. Both parties examined witnesses in support of their respective cases. Case of appellant was that the tractor was without any light and there was morning fog on the road, as a result of which the unfortunate accident occurred and, therefore, driver not being negligent in driving the bus, appellant is not liable to pay any compensation except on account of no fault liability.

4. After hearing the learned Counsel for the claimant as well as the appellant, we are satisfied that driver of a heavy passenger vehicle ought to have been very careful in driving on the road. When it was found that there was morning fog due to which visibility was poor, he should have picked up sound of the tractor to take the vehicle to a side. However, there is clear evidence that the claimant had put light of the tractor on. We are satisfied that the finding of the learned Tribunal is correct that on account of negligence of driver of the bus, accident was caused. Appellant is vicariously liable for payment of compensation.

5. Tribunal is correct in assessment that the tractor was damaged and Rs. 18,870/- was spent on the repairs of the same. It is submitted by the learned Counsel for the appellant that when father is the owner of the tractor son should not be given the compensation. It is, however, not disputed that father has not made any claim. Family appeal's to be joint. In such circumstances only on the technical ground that the father has not made the claim, we would not be justified to reject the same when Tribunal has awarded the same and one of the members of the family claimed the same on behalf of all. Accordingly, we determine compensation for damage of the tractor at Rs. 18,870/-.

6. Next question is the quantum of compensation payable for injury sustained by the claimant. Tribunal has determined Rs. 20,000/- as compensation for pain and suffering, loss of enjoyment, etc., from the date of accident till recovery. Tribunal has assessed Rs. 30,000/- for pain and suffering and future loss of enjoyment of life. We are satisfied that an amount of Rs. 20,000/- would be the just compensation on all counts, both for past, present and future. Tribunal has determined Rs. 20,000/- to be the expenses for treatment, etc., at different places. Materials supporting such expenses are to the extent of slightly more than Rs. 7,000/-. In absence of better evidence, on the facts and in the circumstances of the case when appellant was treated in Government Hospital and Medical College Hospital, we assess compensation of Rs. 10,000/-. For future treatment we assess the compensation at Rs. 10,000/-.

7. Claimant is a driver of the tractor. He is also an agriculturist helping his father in management of cultivation. His disability would disable him from driving tractor. Tribunal has assessed monthly loss on account of disablement to drive and deficiency to manage cultivation at Rs. 250/- which comes to Rs. 3,000/- per year. It is well known that in case a driver is engaged for a tractor salary is to be paid to him. Prevailing rate of salary of such a driver is not in evidence. In such circumstance making a guesswork a consolidated sum of Rs. 50,000/- is awarded as compensation

which if invested would yield Rs. 5,000/- annually towards interest to be sufficient for compensating the loss.

8. In view of aforesaid discussion and finding in modification of the award, we direct that the claimant would be paid Rs. 1,08,870/- in all. Claimant is entitled to interest on this amount at the rate of 6 per cent per annum from the date of application till date of payment. It is submitted for the appellant that the appellant has deposited Rs. 7,500/- with the Tribunal for payment to the claimant as interim compensation. If the amount has been so deposited it will be adjusted from out of the total compensation.

9. From out of the amount deposited as per interim order of this Court the modified awarded amount be paid to the claimant and the balance be refunded to the appellant.

10. In the result, appeal is allowed in pail. There shall be no order as to costs.