

## U.P. State Road Transport Corporation Vs Smt. Maya Devi and Others

**Court:** Allahabad High Court

**Date of Decision:** Dec. 15, 2009

**Citation:** (2010) 2 AWC 1510

**Hon'ble Judges:** S.P. Mehrotra, J; Rajesh Chandra, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

Rajesh Chandra, J.

The appellant U.P.S.R.T.C. has filed this appeal against the award dated 22.7.2009, passed by the Motor Accidents

Claims Tribunal / Special-Judge (D.A.A.), Hamirpur in Motor Accident Claim Petition No. 39/2008.

2. In brief the facts of the case are that Smt. Mayadevi and others filed a petition under the Motor Vehicles Act, 1988 for compensation for the

death of Ramesh Kumar in a motor accident. According to the claimants the U.P.S.R.T.C. Bus No. U. P. 93E 4189 had gone to Delhi from

Hamirpur Depot on 30.10.2009 and at that time Shyam Babu was the driver of the bus whereas the deceased Ramesh Kumar was a conductor

thereon. On 1.11.2006 when the bus was returning to Hamirpur and reached within the jurisdiction of Police Station Bakebar at about 5 a.m., the

same was dashed by the driver against a truck which was standing on the roadside. In this accident Ramesh Kumar as well as the driver Shyam

Babu alongwith some other passengers sustained injuries. Ramesh Kumar was admitted in Kanpur Hospital where he succumbed to the injuries

during treatment.

3. It was alleged in the petition that at the time of death Ramesh Kumar was in the employment of the U.P.S.R.T.C. and was working as a

conductor on contract basis. He was earning Rs. 4,000 per month. It was further alleged that the accident took place due to the rash and negligent

driving of the bus by its driver Shyam Babu and the first information report was lodged on 2.11.2006 at Police Station Bakebar by Mr. R. S.

Gautam In-charge of the Hamirpur bus depot.

4. The opposite party U.P.S.R.T.C. filed its written statement and admitted that the deceased Ramesh Kumar was working as a conductor with

the U.P.S.R.T.C. It was alleged that since the deceased was a workman, the petition ought to have been moved under the Workmen"s

Compensation Act, 1923. It was also stated that the deceased was a conductor at the bus and if the bus was being driven rashly and negligently by

the driver, Ramesh Kumar could have accosted him not to drive the vehicle in a negligent manner. According to the U.P.S.R.T.C. the accident

took place in the month of November and it was a foggy day hence the accident might have taken place due to fog or for some other reasons.

According to the U.P.S.R.T.C. the bus was not being driven rashly and negligently and that the driver was duly licensed at the time of accident.

5. The opposite party No. 3 Shyam Babu, the driver of the bus also filed his written statement and alleged that when he took the bus on 30.10.

2006 from the depot for being taken from Hamirpur to Delhi he got it checked by the foreman and at that time it was found that there was leakage

in the break pipe and the breaks were defective. Moreover the steering was also tight. He had pointed out these defects to the foreman. In return

the foreman had told that the defects have been removed and the bus be taken to Delhi. The foreman also said that if the bus is not taken to the

destination, Shyam Babu will be removed from the service. Under these circumstances Shyam Babu took the bus to Delhi and because of the said

defects in the bus the accident took place while he was returning back from Delhi to Hamirpur.

6. On the pleadings of the parties following issues were framed :

(1) Whether the accident in question took place on 1.11.2006 at about 5 a.m. within the jurisdiction of P.S. Bakebar, district Etah due to the rash

and negligent driving of bus No. UP 93E-4189 by opposite party No. 3 causing injuries to the conductor Ramesh Kumar and his subsequent

death.

(2) Whether the Motor Accidents Claims Tribunal was not having jurisdiction to hear the case.

(3) Relief.

7. The learned Tribunal after going through the evidence adduced in the case came to the conclusion that the accident in question was caused due

to the rash and negligent driving of the bus by its driver Shyam Babu and in the accident Ramesh Kumar died. While deciding issue No. 2 the

Tribunal came to the conclusion that since the legal representative of Ramesh Kumar were having remedy under the Workmen"s Compensation

Act as well as under the Motor Vehicles Act, they could have filed the petition under M.V. Act, 1988. The Tribunal then decided that the

claimants were entitled to a compensation of Rs. 3,07,500 together with interest at the rate of 6% per annum.

8. In appeal we have heard Sri Anubhav Chandra, advocate for the appellant at length and we have also gone through the impugned judgment as

well as the papers filed with the appeal.

9. The learned Counsel for the appellant has assailed the finding of the lower court with regard to the rash and negligent driving of the bus by its

driver Shyam Babu and has stated that the finding is not based on any evidence and is perverse. The evidence was not analysed in its right

perspective and the finding was recorded on the misreading of the evidence. We have considered over this argument and on the basis of the

material available on the record we feel that the argument is devoid of merits.

10. The opposite party No. 3 Shyam Babu, the driver of the offending bus belonging to the U.P.S.R.T.C. has stated in his written statement that

before departing for Delhi he got the bus in question checked by the foreman and at that time it was found that there was leakage in the break pipe

and the steering was also tight. He further alleged that he had pointed out these defects to the foreman and the foreman assured him that the defects

have been removed. However, the contention of the driver Shyam Babu is that the accident in question took place because of the defects in the

breaks. When examined in Court, Shyam Babu has stated on oath before the Tribunal that the accident in question took place due to the failure of

the breaks and that the bus collided with a truck which was standing ahead. He admitted that in this accident Ramesh Kumar sustained injuries and

ultimately died but he denied that there was any negligence on his part in causing this accident. A careful consideration of the averments made in

written statement of Shyam Babu and his testimony before the Tribunal reveals that in spite of defects having been pointed out by the driver Shyam

Babu the defects were not removed and the bus was given to the driver for plying on the road. The U.P.S.R.T.C. has not examined its foreman to

depose that he had attended to the complaints made by Shyam Babu and the breaks were fixed. He has also not come forward to state that the

steering was also repaired. It is thus evident that the bus in question was being driven by its driver having defective breaks and tight steering and it

was on account of these defects that the accident in question took place. Had there been any latent defect in the bus which could not be detected

even after due diligence then there may have been an occasion for the U.P.S.R.T.C. to say that there was no negligence on its part in causing the

accident but since in the case at hand the defects were visible and were even pointed out by the driver and were not removed by the foreman it is

apparent that the U.P.S.R.T.C. was negligent and as a result of this negligence the accident in question took place. In this connection the judgment

of Hon<sup>ble</sup> the Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, , may be referred in which the

following observations were made ""in this connection we may also point out that in order to succeed in a defence that the accident was due to

mechanical defects the owner will have to prove that they had taken all necessary precautions and kept the lorry in a roadworthy condition"".

11. The Apex Court further observed as under :

In order to sustain a plea that the accident was due to the mechanical defect the owner must raise a plea that a defect was latent and not

discovered by the use of reasonable care.

12. In the present case, a perusal of the written statement submitted by the U.P.S.R.T.C. makes it clear that it has nowhere been pleaded that

there was such a mechanical defect in the bus that it could not have been discovered in spite of taking all reasonable care. On the other hand what

the driver of the U.P.S.R.T.C. alleged is that it was because of the defect in the breaks that the accident in question took place. Thus, there is no

occasion for the U.P.S.R.T.C. to avoid the responsibility of the accident which took place in this case.

13. The learned Tribunal after appreciating the evidence on record has correctly come to the conclusion that the accident in question was caused

due to the rash and negligent driving of the bus by its driver. The finding of the Tribunal is therefore confirmed.

14. Now comes the question as to the amount of compensation awarded to the claimants in this case.

15. Learned Counsel for the appellant argued that the deceased Ramesh Kumar was working with the U.P.S.R.T.C. on contract basis and he was

not getting the work 30 days in a month. He has pointed out that a chart from November, 2004 to November 2006 was filed before the Tribunal

showing the number of days in a month when Ramesh Kumar worked with the U.P.S.R.T.C. and that chart has also been filed as Annexure-1 to

the affidavit dated 21.10.2009. His contention is that the average of the monthly income of the deceased Ramesh Kumar comes to Rs. 1,090 per

month and that the Tribunal has committed illegality in assessing the income of the deceased as Rs. 2,500 per month.

16. We have given our anxious consideration to this argument and we feel that the argument is not convincing.

17. Hon"ble the Supreme Court in State of Haryana and Another Vs. Jasbir Kaur and Others, held as under:

It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the

amount of compensation which is to be in the real sense ""damages"" which in turn appears to it to be ""just and reasonable"". It has to be borne in

mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the

compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ""just"" and it cannot

be a bonanza ; not a source of profit ; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors

and quantify the amount of compensation, which should be just. What would be ""just"" compensation is a vexed question. There can be no golden

rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical

calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode

adopted for assessing compensation has to be considered in the background of ""just"" compensation which is the pivotal consideration. Though by

use of the expression ""which appears to it to be just"" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by

a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression ""just"" denotes equitability, fairness and

reasonableness, and non-arbitrary. If it is not so it cannot be just.

18. Hon"ble the Supreme Court in New India Assurance Co. Ltd. Vs. Satender and Others, observed as under :

There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the

splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult

task.

19. Now we have to consider in the light of the judgments noted above as to whether the compensation allowed to the claimants in this case is just

compensation or not.

20. A perusal of the chart indicates that in the month of July, 2005 he was paid Rs. 1,742, in the month of August, 2005 he was paid Rs. 1,952

and in the month of July, 2006 he was paid Rs. 2,562. Thus, it is difficult to arrive at the income of the deceased on the basis of this chart.

Moreover it has been mentioned in the petition itself that when the deceased Ramesh Kumar was not employed by the U.P.S.R.T.C. he used to

work as conductor on the private buses. The claimant Smt. Maya Devi wife of the deceased Ramesh Kumar has stated that Ramesh Kumar used

to remain on duty for whole of the month and was not getting any time to look after the household affairs. The claimant Maya Devi and his

daughter Mithilesh have stated that Ramesh Kumar was earning Rs. 6,000 per month and was paying Rs. 4,000 a month for the family expenses.

However, the learned Tribunal being not satisfied with the statement in this regard did not accept the income as Rs. 6,000 a month. The Tribunal

observed that at present an unskilled labour is also getting Rs. 100 per day and since the deceased was a young man of about 40 years he must

have been earning Rs. 100 per day. The Tribunal also considered that the deceased might not have been getting the work in all the 30 days hence

the Tribunal decided that the deceased was working for 25 days in a month and then assessed the monthly income at Rs. 2,500. We have

considered over this finding of the Tribunal and we are also convinced that the deceased must have been earning Rs. 2,500 per month. It is also

noteworthy that he was maintaining a family consisting of himself, his wife, two grown up daughters and two other minor children. In these days a

family consisting of six members cannot be maintained unless a person is earning Rs. 2,500 per month. Thus, the finding of the Tribunal with

respect to the monthly income of the deceased is also confirmed.

21. The learned Tribunal has deducted 1/3rd of the income for the personal expenses of the deceased and has taken the dependency of the

claimants is 2/3rd. The Tribunal has taken the age of the deceased between 40 years and 45 years and after adopting the multiplier of 15 has

calculated the compensation at Rs. 3 lacs. To this amount has been added Rs. 5,000 for the loss of consortium and Rs. 2,500 for the loss of

estate. The total amount of compensation has thus been calculated at Rs. 3,07,500. The Tribunal has allowed this compensation together with

interest at the rate of 6% per month and we feel that no irregularity or illegality has been committed by the Tribunal in arriving at the amount of

compensation as above. Thus, we hold that the compensation allowed is the just compensation for the claimants.

22. No other point was argued in this appeal.

23. In view of the above discussion the appeal is liable to be dismissed.

Appeal is dismissed.

The amount of Rs. 25,000 deposited by the appellant U.P.S.R.T.C. at the time of filing the appeal be remitted to the Tribunal for being adjusted in

the amount to be paid by the appellant U.P.S.R.T.C.