

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 31st August, 2012

+ **MAC APP. 961/2012**

U.P. STATE ROAD TRANSPORT CORPORATION..... Appellant

Through: Mr. Pradeep Kumar, Adv.

versus

DEVRAJ SINGH

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL.15143/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application stands disposed of.

MAC APP. 961/2012

1. The Appeal is directed against the judgment dated 15.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹1,09,000/- was awarded in favour of the First Respondent for having suffered grievous injuries in a motor vehicle accident which occurred on 09.04.2011.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of bus No.UP-16P-9568 driven by its driver Surender Singh (Respondent No.1 before the Claims Tribunal). It was found that Devraj Singh (First Respondent

herein) suffered head injury with RT temporal EDH. He (Respondent No.1) remained admitted in JPN Apex Trauma Center, AIIMS Hospital, New Delhi from 09.04.2011 to 26.04.2011. He then remained admitted in Saraswati Hospital and Research Institute at Hatras, U.P. The Claims Tribunal observed that the First Respondent was working as Head Constable with U.P. police at a monthly salary of ₹18,000/-. Considering the nature of injuries, the compensation of ₹1,09,000/- was awarded which is tabulated hereunder:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Compensation for Medical Expenses	₹9,000/-
2.	Compensation for Conveyance and Special Diet Charges	₹ 25,000/-
3.	Compensation for Loss of Income/Leave	₹ 25,000/-
4.	Compensation for Pain, Suffering and Loss of Amenities of Life	₹ 50,000/-
5.	Loss of Love & Affection	₹ 1,50,000/-
	Total	₹ 1,09,000/-

3. It is urged by the learned counsel for the Appellant that the First Respondent was responsible for the accident as he was waiting for the bus not at the authorized bus stop but under the flyover.
4. While dealing with the issue of negligence, the Claims Tribunal held as under:-

“6. Since the present petition is under Section 166 & 140 of MV Act, it was the bounden duty of the petitioners to prove that the respondent no.1 was rash and negligent in driving the vehicle at

the time of accident. In this regard, the learned counsel for the petitioner has relied upon the statement of PW1, Sh. Devraj, who is the petitioner himself and has deposed that on 09.04.2011, he alongwith his brother was going from Sarai Kale Khan to Mathura and they were waiting for a bus near Sarai Kale Khan Bus Depot under the flyover when suddenly the offending vehicle i.e. bus bearing no.UP-16-P-9568 driven by its driver in a very rash and negligent took 'U' turn under the flyover without following the traffic rules and hit the petitioner from back side. As a result of the impact, the petitioner fell down on the road and sustained grievous injuries. PW1, Sh Devraj was cross-examined by the Ld counsels for the respondents and he stated that he had come to Delhi on 08.04.2011 from Mathura, UP in connection matrimonial alliance of his daughter and he alongwith his brother-in-law, Sh. Gajender Singh were waiting for bus near Kale Khan Bus Stop and the offending vehicle had hit him from behind. He had denied the suggestion that he was crossing the road at the time of accident without following the traffic rules and volunteered to say that there were buses standing at the place of accident and a bus stop was situated at a distance of about 100/200 meters from the place of accident. The respondent no.1, Sh. Surender Singh has got himself examined as RW1 and has deposed that on the date of accident he was driving the bus at a normal speed and at Sarai Kale Khan Flyover a private vehicle suddenly took a wrong turn and to control the bus he applied emergency brake and in the process the petitioner was hurt as he was standing in the middle of the road in negligent manner and that the petitioner sustained injuries due to his own fault. However, during his cross-examination on 09.05.2012, RW1, Sh. Surender Singh has admitted that he was arrested in FIR No.124/11, PS Sun Light Colony and had also obtained bail in the said case. He further admitted that he had not noted down the registration number of the vehicle which had taken a wrong turn before the accident and due to which he had applied emergency brakes. The respondent no.1/driver has not filed any complaint before any authority regarding his arrest in FIR No.124/11, PS Sun Light Colony. Accordingly, I do not find the testimony of RW1 worthy of any credence. On the other hand the statement of PW1, Sh Devraj S/o Sh. Vijay Bahadur stands corroborated by the certified copy of the Final Report U/s. 173 Cr.P.C. Ex.PW1/G, filed by the police in respect of this accident (FIR No.124/11, PS Sun Light Colony) against the respondent

no.1, driver of the offending vehicle for his trial of offences u/s. 279/337 IPC.”

5. The Claims Tribunal relied on the first Respondent's testimony as the same was corroborated by the registration of a criminal case under Section 279/337 IPC against the driver of the Appellant's bus. I do not find any infirmity on the finding of negligence. It has to be borne in mind that in a Petition under Section 166 of the Act, negligence is required to be proved on the touchstone of preponderance of probability.
6. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

7. The observations of the Supreme Court in *Bimla Devi (supra)* were referred to with approval in a later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
8. Keeping in view that the First Respondent suffered head injury and remained admitted in JPN Apex Trauma Center, AIIMS Hospital, New Delhi for a period of 17 days and thereafter in Saraswati Hospital and Research Institute at Hatras, U.P., the overall compensation of

₹1,09,000/- including a sum of ₹25,000/- towards the loss of leave is just and reasonable.

9. The Appeal is devoid of any merit; it is accordingly dismissed.
10. The statutory deposit of ₹25,000/- shall be refunded to the Appellant.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 31, 2012

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