

SUPREME COURT OF INDIA

Vijay Kumar Kulhar

Vs.

Rajasthan State Road Transport Corp.

C.A.Nos.....of 2009

(S.B. Sinha and Deepak Verma JJ.)

27.07.2009

JUDGMENT

Deepak Verma, J.

1. Leave granted.

2. Appellant, feeling aggrieved and dissatisfied with the judgment pronounced by Division Bench of High Court of Judicature for Rajasthan, at Jaipur Bench in D.B. Civil Special Appeal (Civil) No. 195 of 2006 decided on 5.7.2007, arising out of the Award passed by learned Single Judge on 21.8.2006 in Misc. Appeal No. 104 of 1995, which in turn arose from the Award dated 5.12.1994 passed by Motor Accident Claims Tribunal (hereinafter referred to as `Tribunal'), is before us challenging the same on variety of grounds.

3. We have accordingly heard learned counsel for the parties. Perused the record.

4. Basic and material facts for deciding the said appeals are mentioned herein below:

5. On 22.8.1983, the bus belonging to Rajasthan State Road Transport Corporation (for short, 'RSRTC') was plying between Ramgarh to Jhunjhunu. At the relevant point of time, it was being driven by PW-5 Ghosh Mohammad. When the said bus reached near the crusher machine, after Jhunjhunu Bus Stand, a truck bearing registration No. RJP 4120 loaded with stones overtook the bus from right hand side and hit it, with the result driver of the bus lost its control and it dashed against the stone bridge.

6. Since the bus was damaged in the said accident, RSRTC filed a claim petition against the appellant for awarding compensation to the tune of Rs. 43,078.80 before the Tribunal.

7. On notices being issued by the Tribunal, appellant herein, driver and owner of the truck appeared and filed written statement denying the allegations made in the claim petition filed by RSRTC. According to him, the bus had dashed against the bridge not because of his fault

but on account of rash and negligent driving of the bus by its driver PW 5 Ghosh Mohammad.

8. On the strength of pleadings of the parties, the Tribunal framed six issues. On appreciation of the evidence available on record, the Tribunal came to the conclusion that both drivers, Ghosh Mohammad and present appellant Vijay Kumar were responsible for the accident. Thus, Claims Tribunal proceeded to dismiss the claim petition.

9. Being aggrieved and dissatisfied with the said award of the Tribunal, claimant RSRTC filed Misc. Appeal under Section 173 of the Motor Vehicles Act in the High Court of Judicature at Rajasthan.

10. Learned Single Judge, after appreciating oral and documentary evidence available on record, recorded a finding that accident had taken place on account of rash and negligent driving of the truck by the appellant herein, therefore, appellant would be liable to pay the amount of compensation.

11. Looking to the facts and circumstances of the case, the amount claimed by RSRTC to the tune of Rs. 43078.80 was reduced to Rs. 40,000/- together with interest at the rate of six per cent per annum from the date of filing of the appeal till its payment.

12. Against the said award passed by the learned Single Judge, appellant preferred Special Appeal (C) before the Division Bench of the High Court. High Court considered the appeal on the question of its maintainability in the light of provisions contained in Section 100-A of the Code of Civil Procedure and also on the strength of the judgment of this Court in the case of *Kamal Kumar Datta and another vs. Ruby General Hospital Limited and others*¹ and came to the conclusion that such intra court appeal filed by the appellant after 1st July, 2002 would not be maintainable and dismissed the same. Merit of the matter was not at all considered by the Division Bench.

13. In these appeals, the appellant has challenged not only the order passed by the learned Single Judge awarding compensation of Rs. 40,000/- to respondent but also the order passed by Division Bench in the Special Appeal (c).

14. Mr. Ravindra Bana, learned counsel appearing for the appellant contended the following grounds : One - that Division Bench committed an error in dismissing the Special Appeal (C) holding therein that the same would not be maintainable; Two - Learned Single Judge has gravely erred in awarding compensation to respondent even though it was not established that accident was caused solely due to rash and negligent driving of the appellant.

15. Mr. S. K. Bhattacharya, learned counsel appearing for the respondent submitted that against the well reasoned award passed by the learned Single Judge as also the judgment of Division Bench holding that appeal was not maintainable, no interference is called for and appeals deserve to be dismissed.

16. It is pertinent to mention that as far as ground no.1 is concerned, learned counsel for the appellant has not argued the same. Thus, we are not required to answer the same.

17. P.W.5 Ghosh Mohammad driver of RSRTC Bus had lodged a report in the Police Station, Jhunjhunu in respect of the accident, registered as FIR No. 33/83 for the offence under Section 279 IPC against the present appellant. Exh. 26 is the said report. No doubt, it is true that appellant has been acquitted of the said offence but nothing turns on his acquittal.

18. After the receipt of the report, police had prepared a spot map Exh.1 wherein it has been noticed that left side of the truck had hit the right side of the bus, as a result whereof, the bus was found in hanging position on the left side of the bridge.

19. The mechanical examination report of the truck is marked as Exh. 37 in which it has been noticed that the mudguard on the left side of the truck was dented and there were marks of peeling off and dents on the left side gate of the truck.

20. Exh. 38 is the mechanical examination report of the bus according to which front portion of the bus was damaged and was lying on the floor, the steering control was also lying broken and there were damages on the right side of the bus.

21. From the aforesaid evidence, it is clearly made out that left side of the truck collided with right side of the bus and then it reached the main road. P.W.1 Mahinder Kumar Sharma conductor of the bus and P.W.5, driver of the bus have deposed in one voice that the bus was going at a moderate speed whereas the truck came at a high speed and dashed violently to the rear right side of the bus as a result of which the bus dashed against the bridge and broke the wall and was lying in a hanging position.

22. After carefully going through the FIR, the inspection reports of both the vehicles and the oral evidence available on record, it is clearly made out that it was truck driven by the appellant which had come in a rash and negligent manner from behind and while attempting to overtake the bus had dashed against it causing damage.

23. Once it is held that the accident was caused on account of rash and negligent driving of the truck by the appellant, then obviously the appellant would be liable to pay the amount of compensation, which has been assessed by learned Single Judge at Rs. 40,000/-.

24. In the light of the foregoing discussion, we are of the opinion that appeals have no merits and are accordingly hereby dismissed but with no orders as to cost.

¹(2006) 7 SCC 613