

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

% **Judgment delivered on: 29th March, 2019**

+ **MAC.APP. 141/2017**

UTTAR PRADESH STATE ROAD
TRANSPORT CO. (UPSRTC),
Through the Regional Manager,
Ghaziabad Depot, U.P.

...Appellant

Through: Mr. Aly Mirza, Advocate.

versus

1. RIYAZ KHAN
S/o Late Sh. Sujjan Khan
2. SUDHIR KUMAR
S/o Sh. Ram Bhajan

...Respondents

Through: Mr. JPN Shahi, Advocate
for R-1 with R-1 in
person.

**CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA**

JUDGMENT

I. S. MEHTA, J.

1. The instant appeal is arising from the impugned award dated 08.11.16 in MACT Case No. 3937/16 passed by Ms. Neena Bansal Krishna, Presiding Officer, MACT (SE-01), Saket Courts, New Delhi

(henceforth referred to as the Tribunal) whereby the respondent No.1 was awarded Rs. 22,42,500/- alongwith interest at the rate of 9% p.a. from the date of filing of petition till the date of its realization.

2. The brief facts stated are that on 21.07.2014 the petitioner, Riyaz Khan was traveling from Aligarh, Uttar Pradesh to Kashganj alongwith other passengers in UP State Roadways Bus bearing No. UP-81AF-3137 (hereinafter referred to as offending vehicle) and met with the accident at G.T. Road, opposite Sarai Village, U.P. He was taken to Government Hospital, Sikandra Rao, Uttar Pradesh. Thereafter, he was referred to N.M.C.H. Government Hospital, Aligarh, U.P. Petitioner also received treatment from Safdarjung Hospital, Delhi. FIR No. 308/14 under Section 279/338 IPC was got registered at Police Station Sikandra Rao, Uttar Pradesh.

3. Thereafter, claim petition was filed on 26.03.2015 against Respondent No.1, driver of the offending vehicle, Respondent No.2, Depot Manager (Owner) and Respondent No.3(Appellant herein), Secretary of UPSRTC.

4. Respondent No.1 filed written statement and submitted that he was driving the offending vehicle in U.P. State in normal speed and denied that accident never happened and further denied the claimant was travelling in the bus.

5. Respondent No.2 filed written statement and submitted that the accident took place on 21.07.2014 when one Bolero car was overtaking a truck and in the process of overtaking the Bolero car came on the wrong side of the road and the driver of the offending vehicle tried to save the bus and took the bus on un-metalled portion

of the road where the bus got into existing pot holes in the area and due to that reason bus turned-turtle and some passengers sustained injuries, he further submitted that driver was not negligent in the said accident and accident occurred in the process of saving the Bolero car which was coming from the wrong direction and denied entire allegation made in the claim petition.

6. On the basis of the pleadings of the parties, issues were framed on 29.02.2016 by the Ld. Tribunal.

7. In support of his claim petition, Petitioner filed his affidavit Ex.PW1/A and examined himself as PW1. He relied upon the documents i.e. refer letter of N.M.C.H Aligarh and OPD card of Safdarjung Hospital which are Ex. PW1/1 (colly.), the Photocopy of Discharge Card of Safdarjung Hospital is Mark-A, Medical bills of the petitioner are Ex.PW1/2 (colly.), the Photocopy of school leaving certificate is Ex.PW1/3, Copy of Election Identity Card is Ex.PW1/4 and Disability Certificate issued by Pt. Madan Mohan Malviya Hospital is Ex.PW1/6. Thereafter, petitioner's evidence was closed on 07.10.2016.

On the other hand, Respondent No.1 failed to contest the petition after filing written statement.

8. Respondent No.2 did not lead any evidence in rebuttal.

9. On the basis of pleadings and evidence led by the parties, impugned award was passed. Aggrieved from impugned award, Appellant has preferred the present appeal.

10. The Appellant has challenged the impugned Award on the following grounds: -

- i. That the award is contrary to facts and laws and is liable to be set aside.
- ii. That the award further suffers from material discrepancy which creates doubt whether claimant was travelling on the aforesaid bus on 21.07.2014 for want of evidence i.e. bus ticket.
- iii. That the disability certificate is not proved in accordance with law.
- iv. That the award suffers from proving the claimant was doing work of embroidery and knitting.
- v. That the award further suffers from awarding excessive amount to the claimant.

11. Per contra, learned counsel for Respondent No.1/claimant submitted that the compensation awarded by the Ld. Tribunal is fair, just and reasonable and the present appeal deserves to be dismissed.

12. In the instant appeal the respondent No.1 injured Riyaz Khan in his affidavit Ex.PW1/A has specifically stated that on 21.07.2014 he was traveling from Alipur to Kashganj alongwith co-passengers in offending vehicle which was driven by the respondent No.2 driver Sudhir Kumar rashly and negligently. When they reached at GT road, opposite Sarai village road the respondent No.2 accelerated the speed of the bus and started driving the said bus rashly and negligently as a result of which he lost control over the bus and the bus got turned-turtle on the road with great force and accident has taken place in which claimant's left arm got crushed under the bus and co-passenger also sustained grievous injuries. Later, he was taken to Govt. Hospital,

Sikamndra Rao, U.P. Thereafter he was referred to Safdarjung Hospital and during the course of treatment at Safdarjung hospital his left forearm below shoulder was amputated on 02.08.2014 and later he was discharged on 14.08.2014. The relevant contents of the affidavit Ex.PW1/A is reproduced as hereunder: -

“1. ...On 21.07.2014 at about 11.00 A.M., I was travelling alongwith other passengers in U.P. State Roadways Bus bearing No. UP-81-AF-3137, which was being driven by its driver/respondent No.1 in rash and negligent manner. I was going towards Kashganj from Aligarh, U.P. when I alongwith other occupants reached at G.T. Road opposite Sarai Village Road and respondent No.1 namely Sudhir Kumar accelerated the speed of the U.P. Roadways Bus bearing No. UP-81-AF-3137 in a rash and negligently manner and lost control over the bus and U.P. Roadways Bus Turned-Turtle on the road with a great force and my left arm crushed under the bus and other passengers also sustained grievous injuries. After the accident I alongwith other occupants were removed to Govt. Hospital, Sikandra Rao, U.P. and thereafter I was referred to N.M.C.H. Govt. Hospital, Aligarh, U.P. where the concerned doctor prepared my MLC and diagnosed to me crush injury of left hand forearm and head injury and thereafter I was referred to Safdarjung Hospital, New Delhi on 22.07.2014 for better medical treatment, where the concerned diagnosed to the A/E amputation (Gullitone) done for gangrenous left U.L. GA in EOT on 02.08.2014 Unit-II and discharge on dated 14.08.2014”.

13. The statement of the respondent No.1 Riyaz Khan was closed on 07.10.2016 and Appellant and respondent No.2/driver of the said bus did not prefer to rebut the statement of the respondent No.1/claimant that the accident occurred on 21.07.2014 at G.T. Road

opposite Sarai village road U.P. due to rash and negligent driving on the part of the respondent No.2/driver. The respondent No.2 and the Appellant too do not dispute that offending vehicle was driven by the respondent No.2, Sudhir Kumar on the aforesaid date at 11 A.M. However, the Appellant denies rash and negligent driving on the part of the respondent No.2. There is no explanation on record that the respondent No.2 has not examined himself to rebut the evidence of the respondent No.1/claimant.

14. So far, the identification of the claimant being a rightful passenger on the date of the incident is concerned, respondent No.1/claimant has specifically stated that he was traveling in the U.P. State Roadways Bus and has also given bus No. UP-81-AF-3137 in his affidavit and the same has not been denied by the Appellant in their written statement. The statement of the respondent No.1-Riyaz Khan remains un-rebutted qua the amputation of left forearm due to the crush injury and Disability Certificate Ex.PW1/6.

15. As far as proving of the documents relied upon by the respondent No.1/claimant is concerned the same has been exhibited without objection, since documents were exhibited before the Tribunal without objection at the time of recording of statement of the respondent No.1/claimant on 07.10.2016. Subsequent plea of the Appellant that the documents are not proved is neither here nor there and the same is not available to Appellant and respondent No.2.

16. As far as the plea of the Appellant that the respondent No.1/claimant has failed to prove that he was doing work of embroidery and knitting is concerned, the respondent No.1/claimant in

paragraph 6 of his own affidavit has specifically stated that at the relevant point of time he was doing embroidery and knitting work which is reproduced hereunder: -

“6. ..That at the time of accident I was doing embroidery and knitting work and earning a sum of Rs.18,000/- per month.”

17. The Appellant and respondent No.2 did not rebut the statement of the respondent No.1/claimant and paragraph 6 of the affidavit Ex.PW1/A. The objection raised by the appellant is just for the sake of raising objection which does not take logical conclusion in absence of rebuttal of the aforesaid content of the affidavit and statement of the respondent No.1/claimant. Therefore, there is no force in the contention of the Appellant. Consequently, no interference in the impugned award is required.

18. As discussed above, I find no infirmity in the impugned award dated 08.11.16 passed by the Ld. Tribunal. Thus, the present appeal is accordingly dismissed and impugned award is upheld. Awarded amount be released in favour of the claimants in manner as prescribed in the impugned award.

19. LCR File be sent back. Let one copy of this judgment be sent to the concerned Court. No order as to costs.

I.S.MEHTA
(JUDGE)

MARCH 29, 2019