

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2570 OF 2008

LACHOO RAM & ORS.

... APPELLANT

VS.

HIMACHAL ROAD TRANSPORT CORPN.

... RESPONDENTS

J U D G M E N T

SHIVA KIRTI SINGH, J.

Heard learned counsel for the appellants and learned counsel for the respondent-Himachal Road Transport Corporation.

2. The appellants are claimants. They are aggrieved by the judgment and order under appeal whereby the High Court reversed the findings given by the Motor Accident Claims Tribunal (II) at Shimla in MACT No. 68-S/2 of 1995 and has set aside the Award dated 30.11.1998

whereby the appellants were allowed compensation of Rs.2,74,000/- including the interim compensation, if already awarded to them along with interest at the rate of 12% p.a. from the date of the claim petition.

3. According to the learned counsel for the appellants learned High Court was not justified in substituting its own findings in place of those of the Tribunal by disbelieving statement of PW.2 Shobha Ram and PW.6 Hemant Kumar. The main criticism of the High Court judgment is on the ground that the case should have been decided on the basis of preponderance of probabilities as was done by the Tribunal whereas High Court has required a much higher degree of proof as if it was dealing with a criminal trial. The order under appeal has also been criticized on the ground that reasonings are perverse and that the High Court failed to keep in view the apparent incorrectness of the defence plea which was of total denial of the case of

the claimants that the bus of the respondent was involved in the accident with the motor cycle of the

deceased and the deceased died due to such accident. The judgment of the High Court is further in criticism on the ground that the Court has not given due weightage to the fact that the bus and its driver were detained almost immediately after the occurrence and FIR was also registered against the driver.

4. On the other hand, learned counsel for the respondent-Corporation has taken a counter stand that as a First Appellate Court the High Court was bound to enter into evidence, evaluate it carefully and give its own findings with reasons for the same. According to him the reasons are sound for the view taken by the High Court which has held that there is no direct evidence to show that the bus was involved in the accident and even if that is presumed, the evidence and the circumstances show that negligence was on the part of the deceased in trying to overtake the bus on a very narrow road in the town of Shimla immediately after the bus has started moving when the traffic signal turned green.

5. We have carefully gone through the materials on record and the appeal including counter affidavit as well as statement of case of both the parties.

6. According to the case of the appellants/claimants the deceased Dalip Singh lost his life immediately after the accident as a result of rash and negligent driving of a bus belonging to the Corporation driven by Lachoo Ram respondent no.2 on 12.07.1995. It is also their case that the accident occurred near traffic lights on the narrow Cart Road at the point near Gurudwara Singh Sabha and State Bus Terminal, Shimla, which is hardly 100-150 yards from the Gurudwara. Both, the deceased on a motor cycle and the bus had stopped at the traffic light. When the light turned green, the vehicles started. The respondent no.2 allegedly moved the bus very fast in a rash and negligent manner and struck against the motorcycle by its side. The deceased fell down and was fatally wounded leading to immediate death.

7. The case of the respondent is that there was no accident involving the bus of the Corporation and in the

facts of the case there could be no question of rash and negligent driving attributed to respondent no.2. The claim for compensation was resisted on both the grounds - One, that the bus was not involved in the accident and second, that the accident did not take place due to rash and negligent driving of respondent no.2. The registration of the FIR against the driver soon after the accident was not denied and only a plea was taken that the criminal case was registered falsely and in fact the deceased was never hit by the bus. Further defence was taken that the deceased was an untrained driver and he himself fell down from the motor cycle and died due to his own fault.

8. The evidence and the materials as discussed by the Tribunal and the High Court lead to the conclusion that if the principle of preponderance of probabilities is applied, the Tribunal was right in giving a finding that the motor cycle of the deceased and the bus were involved in the accident. Even the High Court has not totally overruled that possibility as is clear from the

observation in the second paragraph of its judgment on page 10 of the paper book in the following words:

"However, even if it is held that there was some collision the negligence is that of the motor cyclist himself since he could not and should not have tried to overtake the bus on the red light. The road at the red light is extremely narrow and from a standing position to suddenly try to overtake the bus is asking for trouble."

9. Although the High Court has given a tentative view, as noted above, for the reasons that there were some witnesses present near the place of occurrence and they have claimed that the accident was between the motor cycle and the bus and FIR was filed soon after the occurrence against the driver, we have no hesitation in accepting the submission that on this issue the High Court should have accepted the finding of the Tribunal, specially in view of its own observation noted above.

10. But simply the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver-respondent no.2. On

this issue, on comparing the reasons given by the Tribunal while discussing the issue no.1 and those given by the High Court on pages 10 and 11 of the paper book, we find the reasons given by the High Court to be much more cogent and acceptable in coming to the conclusion noted above. Since the bus was standing at the red light and on being asked, soon after starting from the traffic signal it stopped within 100 to 150 yards, it has rightly been reasoned that the bus could not have started on a high speed. The road at the place of the accident was admittedly very narrow and PW.2, who has been found reliable by the Tribunal as well as by the High Court and was present on the spot, has not claimed that the bus driver had given a signal to the deceased motor cyclist to overtake him. This witness could not see the actual accident because at that time the motorcyclist, in an effort to overtake the bus had gone on its right side and was not visible and therefore he could only hear the sound of crash. It is not the case of any witnesses that the bus driver took any sudden

turn while proceeding forward from the traffic signal or that he swerved the bus to the right side.

11. In the facts of the case it is not found possible to accept the contention on behalf of the appellants/claimants that the accident was on account of rash or negligent driving by the driver-the respondent no.2. In that view of the matter it is not found possible to give any relief to the appellants.

12. The appeal is dismissed but without any costs.

.....C.J.I.

(P. SATHASIVAM)

.....J.

(RANJAN GOGOI)

.....J.

(SHIVA KIRTI SINGH)

New Delhi,
January 28, 2014.