

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

% Judgment delivered on: 08th August, 2022

+ **MAC.APP. 5/2021&CM. APPL. 186/2021**

UP STATE ROAD TRANSPORT CORPORATION
THROUGH ITS REGIONAL MANAGER Appellant

versus

NARENDER SHARMA & ANR. Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Shadab Khan, Advocate
For the Respondent : Mr. Shrey Chathly, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT**SANJEEV SACHDEVA, J.**

1. This appeal emanates out of the judgment dated 18.07.2020 whereby a detailed accident report has been disposed of and compensation awarded.

2. As per the DAR, the injured on 06.10.2016 at about 01:45 pm the injured was coming from Seelampur to YumanaVihar, Delhi on his TVS Vicky and when he reached Loni Gol Chakkar (round - about), the offending vehicle a bus belonging to the appellant being driven at high speed and in a rash and negligent manner hit his TVS Vicky as a result of which he fell down and sustained injuries.

3. As per the Appellants, the bus was being driven by its driver as



per rules and regulations and when the bus reached at Loni Gol Chakkar (round-about), Delhi, traffic light was red and therefore the bus was stopped by its driver but suddenly, the injured who was riding the TVS Vicky at a very high speed and in rash and negligent manner applied breaks near the parked bus due to which the said TVS Vicky slipped and he suffered injuries.

4. In support of his claim the injured appeared as PW1. In his testimony he has deposed that the offending bus was being driven at a high speed and in a rash and negligent manner and it had hit his TVS Vicky, due to which he fell on the road and sustained grievous injuries. He has specifically deposed that when he reached under the flyover at Loni Gol Chakkar (round about), at about 01:45 pm, the offending bus being driven by its driver at a very high speed, rashly and negligently, violating traffic rules and regulations suddenly came from Loni Gol Chakkar (round about) side hit him, resultantly, he fell down and received grievous injuries.

5. The Appellants had alleged that the accident was caused due to rash and negligent driving of the injured/claimant. The Tribunal has noticed that the involvement of the offending bus has not been disputed.

6. The Tribunal has further noticed that there was clear contradiction between the cross examination conducted on behalf of the driver of the offending bus and on behalf of the Appellant



UPSRTC in the manner in which the accident had taken place.

7. During cross examination on behalf of the driver of the offending bus, the injured/claimant categorically denied the suggestion that the accident was caused as TVS Vicky was being driven by him at high speed and he fell down after applying sudden break.

8. During cross-examined by learned counsel for UPSRTC, it was suggested to the witness that he was driving TVS Vicky at high speed and that he *“took sudden turn and skidded on the road and hit against bus station at the red light and sustained injuries.”*

9. The Tribunal has further noticed that the said suggestion on behalf of the Appellant/UPSRTC was also contradicted by the joint written statement filed by the appellant and the driver wherein it had been alleged that the accident had taken place when the injured/claimant suddenly applied breaks near the offending vehicle which was parked at that time, as traffic light was red.

10. The Tribunal has also relied upon the mechanical inspection report of the vehicle of the claimant which was found to have fresh damage on the right side and on the rear side which corroborated the fact that the vehicle was hit by the offending bus.

11. The tribunal further noticed that the driver of the offending bus examined himself as R1W1. However in his statement he never



deposed that the TVS Vicky being driven by the injured, hit the stationary bus being driven by him after it slipped on the road. However, a suggestion to the said effect was given on behalf of the Appellant/UPSRTC which showed that the defence taken by the driver and owner of the offending bus in their joint written statement was fabricated.

12. Furthermore, from the discharge summary produced by the claimant it is observed that the nature of injuries sustained are fracture of the right ankle and foot and the right fabula. The nature of injuries sustained by the claimant are suggestive more of a blunt force impact rather than injuries caused by slipping/skidding on the road which would be more in the nature of abrasive injuries. In any event the test in such cases to be applied is on the touchstone of preponderance of probabilities. Which test, has been correctly applied by the tribunal.

13. In view of the above, there is no infirmity in the impugned award or any merit in the appeal. Accordingly, the appeal is dismissed.

14. Order *Dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

AUGUST 08, 2022
‘rs’