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IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 313/2007

Judgment reserved on: February 13, ,2008

Judgment delivered on: 28 - 7 - , 2008

UPSRTC ..... Appellant.
Through: Mr. Rakesh Sachdeva,Adv.

versus

Jitender @ Jeeta ..... Respondent
Through: Mr. O.P.Mannie for respondent.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J.

For orders, see MAC APP No. 310/2007.

28-7 ,2008 **KAILASH GAMBHIR, J**

— fresh CM-14642/11 for directions.

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IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 310/2007

Judgment reserved on: February 13, ,2008

Judgment delivered on: July 28, 2008

UPSRC ..... Appellant.
Through: Mr. Rakesh Sachdeva,Adv.

versus

Munni Devi ..... Respondent
Through: Mr. O.P.Mannie for respondent.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

KAILASH GAMBHIR, J.

Arising out of the same award, the appellants have filed eight separate appeals feeling aggrieved with the findings of the Tribunal primarily on the aspect of negligence while three separate cross appeals have been filed by the claimants claiming enhancement in

compensation amount over and above the amount awarded by the Tribunal.

By way of this common order, eight appeals bearing MAC APP Nos. 309/2007, 310/2007, 311/2007, 312/2007, 313/2007, 314/2007, 319/2007 and 321/2007 filed by the appellant UPSRTC and cross appeals bearing MAC APP No.1077/2006, MAC APP No.1078-81/2006 and MAC APP No. 1082-86/2006, shall be disposed of.

Brief facts which are common in these appeals are as under:

On 9.2.1999 at about 7.00 P.M. 8 persons were going in a maruti car bearing registration no. DL 8CA 0628 from Delhi to Ferozabad. When they reached near village Osani Bypass, a UP Roadways bus bearing registration no. UHK 8299 came at a very fast speed from the direction of Ferozabad being driven in a rash and negligent manner on the wrong side of the road and hit the maruti car which resulted in death of three persons and injury to five persons.

MAC APP Nos. 309/2007, 310/2007, 311/2007, 312/2007, 313/2007, 314/2007, 319/2007 and 321/2007:

Mr. Rakesh Sachdeva, counsel for the appellant strongly contended that learned Tribunal has wrongly attributed negligence on the part of the driver of the appellant's bus who was driving the bus on its left hand side and made his best efforts to avert the accident by even entering the extreme left kuccha portion, but still the Maruti Car which was being driven in a most rash and negligent manner while overtaking a truck, got collided with the bus and slipped under the said bus.

The contention of the learned counsel for the appellant is that the driver of the bus was driving the bus at a normal speed and was on the correct side of the road and it was the driver of the Maruti Car who under the influence of liquor, came on the wrong side of the road and in the process of overtaking a vehicle, proceeded ahead and came on the wrong side of the road and struck against the bus. The driver of the bus could not anticipate that the driver of the Maruti Car would overtake the vehicle but still

to save the Maruti Car, the driver of the bus even entered the kuchcha portion on his left side but still the Maruti Car slipped under the bus itself.

To substantiate his arguments, learned counsel for the appellant contended that the Maruti Car was overloaded with three persons sitting in the front seats while five at the rear seat. The contention of the learned counsel for the appellant is that even an expert driver can loose control of the car in such a situation as with two persons sitting on the left side of the driver would restrict easy maneuvering of brakes/gears.

Counsel for the appellant further urged that injured/claimants have given contradictory statements before the learned MACT while the bus conductor produced by the appellant gave correct version of the accident, but still the Tribunal believed the version as given by the claimants while discarding and disbelieving the version of the appellant. Counsel for the appellant also took serious objection to the non-impleadment of driver/owner and Insurer of the Maruti Car although, the same were necessary parties in the claim petition. Counsel

for the appellant also impinged the award on the ground that at least the Tribunal ought to have held both the vehicles liable for contributory negligence for causing the said accident instead of holding the bus of the appellant solely liable for causing the said accident.

The contention of the counsel for the appellant is that in a case of 'Head On Collusion' between two vehicles', rashness and negligence could not have been attributed on the part of one vehicle alone but both the drivers of the vehicles should have been held responsible to have equally contributed to that accident. Counsel for the appellant also contended that the respondents/claimants failed to prove the site plan from the criminal records and had the same been proved it would have certainly given the exact picture as to how the accident had occurred.

In support of his arguments, counsel for the appellant placed reliance on the following judgments:

1) 2006 ACJ 1058 (SC) Bijoy Kumar Dugar Vs. Bidyadhar Dutta & Ors.

2) 2006 (3) TAC 11 (Bom) Shivaji Waman Eodage & Ors. Vs. Chandrapati Ishwar Singh Dahiya & Ors.

3) 2006 (3) TAC 177(P&H); C.J.Singh Vs. Gur Rattan Pal Singh & Anr.

Mr. O.P. Mannie, learned counsel for the respondent, on the other hand, vehemently refuted the submissions made by the counsel for the appellant. Mr. Mannie submitted that the accident was solely caused due to rash and negligent driving of the bus driver of the appellant as the same was being driven on the wrong side of the road and had hit the Maruti Car coming from the opposite direction from the side of Delhi, at a very slow speed and on its proper left hand side.

Counsel for the respondent further submitted that the claimants who suffered injuries in the said accident gave correct version of the said accident and their testimonies were duly supported by the documentary evidence produced from the criminal court including the site plan. Counsel for the respondent further submitted that the driver of the offending bus alone was challaned by the

Police for his rash and negligent driving. Counsel for the respondent further submitted that even if there are some contradictions in the statements of the claimants about the position of the vehicle prior to the accident, then, the same may not be of much importance as the main question is the positioning of the vehicles at the time of occurrence of the accident.

In support of his arguments, learned counsel for the respondent placed reliance on the following judgments:

1) 1980 ACJ 435 SC, N.K. V.Bros.(P)Ltd. Vs. M. Karumai Ammal & Ors.
2) 1991 SC 487 Basthi Kasim Saheb Vs.The Mysore State Road Transport Corp. & Ors.
3) 1 (1994) ACC 504 (P&H), Girdhari Lal Vs. Radhey Shyam & Ors.
4) 2004 2 TAC 456(Mad)(DB);Kottabomman Transport Corp. Ltd. Vs. Vellai Duraichi & Ors.

Counsel for the respondent also disputed the applicability of the ratio of the judgment reported in **Bijoy Kumar Duggar (Supra)** as in the said case, the collision

had occurred between the vehicles in the middle of the road. While in the facts of the present case, the offending bus came on the wrong side of the road and hit the Maruti Car.

I have heard learned counsel for the parties at considerable length and perused the record.

Perusal of the award shows that the Tribunal has threadbare taken into account the testimonies of the witnesses produced by the claimants as well as that of the appellant and thereafter, reached to the conclusion that the driver of the appellant was solely negligent to cause the accident.

PW4 Mr. Amit Kumar in his deposition categorically denied the suggestion given by the appellant that their car was on the wrong side of the road or the driver of the car overtook the vehicle ahead of the car.

PW5 Mr. Jitender also denied in his cross examination that there was any vehicle ahead of the car. But this witness in his cross examination stated that the car was in the middle of the road. Similarly, PW 6, Mr. Vikas @

Vickky, in his cross examination also deposed that the Maruti Car was in the middle of the road. The said inconsistency which crept into the deposition of the two witnesses, has been duly considered by the Tribunal, and then arrived at a finding that the driver of the appellant's bus was responsible for causing the accident.

Perusal of the award also amplifies that it is not the said inconsistency in the deposition of the two witnesses but the Tribunal also found evasive and contradictory stand taken by the appellant with regard to the facts leading to the accident.

In the written statement filed by the appellant, nowhere it has been stated that the Maruti Car was trying to overtake a truck which was ahead of that. But in the evidence the theory of truck was introduced. Similarly, nowhere in the written statement, the stand was taken that the bus had entered the kuchcha portion on its left side after finding the speeding Maruti Car coming from the opposite direction after overtaking the alleged truck. The Tribunal also observed that the bus driver did not put any

effort to avert the accident even after finding a Maruti Car coming from the opposite direction.

In the written statement the appellant took the stand that the driver had stopped the bus after entering the kachha portion. It is also stated that the driver could not anticipate that the Maruti Car would overtake. There is yet another glaring error committed by the appellant in not producing the driver of the offending bus in the evidence. No explanation has come forth as to why the evidence of the driver who was the only material evidence was withheld by the appellant. The evidence of the conductor as adduced by the appellant cannot be considered to be the substitute of the evidence of the driver who could be the best evidence to depose about the exact facts and circumstances confronted by him at the time of the occurrence of the accident. The adverse inference thus has to be drawn against the appellant for non production of such a material witness. If the version that the offending bus of the appellant entered into the kuchcha portion on the left side, is believed as correct, then certainly, the said accident killing three persons and injuring five persons

could have been easily avoided. It is no doubt true that in cases where head 'on collision between two vehicles is established on record, then responsibility ordinarily can be fastened on both the vehicles being contributory negligent. But, then, in such a case, a clear case of head 'on collision between two vehicles' coming just opposite to each other in almost middle of the road, has to be established on record. In case of **Bijoy Kumar Duggar (Supra),** the facts were established before the Tribunal that drivers of both the vehicles involved in the accident were rash and negligent and keeping in view the facts as proved in the said case, the Apex Court upheld the findings of the Tribunal holding both the vehicles equally responsible in contributing to the accident. It is also matter of record that only the driver of the offending bus was challaned by the police for rash and negligent driving under Section 279/337/338/304-A, IPC while no such case was registered against the driver of the Maruti Car. No copy of the site plan was proved by either of the parties, although the same would have thrown enough light to determine the exact facts leading to the occurrence of the accident. The

appellant could have also summoned the criminal court record to prove the site plan, had it been serious in proving the negligence on the part of the driver of the Maruti Car. Photocopy of the site plan of the criminal case has now been produced by the counsel for the respondent and perusal of the same does not show that the Maruti Car was in the middle of the road while the truck was on its left side.

Be that as it may, in every case relating to head on collision there cannot be absolute rule that both the vehicles, which met with the accident, shall remain liable to the extent of 50:50. It is on the basis of the facts and circumstances of each case that the courts and tribunals have to decide about the negligence and the extent of such negligence of the vehicles involved.

On the basis of the foregoing discussion, I do not find any negligence on the part of the driver of the Maruti Car and therefore, no interference is made in the award on this count.

In the light of the above discussion, I find that there is no infirmity in the impugned award, and therefore, this Court is not persuaded to hold that the driver of the Maruti Car was equally negligent in causing the said accident. The contention raised by the counsel for the appellant is repelled. No other ground of challenge has been made by the appellant during the course of the arguments as the counsel for the appellant had confined his arguments to challenge the impugned award on the aspect of negligence and contributory negligence only.

In view of the above, I do not find that there is any merit in the present appeals filed by the appellant UPSRTC and the same are hereby dismissed.

Now I propose to deal with the three separate appeals filed by the claimants claiming enhancement in the compensation amount.

MAC APP No. 1082-86/2006

In MAC APP No. 1082-86/2006, the compensation amount of Rs.3,32,000/- with interest @6% p.a. has been awarded in favour of the claimants but

feeling not satisfied with the said compensation amount, the appellants have preferred the present appeal. The appellants have primarily claimed enhancement on the ground that the Tribunal has not taken into consideration the grant of future increase in the wages although income of the deceased was assessed under the Minimum Wages Act. Enhancement has also been claimed on the ground of 1/3rd deduction of the income of the deceased towards his personal expenses which as per the appellant should have been 1/4th, keeping in view the large family comprising of widow of the deceased and four children left by him. Enhancement is also claimed towards the inadequate compensation amount granted towards the loss of love and affection, loss of consortium. The appellants have separately claimed further compensation amount under the non pecuniary damages to a sum of Rs.1 lac towards the loss of services and Rs.25,000/- towards loss of estate. The interest has also been claimed @9% p.a., in place of interest granted by the Tribunal @6% p.a. In support of the said enhancement, counsel for the appellant has placed reliance on the following judgments.

1. MAC APP No.40/2004 & Cross objections /2004, dated 25.1.2007

2. 2002 ACJ 2076 (Del) (DB),Vishakha Devi & Ors. Vs. DTC & Anr.

3. 2007 ACJ 2123(SC), Mohinder Kaur & Ors. Vs. Hira Nand Sindhi (Ghoriwala) & Anr.

4. 2007 (VI) AD (Delhi) 730, New India Assurance Co. Ltd. Vs. Nirmala Devi & Ors.

Per contra counsel for the respondent contended that the impugned award is just and fair and requires no interference by this Court.

I have heard learned counsel for the parties. This court has already taken a view that wherever the income of the victim of the accident is considered under the Minimum Wages Act, then necessarily the increase shall also necessarily follow, based on the Minimum Wages Act itself. It has been noticed that the minimum wages get almost more than double within a span of 10 years period and therefore, accepting the contentions of the counsel for the appellant, the minimum wages of Rs.2514/-

as taken into consideration by the Tribunal would have become double to a sum of Rs.5028/- and then taking the average of the same, the income of the deceased would come to Rs.3771. The deceased was survived by his widow and four children. Out of the four children one was minor at the time of the accident and therefore, I accept the contention of the counsel for the appellant that 1/4th deduction would be appropriate to be deducted towards the personal expenses. The annual financial loss of the dependents would come to Rs.33,939/-. The deceased was 42 years old at the time of the accident as per the age disclosed in the post mortem report and therefore, it is apparent that age of the widow of the deceased would be below the said age only as per the Indian tradition. Considering the age of the widow, I feel that the Tribunal has not granted adequate amount of compensation towards loss of consortium. The same is raised from Rs.10,000/- to Rs.50,000/-. The deceased was survived by four children and therefore, the amount of compensation as granted by the Tribunal towards loss of love and affection is raised from Rs.10,000/- to Rs.20,000/- . As far

as the contention pertaining to the award of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of their only son and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the same as the same are not conventional heads of damages. Thus, no separate compensation can be granted towards the loss of services.

No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon'ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking in to consideration relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. As regards the enhancement in the rate of interest is concerned, I am

of the view that grants of 6% interest is just and fair and requires no interference. Rs. 10,000/- is awarded towards loss of estate as same is not awarded by the Tribunal. The compensation amount is thus enhanced from Rs.3,32,000/- to Rs.5,99,085/-. The differential amount shall be paid with interest @7% p.a. by the UPSRTC to the appellants from the date of filing of the petition till realisation. The amount shall be paid in the MAC APP No.1082-86/2006 in the manner to be decided and apportioned by the Tribunal.

MAC APP No.1078-81/2006

In MAC APP No. 1078-81/2006, the compensation amount of Rs. 4,20,000/- with interest @ 6% p.a. has been awarded in favour of the claimants but feeling dissatisfied with the quantum of compensation, the appellants claimants preferred the present appeal. The appellants have primarily claimed enhancement on the ground that the Tribunal has not taken into consideration the grant of future increase in the wages although income of the deceased was assessed under the Minimum Wages Act. Enhancement has also been claimed by wrongly deducting 1/3rd of the income

of the deceased towards his personal expenses which as per the appellant should have been 1/4th keeping in view the large family comprising of widow of the deceased, aged parents and a daughter left by him. Enhancement is also claimed towards the inadequate compensation amount granted towards the loss of consortium. The counsel also claimed compensation towards loss of love & affection. The appellants have separately claimed further compensation amount under the non pecuniary damages to a sum of Rs.1 lac towards the loss of services and Rs.25,000/- towards loss of estate. The interest has also been claimed @9% p.a., in place of interest granted by the Tribunal @6% p.a. In support of the said enhancement, counsel for the appellant has placed reliance on the following judgments:

1. MAC APP No.40/2004 & Cross objections /2004, dated 25.1.2007

2. 2002 ACJ 2076 (Del) (DB),Vishakha Devi & Ors. Vs. DTC & Anr.

3. 2007 ACJ 2123(SC), Mohinder Kaur & Ors. Vs. Hira Nand Sindhi (Ghoriwala) & Anr.

4. 2007 (VI) AD (Delhi) 730, New India Assurance Co. Ltd. Vs. Nirmala Devi & Ors.

Per contra counsel for the respondent contended that the impugned award is just and fair and requires no interference by this Court.

I have heard learned counsel for the parties and perused the record.

This court has already taken a view that wherever the income of the victim of the accident is considered under the Minimum Wages Act, then necessarily the increase shall also follow, based on the Minimum Wages Act itself. It has been noticed that the wages under the Minimum Wages Act become almost more than double within a span of 10 years period and therefore, accepting the contentions of the counsel for the appellant, the minimum wages of Rs.2772/- pm as taken into consideration by the Tribunal would have doubled to a sum of Rs.5544/- and then taking the average of the same, the income of the deceased would come to Rs.4158/-. The deceased was survived by his widow, his aged parents and a daughter and therefore, I accept the

contention of the counsel for the appellant that 1/4th deduction would be appropriate to be deducted towards the personal expenses. The annual financial loss of the dependents would come to Rs.37,422/. The deceased was 25 years old at the time of the accident and therefore, it is apparent that age of the widow of the deceased would be below the said age only as per Indian tradition. Considering the age of the widow, I feel that the Tribunal has not granted adequate amount of compensation towards loss of consortium. The same is raised from Rs.10,000/- to Rs.50,000/-. The deceased was survived by his aged parents and a daughter and therefore, the amount of compensation towards loss of love and affection is allowed at Rs.15,000/-. Further, Rs. 10,000/- is allowed towards loss of estate.

As far as the contention pertaining to the award of amount towards mental pain and sufferings caused to the appellants due to the sudden demise of their only son and the loss of services, which were being rendered by the deceased to the appellants is concerned, I do not feel inclined to award any amount as compensation towards the

same as the same are not conventional heads of damages. Thus, no separate compensation can be granted towards the loss of services.

No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. The Interest is compensation for forbearance or detention of money and that interest is awarded to a party only for being kept out of the money, which ought to have been paid to him. Time and again the Hon'ble Supreme Court has held that the rate of interest to be awarded should be just and fair depending upon the facts and circumstances of the case and taking into consideration relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time and other economic factors. As regards the enhancement in the rate of interest is concerned, I am of the view that grants of 6% interest is just and fair and requires no interference.

The compensation amount is thus enhanced from Rs. 4,20,000/- to Rs. 7,58,596/-. The differential amount shall be paid with interest @ 7% pa by the UPSRTC to the appellants from the date of filing of the petition till

realisation. The amount shall be paid in the MAC APP No. 1078-81/2006 in the manner to be decided and apportioned by the Tribunal.

MAC APP No.1077/2006

In MAC APP No. 1077/2006, the compensation amount of Rs. 3,85,000/- with interest @ 6% p.a. has been awarded in favour of the claimant but feeling dissatisfied with the quantum of compensation, the appellant claimant has preferred the present appeal. The appellant primarily claimed enhancement on the ground that the Tribunal has not taken into consideration increase in minimum wages while assessing income of the appellant injured under the Minimum Wages Act. The counsel also urged enhancement under the heads of special diet, conveyance expenses, pain and suffering & loss of amenities of life. Further, the counsel claimed compensation towards loss of income during treatment, compensation towards disability and disfigurement as the same is not awarded by the tribunal. The counsel also contended that the appellant suffered 60% disability but the tribunal assessed the same at 50%. The interest has also been claimed @9% p.a., in place of

interest granted by the Tribunal @6% p.a. In support of the said enhancement, counsel for the appellant has placed reliance on the following judgments:

1. 2007(3) TAC 397 (Del),Oriental Insurance Co.Ltd. Vs. Vijay Kumar Mittal & Ors.

2. I (2008) ACC 70 (Del),Ram Avtar Vs.Davinder Singh & Ors.

3. 1999 ACJ 809 (Del),Amar Singh Vs. Ishwar & Ors.

4. 1996 ACJ 372 (Del) Rattan Lal Mehta vs. Rajinder Kapoor

5. 2003 ACJ 1420 (Karnataka) Managing Director, Northeast Karnataka Road Transport Corporation. Vs. T. Prabhakar & Ors

6. 2007 (3) TAC 420 (Del),Saurabh Kumar(Master) Vs. Naresh Kumar & Ors.

7. 1995 ACJ 366 (SC) R.D. Hattangdi vs. Pest Control Pvt. Ltd.

Per contra counsel for the respondent contended that the impugned award is just and fair and requires no interference by this Court.

I have heard learned counsel for the parties and perused the record.

In view of the foregoing discussion regarding future increase in income, I accept the contentions of the counsel for the appellant, the minimum wages of Rs.2796/- pm as taken into consideration by the Tribunal would have become double to a sum of Rs.5592/- and then taking the average of the same, the income of the deceased would come to Rs.4194/-. The appellant, who was of 18 years of age and was still a student, has suffered complete damage of one eye, fracture of nose, fracture of right leg and rod was inserted. Considering this, the compensation towards special diet and conveyance expenses is enhanced from Rs. 15,000/- to Rs. 25,000/-. Compensation towards pain and suffering is enhanced from Rs. 20,000/- to Rs. 25,000/- & compensation towards loss of amenities of life is enhanced from Rs. 20,000/- to Rs. 25,000/-. As regards loss of income during treatment, I do not find it appropriate to award

compensation under the said head as the appellant was still a student and was not earning, thus, no compensation can be awarded towards loss of income during treatment. But, compensation towards disability and disfigurement can be awarded, considering the kind of injuries suffered by the appellant, Rs. 30,000/- is awarded towards disfigurement and Rs. 50,000/- is awarded towards disability. As regards the disability, the visual disability has been proved to the extent of 30% as per the certificate issued by the doctor of the Trauma Centre and the tribunal took the visual disability towards work as 50%. The appellant did not bring any document on record to prove the visual disability towards work by way of any cogent evidence but still the tribunal assessed it at 50%, therefore, the tribunal has been quite generous in this regard, thus, I do not feel inclined to interfere in the said finding of the tribunal.

As regards the enhancement in the rate of interest, in view of the foregoing discussion, I am of the view that grant of 6% interest is just and fair and requires no interference.

The compensation amount is thus enhanced from Rs. 3,85,000/- to Rs. 7,08,794/-. The differential amount shall be paid with interest @ 7% pa by the UPSRTC to the appellants from the date of filing of the petition till realisation.

In view of the above discussion, the aforesaid appeals are disposed of.

July 28,2008 **KAILASH GAMBHIR, J**

— fresh CM-14635/11 for transferring the statutory amount to the Motor Accidents claims Tribunal, Tis Hazari.