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

% Date of decision: 22nd October, 2009

+ **MAC.APP.No.139/2008**

UTTAR PRADESH STATE ROAD
TRANSPORT CORPORATION Appellant
Through : Ms. Garima Parshad, Adv.

versus

RAM RATI & ORS. Respondents
Through : Mr. Alok Kumar and
Ms. Manisha Aggarwal, Adv.

+ **MAC.APP. 154/2008**

UTTAR PRADESH STATE ROAD
TRANSPORT CORPORATION Appellant
Through : Ms. Garima Parshad, Adv.

versus

NEERU @ NAMRATA & ANR. Respondents
Through Mr. Alok Kumar and
Ms. Manisha Aggarwal, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

JUDGMENT (Oral)

1. The appellant has challenged the common award passed by the learned Tribunal whereby compensation of Rs.6,42,000/- has been awarded in respect of the death of Mukesh Kumar Tiwari and Rs.4,38,000/- has been awarded in respect of the death of Meena Tiwari to the claimants.

2. The accident dated 28th June, 2005 resulted in the death of Mukesh Kumar Tiwari and his wife, Meena Tiwari. Mukesh Kumar Tiwari was survived by his mother and two minor children who filed separate claim petitions for compensation arising out of the death of their parents before the learned Tribunal.

3. The deceased were travelling in Maruti Van bearing No.DL3C-F-8636 near Dhanipur, G.T. Road near Aligarh, when the UP Roadways bus bearing No.UP14-G-9608 came from behind and hit the Maruti Van. Satish Kumar Tiwari, brother of the deceased was also travelling in the Maruti Van at the time of the accident and he appeared as PW-1 before the learned Tribunal and deposed that the accident occurred due to the rash and negligent driving of the UP Roadways bus bearing No.UP14-G-9608. PW-1 proved the FIR - Ex.PW-1/9, challan - Ex.PW-1/10 post mortem report - Ex.PW-1/11, mechanical inspection report - Ex.PW-1/12 and the site plan prepared by the police - Ex.PW-1/13.

4. The driver of the UP Roadways bus appeared as R1W1 and deposed that the Maruti Van came from behind the bus and overtook the bus and collided with some other truck. R1W1 further deposed that the bus did not touch the Maruti Van. The statement of R1W1 is contrary to the plea taken in the written statement of the driver of UP Roadways bus. In the written statement, it has been pleaded that the Maruti Van was overtaking the bus from behind when a truck came from the

opposite side whereupon the driver of the van applied the brakes and the van overturned on the road.

5. From the testimony of PW-1 corroborated by the FIR, challan and the site plan, it has been proved that the accident occurred due to the rash and negligent driving of the UP Roadways bus bearing No.UP14-G-9608.

6. The learned counsel for the appellant has urged two grounds at the time of hearing of this appeal. The first ground of challenge is that the accident in question did not occur due to the rash and negligent driving of the UP Roadways bus. The second ground of challenge is that the amount awarded by the learned Tribunal is on the higher side. The respondents have filed counter claim seeking the enhancement of the award amount.

7. The plea taken by the appellant is clearly contrary to the statement of R1W1. There is no evidence of collision between Maruti Van and the truck as per the record of investigating agency. R1W1 has also not even cared to give the number of the truck. The case set up by the appellant in the written statement and in the statement of R1W1 was not even put to PW-1 in cross-examination.

8. From the evidence of PW-1 corroborated by the FIR - Ex.PW-1/9, challan – Ex.PW-1/10, post mortem report - Ex.PW-1/11, mechanical inspection report – Ex.PW-1/12 and the site plan prepared by the police - Ex.PW-1/13., it has been proved by sufficient evidence that the accident in question occurred due to the rash and negligent driving of UP Roadways bus bearing

No.UP14-G-9608. The appellant has taken contradictory pleas in the written statement and in the evidence of R1W1. The finding of the learned Tribunal with respect to the rash and negligent driving of the UP Roadways bus is correct and is upheld.

9. The deceased, Mukesh Kumar Tiwari was aged 33 years at the time of the accident and was working as a driver earning Rs.5,000/- per month. The salary certificate was proved as Ex.PW1/7. However, the learned Tribunal did not consider the aforesaid income of the deceased and took into consideration the minimum wages of Rs.3,488/- for skilled worker. The learned Tribunal presumed the income of the deceased to be Rs.4,500/- per month. The multiplier of 17 was applied and after deducting 1/3rd towards personal expenses and adding Rs.10,000/- towards loss of estate, funeral expenses and transportation expenses, Rs.6,42,000/- has been awarded by the learned Tribunal.

10. The learned counsel for the appellant submits that having taken the minimum wages of Rs.3,488/- for skilled worker, the income of the deceased should not have been taken to be Rs.4,500/- per month.

11. It is well-settled by the catena of judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134 and UPSRTC vs. Munni Devi, MAC.APP.No.310/2007** decided on 28.07.2008 that the Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate. This Court has taken

the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages is not akin to future prospects.

12. Following the aforesaid judgments, the income of the deceased according to the minimum wages is computed to be Rs.5,232/- $[(Rs.3,488 + Rs.6,976)/ 2]$. The learned Tribunal has taken the lower amount than computable according to law. The income of the deceased is taken to be Rs 5,232/- per month. $1/3^{rd}$ is deducted towards the personal expenses of the deceased and the loss of dependency of the claimants is computed to be Rs.3,488/- $(5,232 \times 2/3)$. The deceased was aged 32 years at the time of the accident and, therefore, the learned Tribunal applied the multiplier of 17 according to the Second Schedule. However, according to the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the appropriate multiplier for the age of 32 years is 16. In the peculiar facts and circumstances of this case, the multiplier of 17 is not disturbed. However, this case shall not be treated as a precedent with respect to the multiplier applied. By applying the multiplier of 17, the loss of dependency is computed to be Rs.7,11,552/- $(Rs.3,488 \times 12 \times 17)$. Rs.10,000/- is awarded towards loss of love and affection. The learned Tribunal has awarded Rs 10,000/- each towards loss of estate, funeral expenses and transportation expenses of dead body, which is upheld. The total compensation is computed to be

Rs.7,51,552/- (Rs.7,11,552 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000).

13. With respect to the death of Meena Tiwari, housewife aged 25 years, the learned Tribunal has taken the value of services to the family to be Rs.3,000/- per month following the judgment of the Hon'ble Supreme Court in the case of **Lata Wadwa Vs State of Bihar, (8) SCC 197**. The learned Tribunal deducted 1/3rd towards personal expenses and applied the multiplier of 17 to compute the loss of dependency. The learned Tribunal awarded Rs.10,000/- each towards loss of estate, funeral expenses and transportation expenses of dead body. The total compensation awarded is Rs.4,38,000/-.

14. The learned counsel for the claimant/respondent submits that the value of the services of Meena Tiwari be taken to be at least equal to the minimum wages of Rs.3,488/- per month for skilled worker. The learned counsel for the claimants submit that in the case of **Lata Wadhwa** (supra), the Hon'ble Supreme Court considered Rs.3,000/- as value of service of a housewife in respect of an accident pertaining to the year 1989.

15. The learned counsel for the claimants further submits that the multiplier be increased from 17 to 18 in view of recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra). The learned counsel further submits that the deduction of 1/3rd towards personal expenses of the deceased is liable to be set aside as no deduction was made by the Hon'ble Supreme Court in the case of **Lata Wadwa** (supra). The learned

counsel also seeks compensation towards loss of love and affection.

16. With respect to the value of service of the housewife, considering the status of the family of the deceased, no case for taking higher amount is made out. However, the learned counsel for the claimants is right in contending that no deduction of 1/3rd is permissible while assessing the value of the services of the housewife. Reference in this regard be made to para 11 of the judgment in Lata Wadhwa's case which is reproduced hereunder:-

“So far as the deceased housewives are concerned, in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation, on the basis of services rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied, but the estimation of the value of services rendered to the house by the housewives, which has been arrived at Rs.12,000/- per annum in cases of some and Rs.10,000/- for others, appears to us to be grossly low. It is true that the claimants, who ought to have given datas for determination of compensation, did not assist in any manner by providing the datas for estimating the value of services rendered by such housewives. But even in the absence of such datas and taking into consideration, the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3,000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life. The compensation awarded, therefore should be re-calculated, taking the value of services rendered per annum to be Rs.36,000/- and therefore applying the multiplier, as has been applied.”

17. Following aforesaid judgment of Hon'ble Supreme Court, the deduction of 1/3rd towards personal expenses is set aside.

According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra), the appropriate multiplier is 18 instead of 17 and, therefore, the multiplier is enhanced from 17 to 18. Rs.10,000/- is awarded towards loss of love and affection. The claimants are entitled to the total compensation of Rs.6,88,000/- $[(Rs.3,000 \times 12 \times 18) + 10,000 + 10,000 + 10,000 + 10,000]$

18. Both the appeals are dismissed. The cross objections are allowed. The award amount in respect of death of Mukesh Kumar Tiwari is enhanced from Rs.6,42,000/- to Rs.7,51,552/- and in respect of death of Meena Tiwari from Rs.4,38,000/- to Rs.6,88,000/- along with the interest @7.5% per annum from the date of filing of the petition till the date of award.

19. The appellant has already deposited the original award amount awarded by the learned Tribunal in terms of the order dated 13th May, 2009. The learned Tribunal is directed to release the same to the claimants in terms of the award of the learned Tribunal within one week.

20. The enhanced award amount along with interest be deposited with UCO Bank, Delhi High Court Branch within 30 days.

21. Upon such deposit being made, UCO Bank is directed to release a sum of Rs.50,000/- to Prabhat Tiwari and Rs.50,000/- to Namrata Tiwari by transferring the said amount to their Saving Bank Account. The remaining amount be kept in fixed deposit in the joint names of Prabhat Tiwari and Namrata Tiwari for the

period of 10 years on which monthly interest be paid to them.

22. List for reporting compliance on 2nd December 2009.

23. Copy of this order be given 'Dasti' to learned counsel for the parties under the signature of Court Master.

OCTOBER 22, 2009

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J.R. MIDHA, J