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THE HIGH COURT OF DELHI AT NEW DELHI

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MAC APPEAL No.502/2009 & CM 7515/2011

Decided on: 19.09.2011

UP STATE ROAD TRANSPORT CORP.

..... Appellant

Through: Ms. Garima Prashad, Advocate

Versus

SMT. REEMPA DEVI & ORS.

..... Respondents

Through: Mr. Dilip Singh, Mr. A.K. Singh,
Mr. Hemant Singh, Advocates for
respondents no.1 to 3.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | No |

M.L. MEHTA, J. (Oral)

1. The appellant has filed the present appeal against the impugned award dated 08.07.2009 by learned MACT. Vide the impugned award, a sum of ₹ 6 lac was awarded by learned Tribunal as compensation to respondents no.1 to 3 on account of death of Mata Prashad @ Jitu who was husband of respondent no.1, father of respondent No. 3 and son of respondent no.2. The said compensation was made up of ₹ 5 lac on account of loss of earnings of the respondents, ₹ 10,000/- on account of loss of consortium, ₹ 60,000/- on account of loss of love and affection and ₹ 20,000/- on account of funeral expenses. The said amount was

allowed to be disbursed to the respondents who are wife, mother and child of the deceased in the manner as indicated in the award.

2. The challenge to the award is mainly on two counts, firstly, the appellant has disputed its sole liability on the ground that there was another truck bearing registration number UP 70AT-2065 which was in stationary condition and was parked on the roadside without there being any indication and parking lights. In this regard, it is submitted that some part of negligence was also of the truck which was parked on this roadside. In this regard, it is also submitted that the claim petition filed by the respondents/ claimants was not maintainable on account of non-joinder of the driver and owner of the said stationary truck. Secondly, the compensation as awarded by the Tribunal is alleged to be excessive inasmuch as the Tribunal had taken the income of the deceased to be ₹ 6,000/- per month without there being sufficient evidence in this regard.

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

4. With regard to the challenge on account of non-joinder of driver and the owner of the said stationary truck part negligence of this truck on account of having been parked without parking lights, it may be noted that though such a plea was taken by the appellant in the written statement, but no witness was examined in this regard. The appellant had examined one Sunil Kumar PW3, a co-passenger in the bus in which the deceased was travelling who had categorically stated that the bus

was being driven by its driver at a very high speed and in a rash and negligent manner and that at about 4.45 am it suddenly hit the stationary truck bearing registration number UP 70AT-2065. He further stated that the driver of the bus did not adhere to the principles of safe driving and because of driving the vehicle at a very fast speed, it hit the stationary truck which was parked there. It is seen that testimony of this witness remained unassailed throughout before the Tribunal. The fact that the truck was parked on the roadside in the early hours, it was incumbent upon the driver of the bus to have driven the bus cautiously while passing through the stationary truck. Notice can be taken of the fact that in the month of June, there is sufficient amount of visibility in the morning at about 5 am and the fact that there was no parking light of the stationary truck would not in any way minimize the responsibility of the driver of the offending bus. Learned Tribunal, therefore, has rightly recorded that the accident occurred due to rash and negligent driving of driver of the offending bus. I find no infirmity or illegality in the findings recorded by learned Tribunal in this regard.

5. With regard to the challenge on the amount of compensation, it is seen that the case of the respondents was that the deceased was a tailor by profession. One Kunwar Pal was examined who deposed that the deceased was working with him and was drawing a salary of ₹ 6,000/- per month, in addition to overtime allowances. The statement of accounts was also filed in this regard. There is also no challenge to the testimony of this witness. However, since the learned Tribunal did not find any corroboration to the testimony of this witness, which to my

mind was not required, the Tribunal proceeded to treat the deceased as unskilled worker and taking the minimum wages as ₹ 3470/- per month as prescribed and keeping in view the age of the deceased as 25 applied the multiplier of 15 and made a deduction of 1/3rd on account of personal expenses of the deceased in arriving at a figure of ₹ 5 lac as loss of dependency of respondents. To my mind, this was quite just and reasonable approach which has been taken by the learned Tribunal. Likewise, I find no infirmity or illegality in granting compensation on account of loss of consortium, loss of love and affection and on account of funeral expenses. There is no perversity or illegality noticed by me in the overall compensation awarded by the Tribunal. The appeal is without any merit and is hereby dismissed.

6. With regard to the amount of compensation, certain directions were given by the learned Tribunal which were modified by this Court vide order dated 01.12.2009. It is informed that in compliance of the said order, the amount deposited in the names of respondents no.1 to 3, who were wife, mother and child of the deceased respectively, have already been credited and the respondent no.1 and 2 are regularly getting monthly interest on the fixed deposits. The amount lying deposited in the name of respondent no.3 has no facility of withdrawal of interest and it has been ordered to be deposited till his attaining the age of majority. The permission is sought in the aforesaid application for withdrawing a sum of ₹ 1 lac each by respondents no.1 and 2 so as to enable them to construct their house in their native village. It is also noticed that the respondents were permitted to get the fixed deposits

transferred to any branch of State Bank of India according to their convenience. The respondents are residents of Village Deokher, Tehsil Hariaya, District Basi, Uttar Pradesh. I consider that it would be extremely inconvenient for the respondents to keep on maintaining the bank account in Delhi and to withdraw interest on the deposits. Learned counsel informs that their account can be transferred to State Bank of India at Tehsil Hariaya, District Basti, Uttar Pradesh which is their native place and where they are presently residing. In view of all this, it is directed that the fixed deposit receipts in the names of respondents viz. Smt. Reempa Devi, Smt. Ramkeshar @ Dhukhna and Chandan son of late Mata Prasad @ Jitu and deposited with State Bank of India, Tis Hazari Branch, Delhi shall be transferred to State Bank of India, Tehsil Hariaya, District Basti, Uttar Pradesh in their names and after doing so, the respondents no.1 and 2 would be entitled to withdraw a sum of ₹1 lac each from their fixed deposits and continue to withdraw monthly interest on the remaining deposits. It is clarified that the remaining deposits will be for the period of 7 years in the names of respondents no.1 and 3. Rest of the terms and conditions imposed vide order dated 1.12.2009 shall remain as unchanged.

7. It is informed by learned counsel for the appellant that a sum of ₹25,000/- is lying deposited in this Court which was deposited by the appellant herein as interim compensation. I find that the said amount did not form part of the award and the said fact has been conceded by learned counsel for the respondents. It is, therefore, directed that the said amount of ₹25,000/- with accrued interest thereon may be released

in favour of the appellant forthwith on moving an appropriate application in this regard before the Registrar General of this Court.

8. The appeal and the application stand disposed of. Copy of this order may be given dasti to the respondents under the signature of the Court Master.

**M.L. MEHTA
(JUDGE)**

September 19, 2011
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