

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

Date of decision: 29th November, 2012

+ **MAC.APP. 248/2011**

U.P. STATE ROAD TRANSPORT CORPORATION..... Appellant

Through: Ms. Garima Prashad, Adv. with
Mr. Shadab Khan, Adv.

versus

MITHLESH & ORS. Respondents

Through: Mr. O.P. Mannie, Adv.

+ **MAC.APP. 253/2011**

MITHLESH & ORS. Appellants

Through: Mr. O.P. Mannie, Adv.

versus

U.P. STATE ROAD TRANSPORT CORPORATION & ORS.

..... Respondents

Through: Ms. Garima Prashad, Adv. with
Mr. Shadab Khan, Adv.

+ **MAC.APP. 250/2011**

U.P. STATE ROAD TRANSPORT CORPORATION..... Appellant

Through: Ms. Garima Prashad, Adv. with
Mr. Shadab Khan, Adv.

versus

PAPPU Respondent

Through: Mr. O.P. Mannie, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These three Appeals (MAC APP.248/2011, 253/2011 & 250/2011) arise out of a common judgment dated 20.11.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹85,001/- was awarded in favour of Respondent Pappu, (in MAC APP.250/2011) and a compensation of ₹16,19,272/- in favour of legal representatives of deceased Sunil Kumar, Respondents No.1 to 4 (in MAC APP.248/2011 and the Appellants in Cross Appeal No.253/2011).
2. The plea raised by the Appellant U.P. State Road Transport Corporation (UPSRTC) in MAC APP.248/2011 and 250/2011 is that the compensation awarded is excessive and exorbitant. While the plea raised by the legal representatives of the deceased Sunil Kumar in MAC APP.253/2011 is that the compensation awarded is on the lower side as no addition was made towards future prospects.
3. For the sake of convenience, the Appellant U.P. State Road Transport Corporation in MAC APP.248/2011 and MAC APP.250/2011 shall be referred to as the UPSRTC and the Appellants in MAC APP.253/2011 shall be referred to as the Claimants.
4. The following contentions are raised on behalf of the UPSRTC:-
 - (i) It was a head on collision between the motor car No.DL-1CL-0913 driven by deceased Sunil Kumar, thus, there was contributory negligence on the part of deceased. UPSRTC was not liable to pay the full compensation.

- (ii) In MAC APP.248/2011, the Claims Tribunal ought to have been deducted income tax payable on the deceased's income before computing the loss of dependency. The Claims Tribunal erred in not deducting any amount of tax. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.
- (iii) In MAC APP.250/2011 a compensation of ₹85,001/- awarded in favour of the First Respondent (the Claimant) was excessive and exorbitant.
5. On the other hand, in MAC APP.253/2011, learned counsel for the Claimants urges that the deceased was a self employed person. His income was gradually increasing as was evident from the ITRs proved on record. He was entitled to an addition of 30% on the basis of report of the Supreme Court in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559.

NEGLIGENCE

6. The Claims Tribunal dealt with the issue of negligence in Paras 14 to 35 of the impugned judgment. I have before me the Trial Court record. Injured Pappu, who is an eye witness to the accident testified that on 10.05.2008 at about 9:00 P.M. he along with Sunil Kumar was going from Delhi to Braj Ghat in a motor car which was being driven by Sunil Kumar (since deceased). When they reached National Highway Road near Allahbuxpur, a U.P. State Roadways bus No.UP-25T-5257 came from the opposite direction at a very high speed. It came from the wrong side of the road and hit the car. After the impact it dragged the car for a

considerable distance. The car was completely smashed in the accident. In cross-examination, the manner of the accident was not disputed by the Appellant UPSRTC. A simple suggestion was given to PW-2 that he was making a false statement. Tufail (RW1) who was the driver of UPSRTC bus tried to shift the blame on deceased Sunil Kumar, the driver of the car. RW-1 denied the suggestion that the accident was caused on account of his negligence. On the basis of the evidence of PW-2 on the one hand and RW1 on the other, the Claims Tribunal tilted the balance on negligence in favour of the Claimants and against the Appellant UPSRTC and its driver Tufail Ahmed. The Claims Tribunal was perfectly justified in doing so in as much as PW-2's testimony was left completely unchallenged and uncontroverted. On the other hand, a suggestion was given to RW1 Tufail Ahmed that it was his negligence due to which the accident was caused.

7. Apart from this, a criminal case was also registered against RW-1 which shows that the police investigation also found that the accident was caused on account of rash and negligent driving of UPSRTC bus by RW-1. RW-1 did not lodge any complaint with the senior police officers for his false implication.
8. It has to be borne in mind that in a Claim Petition under Section 166 of the Act, the negligence is required to be proved on touchstone of preponderance of probability.
9. In *Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, while holding that in a petition for award of compensation, the negligence has to be proved on the touchstone of preponderance of probability, in para 15, it was observed as under:-

“15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

10. The observations of the Supreme Court in *Bimla Devi (supra)* were referred with approval in later judgment in *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635.
11. On the basis of the material on record culpable negligence on the part of UPSRTC's driver was sufficiently proved. The Claims Tribunal's finding on negligence cannot be faulted.

QUANTUM (in MAC APP.248/2011 & 253/2011)

12. On the basis of documentary evidence, it was proved that the deceased Sunil Kumar was income tax assessee. He was filing ITRs for the past several years. In the Assessment year 2007-08 Sunil Kumar returned an income of ₹1,29,106/-. The ITR Ex.PW-1/6 was filed with the Income Tax Authority on 02.01.2008, that is much before the accident. The same is not even disputed by the learned counsel for the UPSRTC. A perusal of the computation of income Ex.PW-1/7 shows that there was liability of income tax of ₹1200/- which was liable to be deducted as per *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. The deceased Sunil Kumar was aged 35 years.
13. This Court in *Rakhi v. Satish Kumar & Ors.* (MAC. APP. 390/2011) decided on 16.07.2012, referred to the reports of the Supreme Court in

General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176, *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179, *Bijoy Kumar Dugar v. Bidya Dhar Dutta & Ors*, (2006) 3 SCC 242, *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr*, (2009) 6 SCC 121 and *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 and held that even in the absence of any evidence with regard to future prospects *Santosh Devi* provides for an increase of 30% towards inflation in the victims income in case of self employed persons and persons having fixed income. Relevant portion of *Santosh Devi* is extracted hereunder:

“14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self- employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized

sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

14. Thus, even in the absence of any evidence with regard to the future prospects, the Claimants were entitled to an addition of 30% on account of inflation.
15. The loss of dependency thus comes to ₹19,95,333/- (1,29,106/- - ₹ 1200/- (income tax) + 30% x 3/4 x 16) as against a sum of ₹15,49,272/- awarded by the Claims Tribunal.
16. Consequently, there is enhancement of ₹4,46,061/- in the overall compensation awarded in favour of the Claimants (Respondents No.1 to

- 4) in MAC APP.248/2011 which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment.
17. Appellant UPSRTC is directed to deposit the enhanced compensation along with interest with the Claims Tribunal within six weeks.
18. The enhancement compensation shall enure for the benefit of the First Respondent.
19. Seventy five percent of the compensation awarded shall be held in fixed deposit for a period of four years, six years and eight years. Rest 25% shall be released on deposit.
20. Both the Appeals (MAC APP.248/2011 and MAC APP.253/2011) are allowed in above terms.

QUANTUM (in MAC APP.250/2011)

21. The First Respondent Pappu in his Affidavit Ex.PW-2/A testified as under:-

“1. That on 10.05.2008 at about 9:00 P.M. I along with Sunil Kumar were going in car from Delhi to Braj Ghat. The car was being driven by Sunil Kumar. When we reached National Highway Road near Allahbuxpur at that time a U.P. Roadways Bus bearing no.UP-25T-5257 came from the opposite direction at a very high speed driven most rashly and negligently came on the wrong side of the road and hit the car and thereafter dragged the car for a considerable distance. The car was completely smashed in the accident. Due to the forceful impact I was thrown out of the car on the road. Sunil Kumar died at the spot. The driver of U.P. Roadways bus bearing No.UP-25T-5257 ran away from the spot leaving the bus at the place of accident.

2. I was removed to Aman hospital from the place of accident I was given first aid and thereafter I was shifted to Jai Prakash Narain

Appex Trauma Centre, New Delhi where I was treated for injuries received in the accident. I received following injuries:-

- i. Head injury,*
- ii. Teeth broken,*
- iii. Stitches on the neck and other multiple injuries all over body.*

3. At the time of the accident I was doing service in MCD and earning ₹6,000/- per month. I could not work for about three months. I spent ₹25,000/- on medical treatment, ₹5,000/- on special diet and ₹5,000/- on conveyance. I suffer headache continuously. I lost my teeth. Documents are Ex.PW-2/1 to PW-2/7.”

22. This part of the First respondent’s testimony was not challenged in cross-examination. Thus, it is established that the First Respondent suffered head injuries. His teeth were broken. He suffered multiple injuries on his neck and other parts of the body. The First Respondent remained under treatment in Aman Hospital (Ex.PW-2/1 to Ex.PW-2/3) and in AIIMS (Ex.PW-2/4). The Claims Tribunal awarded a compensation of ₹85,001/- which is tabulated hereunder:-

Sl.No.	Compensation under various heads	Awarded by the Claims Tribunal
1.	Loss of income	₹18,000/-
2.	Medicines & Medical Treatment	₹ 7,001.01/-
3.	Pain and Suffering	₹ 30,000/-
4.	Conveyance, Special Diet and Attendant	₹ 30,000/-
	Total	₹ 85,001.01/-

23. In view of the nature of injuries suffered, particularly the loss of teeth the compensation of ₹85,001/- cannot be said to be excessive or exorbitant on the other hand, the same is just and reasonable.

24. Appeal being MAC APP.250/2011 is devoid of any merit; the same is accordingly dismissed.
25. The statutory amount of ₹25,000/- shall be refunded to the Appellant UPSRTC after the enhanced compensation is deposited and a compliance report is filed in this regard with the Registrar of this Court.
26. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 29, 2012

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