

\$~12

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

Date of decision: 24th April, 2012

+ **MAC. APP. No.998/2011**

U.P. STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Ms Garima Prashad with
Mr. Pradeep Kumar, Advocates

Versus

MANSHA DEVI & ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant U.P. State Road Transport Corporation (UPSRTC) impugns a judgment dated 07.07.2011 passed by the Motor Accident Claims Tribunal whereby a compensation of ₹6,43,680/- was awarded for the death of Parvesh Kumar, who died in a motor accident which occurred on 19.04.2010.
2. On the basis of the evidence produced during inquiry before the Claims Tribunal, it was opined that the accident was caused on account of the rash and negligent driving of the UPSRTC bus

bearing registration No.UP-15AT-3661 by its bus driver (Mohd. Azam Khan).

3. It was claimed that the deceased was working as a Sales Executive with M/s Triveni Jewellers, Maliwara, Chandni Chowk, Delhi and was getting a salary of ₹9,000/- per month, in addition to 1% commission on sales made through him. In the absence of any documentary evidence from the deceased's employer or any other cogent evidence, the Claims Tribunal declined to take the salary or the profession into consideration. The Claims Tribunal on the basis of the deceased's educational qualification took the help of minimum wages as on the date of the accident fixed under the Minimum Wages Act, added 50% towards inflation to compute the loss of dependency as ₹6,28,680/-. After adding damages under non-pecuniary heads, the overall compensation of ₹6,43,700/- was awarded.
4. Following contentions are raised on behalf of the Appellant:
 - i) There was no negligence on the part of the Appellant's driver; in any case there was contributory negligence on the part of the deceased.
 - ii) There was no evidence of future prospects and it was not permissible to award 50% addition on account of inflation. Moreover, the deceased's parents were residing in U.P. The minimum wages fixed by U.P. Government were much less than those fixed by the Govt. of NCT of Delhi. The minimum wages as

prevalent in U.P. ought to have been taken into consideration for award of loss of dependency.

NEGLIGENCE:

5. The Claims Tribunal dealt with the issue of negligence as under:

“6. PW-2 Sh. Manoj Kumar is the eye witness of the accident who has narrated about the accident in detail in his affidavit Ex.PW2/X. According to PW2, the accident had occurred due to the rash and negligent driving of the offending bus, by Respondent no.1. He was driving the bus at a very high speed and was trying to overtake other vehicles without following traffic rules. He had hit the scooter from behind and after the accident dragged the scooty to considerable distance. The said accident had resulted in death of Sh. Parvesh Kumar @ Sonu.

7. PW-2 has further deposed that on the day of the accident he was going to bring certain goods for his factory which was situated at 3rd Pushta, New Usman Pur, Delhi, and the place of accident was at a distance of about 2 km. from his factory. He had brought the goods in a cycle rickshaw, and he was at a distance of about 50 meters from where he had witnessed the accident. Police had recorded his statement, Site plan was prepared, and photographs were taken in his presence. Though the witness was cross-examined at length by Respondents no.1 & 2, but the testimony of the witness could not be shaken qua the fact that Respondent no.1 was driving the offending vehicle in rash and negligent manner thereby causing the accident.

8. Both the Respondents though took the plea that the deceased was driving his scooty in between a truck and the offending bus and the accident had occurred due to the negligence of the deceased. But they could not prove the negligence of the deceased. Respondent no.1 has examined himself in defence as R1W1 and in the affidavit, he has stated that the accident took place due to the negligence of the deceased. In cross-examination R1W1 has deposed that he had filed a complaint in U.P.S.R.T.C. Office that the accident did not occur due to his negligence. But the said complaint has not been produced and proved by him. Thus, R1W1 has merely raised the plea for not having caused the accident which he has not been able to prove.
9. On the other hand, Ex.PW1/6 is the detailed accident report (DAR) filed by the IO with copies of the criminal record. As per DAR, FIR bearing No.126/10, under Section 279/304A IPC was registered against the driver of the offending bus bearing No.UP-15AT-3661. The FIR also supports the testimony of PW2 that the place of accident was got photographed. As per the criminal records, Respondent no.1 has been facing trial for offence punishable under Section 279/304A IPC for having driven the offending bus in rash and negligent manner and thereby causing the accident.”

6. In the Claim Petition, it was averred that the deceased was proceeding on a *Scooty* bearing registration No.DL-6SAD-1628 at a moderate speed towards Shastri park. When he reached near the Shastri Park red light, a UPSRTC bus bearing registration No.UP-15AT-3661 driven by its driver

(Respondent No.1 before the Claims Tribunal) came at a very high speed and while overtaking other vehicles, dashed against the *Scooty* on the rear and dragged it for a considerable distance. In their joint statement, the Appellant and its driver came up with the plea that the driver of the bus was plying the bus in his lane. When he reached near the red light at Shastri Park, there was no space on the road on the left side as trucks were running there. The deceased while driving the *Scooty* came in between the bus and the truck rammed into the truck and then came under the rear wheel of the bus. The Appellant and its driver did not come out with the registration number of the truck/trucks. A certified copy of the site plan prepared in FIR No.126/10 P.S. New Usmanpur was placed on the record of the Trial Court. From the site plan, it is evident that the bus was being driven in the middle of the road. The UPSRTC driver's plea that he was driving the bus in the bus lane and the trucks were going on his left side is not supported by the site plan. In a Claim Petition, the negligence is required to be proved at the touchstone of preponderance of probability.

7. I do not see any reason to disbelieve the testimony of PW2 which is supported by registration of the criminal case against the Appellant's driver. The Claims Tribunal's finding on the negligence against the Appellant's driver is well-founded and cannot be interfered with.
8. As far as quantum of compensation is concerned, the accident took place in Delhi. It is not the Appellant's case that the

deceased was not a resident of Delhi. The Respondents (Claimants) claimed that the deceased was employed with M/s Triveni Jewellers, Maliwara, Chandni Chowk, Delhi, though the Claims Tribunal declined to believe the employment with the said jeweler in the absence of any documentary evidence, yet there is nothing on the record to show that the deceased was not a resident of Delhi. Thus, the minimum wages of a matriculate as prevalent in the State of NCT of Delhi at the time of the accident were rightly adopted by the Claims Tribunal for awarding of compensation. Increase on account of inflation, however, was not justified in view of the judgment of this Court in *Smt. Dhaneshwari & Anr. v. Tejeshwar Singh & Ors.*, MAC APP No.997/2011 decided on 19.03.1012. The loss of dependency would, therefore, come to ₹5,02,944/- ($₹6448 \div 1/2 \times 12 \times 13$).

9. The Respondents(the Claimants) were entitled to ₹25,000/- towards loss of love and affection and ₹10,000/- each towards loss to estate and funeral expenses.
10. The overall compensation thus comes to ₹5,47,944/-. The compensation thus stands reduced from ₹6,43,680/- to ₹5,47,944/-.
11. The excess amount of ₹95,736/- along with interest and the interest accrued during the pendency of the Appeal shall be refunded to the Appellant U.P. State Road Transport Corporation. The balance amount along with the proportionate interest and interest accrued during the pendency of the Appeal

shall be released/held in Fixed Deposit in favour of the Respondents (Claimants) in terms of the order passed by the Claims Tribunal.

12. The Appeal is allowed in above terms.
13. The statutory amount of ₹25,000/- shall be refunded to the Appellant.

(G.P. MITTAL)
JUDGE

APRIL 24, 2012

pst