

\$~7 & 8

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

Date of decision: 28th May, 2012

+ **MAC.APP. No.721/2007**

**UTTARANCHAL STATE ROAD TRANSPORT
CORPORATION**

..... Appellant

Through: Mr. Harish Chandra Pant,
Advocate

Versus

RAMA DEVI KAIRA & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate

WITH

+ **MAC.APP. 374/2011**

RAMA DEVI KAIRA & ORS

..... Appellant

Through: Mr. S.N. Parashar, Advocate

versus

UTTRANCHAL TRANSPORT CORPORATION

..... Respondent

Through: Mr. Harish Chandra Pant,
Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals (MAC. APP. No.721/2007 and MAC. APP. No.374/2011) arise out of a judgment dated 12.09.2007 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.10,32,000/- was awarded for the death of Rajinder Singh Kaira who died in an accident which occurred on 19.04.2006.
2. On 20.04.2006, deceased Rajinder Singh Kaira along with other persons was travelling in Uttaranchal State Road Transport Corporation (USRTC) bus No.UA-07M-8604 from Delhi to Almora. At about 3:45 AM, the bus reached Gethia Sanitorium, Nainital. The bus was being driven in a very rash and negligent manner. The driver of the bus lost control as a result the bus fell down the road in a '*khad*'. The deceased suffered injuries which proved to be fatal. On appreciation of the evidence, the Claims Tribunal found that the accident occurred on account of the rash and negligent driving of the bus owned by the Appellant. It was proved that the deceased Rajinder Singh Kaira was in Government Service. On the date of the accident, he was getting a salary of ₹9991/- per month including transport allowance of ₹100/- and washing allowance of ₹30/-. The Claims Tribunal apart from these allowances deducted other allowances payable to the deceased, added 50% towards future prospects and applied a multiplier of '9' to compute the loss of dependency as ₹9,72,000/-. On adding a

sum of ₹60,000/- towards non-pecuniary heads, the overall compensation came to be ₹10,32,000/-

3. The Uttaranchal State Road Transport Corporation(USRTC) has filed the Appeal impugning the judgment on the ground of negligence, whereas the Respondents No.1 to 4 (the Claimants) have filed the Cross-Objections on the ground that the compensation awarded is on the lower side.

NEGLIGENCE:

4. It is urged by the learned counsel for the appellant USRTC that the accident occurred as the driver of the USRTC bus tried to save a boy who had suddenly come on the road. On the issue of negligence, the Claims Tribunal held as under:

“Petitioners in context of this issue have examined Smt. Vimla Bisht as PW1. This witness has testified that she was travelling in the ill fated bus at the time of accident. In para no.1 of Ex.PW1/X she has testified that the driver of the offending bus was driving the bus in a rash and negligent manner and lost control over the bus while so driving. She has further testified that on account of loss of control, bus fell down 500 feet below. In last lines of para no.1, she has testified that accident took place on account of fault of the driver of the bus. She was cross-examined on 19.03.2007 at length by Ld. counsel Sh. G.S. Aneja for respondent. Nothing favourable to respondent could be elicited during lengthy cross-examination. Her presence in the bus stands established from a bare perusal of her testimony. The road was a hilly one admittedly. This witness has testified that at the place of accident road was straight. She has also testified that two vehicles could pass easily to and fro at the

spot of accident. She has denied the suggestion that driver of the bus was driving the bus at a moderate speed and accident was not caused due to the negligence of the bus driver. She has also denied the suggestion that one unfortunate unknown person tried to cross the road all of a sudden and driver in the process lost his control. Respondent has not led any evidence to prove the defence of sudden closing of the road which is at variance with pleadings. Thus from the above discussed version, one leads to the inference that driver of the bus was not driving the bus in a proper manner and rashness and negligence as required in a civil case stands proved by the petitioners. It is well settled that rashness and negligence is not required to be proved in a manner as is required in a civil or criminal case. 'Kaushnuma Begum' and 2001 ACJ 1638, being handy precedents in this regard."

5. The driver of the bus has not come forward to narrate the circumstances in which the accident occurred. Although it is not proved on record that any person had suddenly come on the road, the manner of the accident clearly depicts that the driver of USRTC bus was not having sufficient control over the bus and that was the reason that it went off the road and fell into a trench. Negligence on the part of the driver of the USRTC is writ large.

QUANTUM OF COMPENSATION:

6. It was established from PW3's testimony that the deceased Rajinder Singh Kaira was employed with Indian National Science Academy as a helper and was getting a salary of ₹9,991/- per month. This included a sum of ₹100/- towards

travel allowance and ₹30/- towards washing allowance. Only a sum of ₹130/- can be treated as allowances which were incidental to the employment. Rest of the salary was for the benefit of the deceased and his family members. The deceased left behind four legal representatives. At least the widow and the Fourth Respondent who was aged 21 years at the time of the accident were dependent on the deceased. The deduction towards the personal and living expenses would be $1/3^{\text{rd}}$ as taken by the Claims Tribunal and the appropriate multiplier would be '13'. (*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121). The loss of dependency thus comes to ₹13,33,207/- (₹9,861/- x 12 + 30% x $2/3$ x 13). On adding a sum of ₹60,000/- awarded towards the non-pecuniary damages(as awarded by the Claims Tribunal), the overall compensation comes to ₹ 13,93,207/-

7. A cost of ₹30,000/- was imposed upon the Appellant by an order dated 23.03.2011. Another cost of ₹10,000/- was imposed for restoration of the Appeal by an order dated 09.05.2012.
8. The enhanced compensation of ₹3,61,207/- shall carry interest @ 7.5% per annum from the date of filing of the Petition till the date the amount is paid. The Appellant is directed to deposit the enhanced amount along with interest in the UCO Bank, Delhi High Court Branch in the name of the Respondents No.1 to 4 within six weeks.

9. 55% of the enhanced amount shall be payable to the First Respondent and 15% each shall be payable to the Respondents No.2 to 4. The enhanced amount of compensation payable to the Respondents No.2 to 4 shall be released immediately. 25% of the enhanced amount payable to the First Respondent shall be released to her immediately, rest of the amount shall be held in Fixed Deposit for a period of one year, three years and five years respectively in equal proportion.
10. The compensation deposited in this Court as awarded by the Claims Tribunal shall be released in favour of the Respondents No.1 to 4 in terms of the order passed by the Claims Tribunal.
11. The MAC. APP. No.721/2007 filed by the USRTC is devoid of merit; the same is accordingly dismissed.
12. The Cross-Objections (MAC APP. No.374/2011) preferred by the Claimants is allowed in above terms.
13. The statutory amount of ₹25,000/- shall be refunded to the Appellant USRTC Company after they pay the costs to the Claimants and file a proof before the Registrar.
14. Pending Applications, if any, stand disposed of accordingly.

(G.P. MITTAL)
JUDGE

MAY 28, 2012

pst