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

Date of decision: 26th September, 2012

+ **MAC.APP. No.722/2007**

**UTTARANCHAL STATE ROAD TRANSPORT
CORPORATION**

..... Appellant

Through: Mr. Mukesh K. Verma with
Mr. Harish Chandra Pant,
Advocates

Versus

VIMLA BISHT & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate

+ **MAC.APP. 354/2011**

VIMLA BISHT & ORS.

..... Appellant

Through: Mr. S.N. Parashar, Advocate

versus

**UTTRANCHAL STATE ROAD TRANSPORT
CORPORATION**

..... Respondent

Through: Mr. Mukesh K. Verma with
Mr. Harish Chandra Pant,
Advocates

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.722/2007 and MAC. APP. No.354/2011) arise out of a judgment dated 12.09.2007 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby a compensation of ₹4,06,400/- was awarded for the death of Rattan Singh Bisht who died in a motor vehicle accident which occurred on 19.04.2006.
2. On 20.04.2006, deceased Rattan Singh Bisht 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.
3. Although, the income of the deceased was claimed as ₹7,000/- per month, in the absence of any evidence regarding the income, the Claims Tribunal took the minimum wages of an unskilled worker of ₹3,300/-, added 50% towards future prospects and applied a multiplier of 9 to compute the loss of dependency as ₹3,56,400/-. On adding a sum of ₹50,000/-

towards non-pecuniary heads, an overall compensation of ₹4,06,400/- was awarded.

4. 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 3 (the Claimants) have filed the Cross-Objections on the ground that the compensation awarded is on the lower side.

NEGLIGENCE:

5. 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."

6. 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, even if it is admitted that a boy came 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 and thus sufficiently established.

QUANTUM OF COMPENSATION:

7. While dealing with the quantum of compensation, the Claims Tribunal held as under:

“16. Another determinant required to be ascertained is the income of the deceased at the time of death. Although in Ex. PW1/X income of the deceased has been shown as Rs.7,000/- per month, no documentary proof concerning the same has been produced on record. It is no more res integra that self serving assertion of the claimants in this regard cannot be accepted as correct. Confronted with this situation Ld. counsel for the claimants fairly conceded that let the minimum wages of an uneducated and unskilled worker be taken as the income of the deceased. According to the Schedule minimum wages of an uneducated and unskilled worker were Rs.3,271/- (say Rs.3,300/-) as on 20.04.2006 i.e. the date of accident/death of deceased. As per the petition deceased is survived by his wife aged 42 years, his son Sh. Balwant Singh aged 24 years and his daughter Ms. Kavita Bisht aged 21 years. Therefore, deduction of 1/3rd out of annual income has to be made. Counsel for petitioner submitted that even the minimum wages are increasing and a minimum wager has also got future prospects. In FAO No. 396/01 decided on 15.01.2007 Hon'ble Mr. Justice Pradeep Nandrajog has held that minimum wager is also to be awarded future prospects. Judgment of Hon'ble Supreme Court titled as Bijoy Kumar Dugar v. Bidyadhar Dutt & Ors. reported in II (2006) SLT 651 was referred in the same. Therefore, the plea of the Ld. counsel for the petitioner has to be accepted. The Formula of calculation for the purpose stands settled by the Hon'ble Supreme Court in Sushma Thomas case in this regard. The Formula is that income is to be doubled and has to be added to the income at the time of death. Thereafter mean of the aggregate is taken out by dividing it by two. So by this Formula income which will form the basis of the compensation comes to Rs. 4,950/- (3300 + 6600 = 9900 divided by 2 = 4950). Annual income thus comes to Rs. 59,400/-.

(4950 x 12 = 59,400). 1/3rd has to be deducted and it comes to Rs. 19,800/- (59,400 – 19,800 =39,600). Thus multiplicand has been arrived at which can be said to be dependency loss.”

8. It is stated by the learned counsel for the Appellant that in the absence of any evidence with regard to the deceased's future prospects, 50% addition should not have been made by the Claims Tribunal.
9. On the other hand, learned counsel for the Cross-Objectors argues that the deceased Rattan Singh Bisht was a student of 11th Standard. He relies on the Transfer Certificate Ex.PW1/B issued by Almora Inter College, Almora. It is thus urged that minimum wages of a matriculate ought to have been taken into consideration while awarding the loss of dependency. The learned counsel states that even if the Cross-Objectors were not entitled to addition of 50% in the absence of any evidence with regard to the future prospects, they were entitled to an addition of 30% in view of the Supreme Court report in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, where it was held that even in the absence of any evidence as to future prospects an increase of 30% in the income has to be provided where the victim had fixed income or was a self employed person. It is urged that since the deceased was aged 48 years on the date of the accident, the Claims Tribunal erred in applying the multiplier of 9, on the other hand, it should have been 13.

10. Since the deceased was a matriculate, minimum wages of a matriculate should have been taken instead of minimum wages of an unskilled worker. I would agree with the learned counsel for the Appellant that the Cross-Objectorists were not entitled to an addition of 50% towards future prospects in the absence of any evidence in this regard. But, at the same time, they were entitled to an addition of 30% on account of inflation on the basis of Supreme Court report in *Santosh Devi*. Moreover, the appropriate multiplier at the age of 48 would be 13 instead of 9 taken by the Claims Tribunal. The loss of dependency thus comes to ₹5,02,808/-($₹3719 \times 12 + 30\% \times \frac{2}{3} \times 13$). On adding a compensation of ₹50,000/- awarded towards non-pecuniary damages, the overall compensation comes to ₹5,52,808/-.
11. The enhanced compensation of ₹1,46,408/- 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 3 within six weeks.
12. The compensation already deposited shall be released in terms of the order passed by the Claims Tribunal.
13. The enhanced compensation shall enure for the benefit of the First Respondent(Cross-Objectorist). 75% of the enhanced amount shall be held in fixed deposit for a period of two years, four years and six years and rest shall be released on deposit.

14. By an order dated 09.05.2012 costs of ₹15,000/- was imposed on the Appellant. The costs have still not been paid.
15. 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.
16. If the amount of costs is not paid within four weeks, the statutory amount of ₹25,000/- shall be released in favour of the First Respondent. The First Respondent shall be entitled to take execution in respect of the remaining cost.
17. MAC. APP. No.722/2007 and MAC. APP. No.354/2011 are disposed of in above terms.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

SEPTEMBER 26, 2012

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