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

% *Judgment delivered on: 31<sup>st</sup> July, 2013*

+ **MAC.APP. 1003/2012 & CM. No. 15852/2012**

U.P.STATE ROAD TRANSPORT CORPORTION ..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates.

Versus

ASHOK KUMAR & ORS. .... Respondents

Through: Mr. Munish Chhoker, Advocate for Respondent Nos.1 and 2.  
Mr. Malkhan Singh, Advocate for Respondent No.3.

**AND**

+ **MAC.APP. 1005/2012 & CM No. 15859/2012 (stay)**

U.P.STATE ROAD TRANSPORT CORPORTION ..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates.

Versus

KAVITA SHARMA & ORS. .... Respondents

Through: Mr. Munish Chhoker, Advocate for Respondent Nos.1 and 2.  
Mr. Malkhan Singh, Advocate for Respondent No.3.

**AND**

+ **MAC.APP. 1004/2012 & CM Nos. 15856/2012 and 661/2013**

U.P.STATE ROAD TRANSPORT CORPORTION ..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab  
Khan, Advocates.

Versus

DARSHAN LAL & ANR. .... Respondents

Through: Mr. Munish Chhoker, Advocate for  
Respondent Nos.1 and 2.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**CM No.661/2013 (U/s 151 CPC) in MAC. Appeal No. 1004/2012**

In view of the order passed on 21.03.2013, the instant application stands disposed of.

**MAC Appeal Nos. 1003, 1005 & 1004 of 2012**

1. All the aforesaid appeals have been preferred by the appellant/U.P.State Road Transport Corporation (UPSRTC) impugning the common award dated 28.05.2012 passed by the learned Tribunal in claim petitions bearing Nos. 186/10, 187/10 and 636/10 arising out of an accident took place on 09.12.2009.

2. Brief facts of the case are that on 09.12.2009, Rohit Sharma, Deepender Kumar, Bharat Chauhan and Mahesh Sharma were proceeding towards Nangla Pipri, Mohan Pura, District Etah, Uttar Pradesh in a Maruti

Wagon-R bearing No.DL-7CK-0227. Rohit Sharma (deceased) was driving the said Wagon-R. When they reached near Nihampur Village, Kas Ganj Road, Sikandara Rao, District Mahamaya Nagar, U.P., U.P. Roadways bus bearing No. UP-25AG-0256, driven by its driver at a high speed, rashly and negligently, hit the said Maruti Wagon-R car. Rohit Sharma and Deepender Kumar sustained fatal injuries and died on the spot and the other occupants, namely; Bharat Chauhan and Mahesh Sharma also suffered injuries.

3. Resultantly, MAC. Petition No. 186/10 was filed by Sh. Ashok Kumar Sharma and Smt. Maya Devi, parents of the deceased Rohit Sharma.

4. MAC. Petition No. 636/10 was filed by Smt. Kavita Sharma, wife of the deceased Rohit Sharma.

5. MAC. Petition No. 187/10 was filed by Sh. Darshan Lal and Smt. Savitri Devi, parents of the deceased Deepender Kumar.

6. It is important to note that injured Bharat Chauhan and Mahesh Sharma did not file any claim petition before the learned Tribunal.

7. As noted earlier, all the aforesaid three claim petitions were decided by the learned Tribunal by a common award dated 28.05.2012.

8. In claim petition Nos. 186/10 and 636/10, the learned Tribunal has awarded a total compensation of Rs.21,71,900/- along with interest @ 7.5 % per annum in favour of the claimants in the following proportions:-

(i) Rs.2,17,190/- along with corresponding interest in favour of Sh. Ashok Kumar Sharma, father of deceased Rohit Sharma;

- (ii) Rs.8,68,760/- along with corresponding interest in favour of Smt.Maya Devi, mother of deceased Rohit Sharma; and
- (iii) Rs.10,85,950/- along with corresponding interest in favour of Smt. Kavita Sharma, wife of deceased Rohit Sharma.

In claim petition No. 187/10, the learned Tribunal has awarded a total compensation of Rs.8,53,650/- along with interest @ 7.5% per annum in favour of the claimants.

9. Since the appellants are impugning the common award dated 28.05.2012 passed by the learned Tribunal in three claim petitions, noted above; therefore, this Court has decided to dispose of all these appeals by the common judgment.

10. Learned counsel appearing on behalf of the appellant/UPSRTC has argued two issues in all three appeals noted above. Firstly, the driver of the offending vehicle was not negligent and secondly, the learned Tribunal has erred in calculating the double income of both the deceased.

11. As regards the issue of contributory negligence, learned counsel submitted that PW3 Mahesh deposed that on 09.12.2009, he alongwith Rohit Sharma, Deepender Kumar and Bharat Chauhan were travelling in a Maruti Wagon-R bearing No.DL-7CK-0227 and proceeding towards Nangla Pipri, Mohan Pura, District Etah; Rohit Sharma was driving the said Wagon-R; when they reached near Nihalpur Village, Kas Ganj Road, Sikandara Rao, District Mahamaya Nagar, U.P., a U.P. Roadways bus bearing No. UP-25AG-0256, driven by its driver at a high speed, rashly and negligently, hit the said Maruti Wagon-R car; Rohit Sharma and Deepender Kumar

sustained fatal injuries and died on the spot and the other occupants also suffered injuries

12. Learned counsel has pointed out that during cross-examination, PW3 has stated that the bus had collided with their vehicle from front side which proved that the accident was a head on collision and the learned Tribunal has failed to consider the aspect of contributory negligence on the part of the driver of the Maruti Wagon-R.

13. He further submitted that when there is head on collision, it is always the fault of both the drivers of the vehicles involved in the accident. Therefore, the contributory negligence is also on the part of the driver of the Maruti Wagon-R.

14. Driver of the offending vehicle appeared as R1W1 and deposed that on 09.12.2009, he was driving the UPSRTC bus bearing No.UP-25AG-0256, i.e., from Pili Bheet to Mathura and when the bus reached near Nihalpur at about 9.00 p.m, a Wagon-R Car DL-7CK-0227, driven by its driver rashly and negligently, tried to overtake a truck, driver of the said car lost balance due to which car slipped and turned around and met with an accident. The accident occurred due to negligence on the part of driver of the said Car and there was no negligence on his part.

15. On the issue raised above, PW3, Sh. Mahesh, injured, who was travelling in the Wagon-R, deposed that the U.P. Roadways bus bearing No. UP-25AG-0256 had collided with their vehicle from front side. Whereas the appellant/UPSRTC has taken contrary stand in the written statement and totally denied about the accident. In turn, the driver of the offending vehicle

in his testimony has stated that the accident took place because of the negligence of the car driver, who was trying to overtake a truck.

16. The facts regarding overtaking of truck were not part of the pleadings, therefore, the same were neither considered by the learned Tribunal nor they can be believed at this stage. Importantly, there is not an iota of evidence led by the appellant/UPSRTC to support this fact.

17. Even otherwise, the mechanical inspection report of the car as well as the bus proved that the car was hit from front side by the offending vehicle.

18. That apart, during cross-examination, R1W1 stated that FIR was registered against him; he was arrested and released on bail. Subsequently, the offending bus No. UP-25AG-0256 was taken into custody. Importantly, the driver of the offending vehicle could not even tell the number of other vehicle allegedly involved in the accident, besides bus No. UP-25AG-0256.

19. Moreover, the appellant/UPSRTC had not preferred any representation/complaint for lodging of FIR against their driver, involving their bus into the accident. Charge sheet has already been filed against the driver of the offending vehicle in the concerned court.

20. Additionally, the FIR, post-mortem report, mechanical inspection report, site plan, charge sheet and testimony of PW3, conclusively establish the fact that the death of deceased caused by the road accident involving UP Roadways bus bearing No. UP-25AG-0256. There is no material to disbelieve the version of PW3, who was an eye witness and therefore, it is reliable and trustworthy. Moreover, there is nothing on record to dispel the inference that deceased Sh. Rahul Sharma and Sh. Deepender Kumar, died

on account of injuries sustained by them in a road accident which occurred on 09.12.2009 involving the bus mentioned above and due to rash and negligent driving of its driver.

21. In view of the above, I do not find any discrepancy qua the order passed by the learned Tribunal on this issue.

22. The second issue raised by the learned counsel for the appellant/UPSRTC is that the learned Tribunal has erred in holding that the deceased were working in two places simultaneously without giving a specific finding as to how and when the deceased were working at two different places at the same time. Thus, the learned Tribunal has erred while considering the monthly income of deceased Rohit Sharma as Rs.6,540/- plus Rs.5,727/- and of deceased Deepender Kumar as Rs.4,000/- plus Rs.5,483/-.

23. On the issue of salary, Sh. Ashok Sharma, father of deceased Rohit Sharma has stated that his son was 26 years of age and was earning Rs. 13300/-per month being a Shift Manager in Devyani International Ltd. and Platoon Commander in Delhi Home Guard. The aforesaid fact has been corroborated by PW5, Sh. Ved Pal Singh, District Staff Officer in Directorate General, Home Guards, by which the salary record Ex. PW5/B of the deceased Rohit Sharma has been proved. During cross-examination, the said witness stated that deceased was given no benefit except the salary shown in Ex.PW-5/B and he was getting Rs. 195/- per day.

24. Further corroborated by PW6, Sh. Ravinder Sharma, Manager HR, Devyani International Ltd., the salary slip of deceased for the month of

October, 2009 and November, 2009 as Ex.PW6/1 and stated that the deceased was appointed in the company as Shift Manager and submitted that deceased Rohit Sharma was working with them since 10.03.2006 (accident took place on 09.12.2009).

25. PW2, Sh. Darshan Lal, father of deceased Deepender Kumar deposed that at the time of accident his son was aged 28 years and was working in Home Guards under Directorate General of Home Guards and Him Motors Ltd. and was earning Rs. 16,000/- per month. The aforesaid fact has been corroborated by PW-4 Sh. Sarad Chand Kapoor and proved the salary certificate of deceased Deepender Kumar as Ex.PW4/A. During cross-examination, he stated that deceased Deepender Kumar was working as a Field Boy and he was also working as Home Guard.

26. PW5, Sh. Ved Pal Singh, District Staff Officer, Directorate General, Home Guards, was examined and the salary of deceased Deepender Kumar has been proved as Ex.PW5/A.

27. From the depositions of PW4, PW5, PW6 and fathers of the deceased Rohit Sharma and Deepender Kumar, it is established that the monthly statement Ex. PW5/B pertaining to deceased Rohit Sharma has been issued by Directorate General of Home Guards; and that he was getting salary of Rs. 5727/- in the month of November, 2009. The salary certificate issued by Devyani International Ltd., Ex. PW1/2 proves that deceased Rohit Sharma was working as Shift Manager and drawing a salary of Rs. 7540/- in the month of November 2009.

28. Perusal of the bank statement Ex.PW5/A, pertaining to deceased Deepender Kumar shows that he was getting salary of Rs. 5483/- in the month of November, 2009. The certificate Ex.PW4/A issued by Him Motors Pvt. Ltd. shows that he was getting Rs. 410/- per day in addition to local conveyance and he was working with them for collecting cheques and had worked for two years.

29. Thus, in view of the above, learned Tribunal has rightly considered the monthly salary of deceased Deepender Kumar as Rs.9483/- (Rs.4,000/- plus Rs.5,483/-) and deceased Rohit Sharma as Rs.12,267/- (Rs.6,540/- plus Rs.5,727/-).

30. It is pertinent to note that the appellant/UPSRTC neither before the learned Tribunal nor before this Court have brought any material or witness contrary to the proved facts by the claimants.

31. In view of the above discussion, I do not find any discrepancy in the award dated 28.05.2012 passed by the learned Tribunal.

32. Resultantly, all the appeals noted above along with pending applications are dismissed with no order as to costs.

33. The Registry of this Court is directed to release the statutory amount in favour of the appellant/UPSRTC.

34. Vide order dated 10.09.2012, this Court stayed the execution of the impugned award dated 28.05.2012 subject to the deposit of award amount along with upto date interest with UCO Bank, Delhi High Court Branch, New Delhi. Thereafter, vide order dated 21.03.2013, this Court has released

50% of the awarded amount in terms of the award passed by the learned Tribunal.

35. Since all the appeals filed by the appellant/UPSRTC have been dismissed, the Branch Manager, UCO Bank, High Court of Delhi, New Delhi is directed to release the balance amount along with up-to-date interest accrued thereon in favour of the respondents/claimants in terms of the order dated 28.05.2012 passed by the learned Tribunal on taking necessary steps by them.

**CM. Nos. 15852, 15856 & 15859 of 2012 (for stay)**

Since the appeals have been dismissed, all these applications have become *infructuous*. The same are accordingly disposed of.

**SURESH KAIT, J.**

**JULY 31, 2013**

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