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

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Judgment delivered on: 13.05.2019

+ **MAC.APP. 532/2017, CM APPL. 23151/2017 – STAY**

UPSRTC

..... Appellant

Through: Mr.Rishabh Pant, Advocate.
(M. No.9971919424)

Versus

ASHOK KUMAR & ANR.

..... Respondents

Through: Mr. Ravi Bhardwaj, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant impugns the Award of compensation on two counts: i) that since the motor-car in which the respondent no. 1-victim was travelling, as a passenger, had crashed into the appellant's bus, therefore, *ex facie*, there would be an element of contributory negligence by the driver of the motorcar and accordingly some portion of the compensation amount should be reduced from the appellant's liability and apportioned to the motorcars' owner/driver; and ii) that since grant of interest on the awarded amount @ 12% per annum is on the higher side, hence it should be made 9% per annum.

2. The learned counsel refers to the claim of the respondent no.1/claimant in which he admits that the vehicle in which he was travelling

collided with the appellant's offending vehicle, because the bus in front was being driven in a rash and negligent manner. However, the mere fact that the respondent's vehicle was behind the appellant's vehicle, therefore, it was incumbent and prudent for the respondent to keep a safe distance from the vehicle moving ahead, so as to avoid any sudden collision. Para 1 of the claim petition read as under:

“ That on the fateful day i.e. 12.02.2013 at about 3.35 PM, the petitioner/injured was coming from Haridwar to Delhi by his vehicle (swift car No. DL-8CU-6223) along with his friends namely Atul Jain, Mayur Sharma, Mahesh & Prem, which was being driven by friend of the petitioner/ injured Atul Jain, as soon as the petitioner approached to Cheetal Cafe, Bhangel Choraha Highway, Khatauli, Mujaffar Nagar, U.P. suddenly the offending vehicle bearing No. UP-15AT-1336 (UPSRTC BUS) which was being driven by the respondent No. 1 in a very fast speed in rash, negligent and zig-zag manner without obeying the traffic rules, applied sudden breaks due to this act, the offending vehicle had collided with the vehicle (in which the injured was travelling), due to which the petitioner/injured received grievous multiple injuries on his mouth, lips, forehead, neck, legs, arms, hand, lungs (suppressed due to heavy pressure over the chest) and other parts of his body, also the friends of petitioner received injuries. In between the somebody called 100 number police, the police approached to place of incident and arrested the respondent No. 1 along with UPSRTC Bus and registered the case U/s 279/337/338/427 IPC, P.S. Khatoli, Distt. Mujaffar Nagar, U.P.”

(emphasis supplied)

3. The above averments describes the manner in which the appellant's vehicle was being driven. It is specifically alleged that the bus was being driven at a very fast speed in a rash, negligent and zig-zag manner without

obeying the traffic rules. The mere fact that the bus was being driven in zig-zag manner would pose a threat to other road users, whether ahead or behind it. The nature of the driving as alleged, has not been challenged in the evidence led by the respondent. The evidence of the respondent/claimant by way of affidavit dated 02.02.2017, reiterates the aforesaid contention, *inter alia*, as under:

“That I am residing at the above mentioned address and running his business of property dealing at DLF Ankur Enclave, Ghaziabad, UP in the name and style of M/s Balaji Properties and was earning more than Rs.50,000/- per month having liabilities of his spouse, other and two school going children, who are dependent upon the petitioner. On 12.02.2013 at about 03.35 p.m., the petitioner/injured was coming from Haridwar to Delhi by his vehicle (swift car No. DL-8CU-6223) along with his friends namely Atul Jain, Mayur Sharma, Mahesh and Prem, which was being driven by friend of the petitioner/injured Atul Jain, as soon as the petitioner approached to Cheetal cafe, Bangel Choraha High way, Khatauli, Mujaffar Nagar, UP, suddenly the offending vehicle bearing No. UP-15AT 1336 (UPSRTC Bus) which was being driven by the respondent No. 1 in a very fast speed in rash, negligent and zig-zag manner without obeying the traffic rules, applied sudden breaks due to this act, the offending vehicle had been collide with the vehicle in which the injured was travelling due to which the deponent received grievous multiple injuries on his mouth, lips, forehead, neck, legs, arms, hand, lungs, suppressed due to heavy pressure over the chest and brain and other parts of his body due to which the petitioner lost his memory. In between somebody called at 100 number police, the police approached the place of incident and arrested the respondent No. 1 along with UPSRTC Bus and registered the case U/s 279/337/338/427 IPC P.S. Khatoli, Distt. Mujaffar Nagar, U.P. Thereafter the injured was taken to Giri Pushpa Hospital and then to Anand Hospital, Meerut,

U.P. in a very critical condition, where he was medically treated and after that he was medically examined by doctor of Anand Hospital, Meerut, UP and the petitioner/ injured is still under medical supervision as he received number of stitches on his mouth, lips, neck and tendon also slit, the face of the petitioner/ injured is badly damaged, number of plates are installed in his mouth by surgery thereafter plastic surgery is also been done of the petitioner. His one finger is permanently disabled, a period will be spent in coming the petitioner in normal way, but he has left his look caused by said negligent and rashly driving of the respondent no. 1.”

(emphasis supplied)

4. This testimony of the injured victim remains un-impeached. It has been duly considered in the impugned award, as under:

“10. To succeed in the claim petition in view of section 166 of the MV Act, It is for the claimant to prove that vehicle which caused the accident was being driven rashly and negligently by its driver. The petitioner / injured filed his affidavit by way of evidence and examined himself as PW-1 who deposed about the facts of the case. He was cross-examined by Id. Counsel for respondent and during cross-examination nothing has come forward in his testimony to disbelieve the version of PW-1/ injured / petitioner. The PW-2 proved the disability certificate of the petitioner Ex. PW 2/1. On the other hand, respondents did not examine any witness to rebut the contentions and deny the claim of the petitioner and mere denial is not sufficient to rebut the claim of the petitioner. No witness was produced or examined by respondent as well to prove as to how accident occurred due to the negligence of the petitioner; the respondent No. 1 was not at fault and was not driving the vehicle in rash and negligent manner. The petitioner/ injured has proved the relevant records in support of contentions and there is no reason to disbelieve the testimony of witnesses. I have gone through the record of

criminal proceedings and documents in respect of the accident caused to the petitioner which is prima facie suggestive of negligence of respondent No. 1 in driving the vehicle at the time of accident.

Relied judgment in (Bimla Devi and Ors. v. Himachal Road Transport

(Corporation and Ors., (2009) 13 SC 530 and the judgment in Parmeshwari v. Amir Chand (2011) 11 SCC 635 and Kusum Lata v. Satbir (2011) 3 SCC 6461.

Hon'ble Supreme Court in Bimla Devi and Ors. vs Himachal Road Transport Corporation and Ors. (2009) 13 SC 530 held 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 any accident caused by a particular bus in a particular manner may not be possible to be done by the claimant. 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."

5. Insofar as the testimony of the injured victim remained unshaken there is no reason to disbelieve the same. Accordingly, the contention of the appellant apropos their being contributory negligence by the vehicle in which the respondent was travelling, is untenable and accordingly rejected. As regards the appellant's second contention that interest on the compensation amount should be payable @ 9% p.a. and not @ 12% p.a., the Court has accessed www.sbi.co.in/portal/web/interest-rates and found that rate of interest on term deposits applicable at the time of accident and even thereafter, was maximum @ 9% p.a.. Accordingly, rate of interest is reduced from 12% p.a. to 9% p.a.

6. Let the awarded amount along with interest accrued thereon @ 9% p.a. be released to the respondent/claimant in terms of the scheme of disbursement specified in the Award. The excess amount shall be returned to the appellant. The statutory amount too, be released to the appellant.

7. The appeal is disposed-off in the above terms.

MAY 13, 2019/acm

NAJMI WAZIRI, J

