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

Decided on: 9th February, 2015

+ **MAC.APP. 434/2014**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION Appellant

Through: Ms. Garima Prashad, Advocate

versus

SMT GULVASHRI & ANR. Respondents

Through: Mr. J.P. N. Shahi, Advocate for
Respondents no.1 & 2.

+ **MAC.APP. 144/2015**

SMT GULVASHRI & ANR. Appellants

Through: Mr. J.P. N. Shahi, Advocate

versus

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION Respondent

Through: Ms. Garima Prashad, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM. APPL 19761/2014 (delay)

For the reasons stated in the application, the delay of 69 days in filing the Cross-Objections is condoned.

Application stands disposed of.

CM APPL.19760/2014 (Cross-Objections)

These Are Cross-Objections filed by Respondents no.1 and 2. Let the Cross-Objections be registered as MAC. APP. 144/2015.

The application stands disposed of.

MAC.APP. 434/2014 & MAC. APP. 144/2015

1. These two appeals arise out of judgment dated 29.01.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.8,94,967/- was awarded for the death of Sonu who died in a motor vehicular accident which occurred on 01.05.2012 at about 9.00 a.m.
2. Following contentions are raised on behalf of the Uttar Pradesh State Road Transport Corporation (UPSRTC):
 - (i) There was no negligence on the part of its driver, therefore, UPSRTC is not liable to pay any compensation; the Claims Tribunal erred in fastening the liability; and

- (ii) The compensation awarded is exorbitant and excessive. In the absence of any evidence with regard to future prospects, addition of 50% made was unjustified.
3. On the other hand, the learned counsel for the Respondents no.1 and 2 states that negligence was conclusively proved and that the compensation awarded is on the lower side. Relying on *Amrit Bhanu Shali v. National Insurance Co. Ltd. 2012 (6) SCALE 1*, it is urged that multiplier ought to have been selected as per the age of the deceased instead of age of deceased's mother.

NEGLIGENCE

4. The Claims Tribunal appreciated the evidence of PW-2 Mahendra, an eye witness to the accident and also Vimlesh Kumar, driver of UPSRTC who entered the witness box as R2W1. Paras 9 to 12 of the impugned judgment are extracted hereunder:-

9. The testimony of PW-2 is relevant on this issue. The PW-2 Sh. Mahendra stated that on 01.05.2012 at about 9 am he along with Sonu was going to Sikandara from Khoda and he was accompanying Sh. Sonu to see him off and Sh. Sonu boarded in the bus no. UP-75M-2348 and the bus started moving and the bus driver stopped the bus applying sudden brakes after travelling for about 50 feet and Sh. Sonu fell down from the gate and the driver of the said bus did not stop and went away with his vehicle. The PW-2 stated that 2-3 police man were near to the place of accident and

the injured was removed to the Pushpanjali Hospital where he succumbed to the injuries on the same day. The PW-2 stated that the police had recorded his statement. The PW-2 also stated that Sonu fell from the bus and ran over under the rear wheels of the said bus. During cross-examination, the PW-2 stated that when the deceased was boarding into the bus, the bus was stationary and when the deceased boarded in the bus he was alone.

10. On the other hand, respondent no. 2 examined Sh. Vimlesh Kumar as R2W1. Sh. Vimlesh Kumar stated that he had nothing to do with the accident and no accident had taken place because of negligence or rash driving of respondent no.1 and he was having valid driving licence. The R2W1 also stated that on 01.05.2012, he was plying the bus no. UP-75M-2348 abiding all rules and regulations of traffic and was taking all major and minor precautions, at slow speed from Delhi to Etawa and when the Bus reached at Khora Bypass, Ghaziabad at about 9.00 A.M. and the bus was running with slow speed on bypass on the left side and gate of the bus was closed and a boy tried to board on the running bus but his foot slipped and he fell down on the road and sustained injuries and the said accident occurred due to negligence of the boy and his guardian did not stop him from boarding on the running bus with closed gate of the bus and there is no negligence on the part of the respondent no. 1. During cross-examination, R2W1 stated that an FIR no. 560/12 was lodged against him and the vehicle no. UP-75M-2348 was seized by the police. The R2W1 stated that he had given a complaint regarding false implication, to PS Indirapuram but was not having the copy of the complaint.

11. I have gone through the material on record. The testimony of R2W1 is not reliable and consistent. The R2W1 stated that the gate of the bus was closed and a boy tried to board on the running bus and his foot slipped and he fell down and sustained injuries and accident had taken place because of negligence of the boy. The statement of R2W1 is self serving and totally unreliable as if the gate of the bus was closed how any passenger can board into the bus. The FIR has been registered against the respondent no. 1. It is recorded in the site plan that the bus driver did not stop after the accident rather went away from the place of accident. The testimony of PW-2 is reliable and consistent. Further the respondent no. 2 failed to place on record any complaint preferred by him against lodging of the FIR.

12. The FIR, charge-sheet, mechanical inspection report, postmortem report, site-plan and the testimony of the PW-2, taken together fully establish the death of Sh. Sonu caused by the injuries sustained by him involving vehicle bearing registration No. UP-75M-2348 in a road accident. There is nothing on record to dispel the inference that deceased Sh. Sonu, died on account of injuries sustained by him in a road accident which occurred on 01.05.2012 because of rash and negligent driving of vehicle bearing No. UP-75M-2348 being driven by respondent no. 1. Issue no. 1 is accordingly decided in favour of petitioners and against the respondents”.

5. It is pointed out by the learned counsel for the Appellant that the case set up in the claim petition by Respondents no.1 and 2 was that the accident took place while Sonu was boarding the

bus and on account of sudden start of the bus.

6. Admittedly, the FIR was immediately recorded. Name of Mahendra S/o Rajbir Singh, village Kuthila was recorded in the FIR itself. It is evident from the averments made in the FIR that deceased Sonu and his father were travelling in bus no. UP-75M-2348. This is corroborated from the testimony of PW-2 Mahendra. The Claims Tribunal rightly held the driver of bus no. UP-75M-2348 liable for the accident observing that *the statement of R2W1 is self serving and totally unreliable as if the gate of the bus was closed, how any passenger can board into the bus.* Although the driver stated in his cross-examination that he had filed a complaint against his false implication, but the said complaint was not proved.
7. In a petition under Section 166 of the Motor Vehicles Act, 1988 (the Act), negligence has to be established on the touchstone of preponderance of probabilities, which to my mind has been done in the instant case. The finding reached by the Claims Tribunal cannot be faulted.

COMPENSATION

8. Deceased Sonu was a matriculate. The Claims Tribunal took the minimum wages of a matriculate to compute the loss of dependency. In view of three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65, addition towards future prospects is not

permissible unless there is evidence with regard to the same. The question of grant of future prospects was dealt with by this Court at great length in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.* MAC APP. No. 189/2014 decoded on 12.01.2015.

9. The multiplier is also to be as per the age of the deceased or the claimant, whichever is higher. The law was discussed in great detail by me in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors.*, ILR (2012) 6 DEL 447, wherein paras 4 to 9, this Court has held as under:-

“4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362, where the Supreme Court relied on G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

“12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, v. Susamma Thomas: (1994) 2 SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier

method is the sound method of assessing compensation. The Court observed:

“The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

The principle was explained and illustrated by a mathematical example:

“The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being

shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up.”

5. *There is another three Judges’ decision of the Supreme Court in New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1, where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-*

“6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.”

6. *Learned counsel for the Appellant referred to Sarla Verma (supra 1) in support of the proposition that age of the deceased is to be taken into consideration for selection of the multiplier. As an example the multiplier taken in various cases such as in Susamma Thomas (supra), U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362 as clarified in New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and the multiplier as mentioned in Second Schedule to the Motor Vehicles Act were compared and it was held that the multiplier as per Column No.4 in the said table was appropriate for application. Sarla Verma (supra) related to the death of one Rajinder Prakash who had left behind his widow, three minor children apart from his parents and the grandfather. Obviously, the age of the deceased was taken into consideration for the purpose of selection of the multiplier as the deceased left behind a widow younger to him, apart from three minor children. It was not laid down as a proposition of law that irrespective of the age of the claimants, the age of the deceased is to be taken into consideration for selection of the multiplier for calculation of the loss of dependency. It is true that in Mohd. Ameeruddin (supra 2) and P.S. Somanathan (supra 3) and National Insurance Company Ltd. v. Azad Singh (supra 5), the Hon'ble Supreme Court applied the multiplier according to the age of the deceased, yet in view of Trilok Chandra (supra) and Shanti Pathak (supra) decided by the three Judges of the Supreme Court, the judgment in Mohd. Ameeruddin (supra 2), P.S. Somanathan (supra 3) and Azad Singh (supra 5) cannot be taken as a precedent for selection of the multiplier.*

7. *In the latest judgment of the Supreme Court in National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667 and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-*

“9. This Court in the case of Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

“6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie, AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.”

10. *In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours.*

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.”

8. *Similarly in Manam Saraswathi Sampoorna Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.*

9. *Thus, there is no escape from the conclusion that the multiplier has to be selected as per the age of the deceased or that of the claimants whichever is higher”.*

10. The loss of dependency thus, comes to Rs.4,67,100/- (Rs.5190/- x 1/2 x 12 x 15).
11. On adding a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss to estate and Rs.59,317/- on account of medical expenses as already granted by the Claims Tribunal, the overall compensation comes to Rs.6,61,417.
12. The overall compensation thus, stands reduced by Rs.2,33,550/-
13. The compensation held payable shall be released/held in Fixed Deposit along with the proportionate interest in terms of the orders passed by the Claims Tribunal.
14. Excess amount of Rs.2,43,550/- along with proportionate

interest shall be released to the Appellant UPSRTC.

15. Both the appeals are disposed of accordingly.
16. Pending applications also stand disposed of.
17. Statutory amount, if any, deposited shall be refunded to the Appellant UPSRTC.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2015

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