

\$~11

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

Date of decision: 05th January, 2015

+ **MAC. APP. No.1059/2013**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION

..... Appellant
Through: Ms. Garima Prashad, Advocate & Mr.
Shadab Khan, Advocate

Versus

HIMANSHU SAXENARespondent
Through: Mr. R.K. Bachchan, Advocate.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant Uttar Pradesh State Road Transport Corporation (UPSRTC) lays challenge to the judgment dated 03.08.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.16,73,748/- was granted to Respondent no.1 Himanshu Saxena (adopted son) for the death of his father Deepak

Narayan Saxena in a motor vehicular accident which occurred on 03.10.2009.

2. There is twin challenge to the judgment. It is urged by the learned counsel for the Appellant that there was no negligence on the part of the Appellant's driver or in any case, it was composite negligence on the part of Appellant's driver and the truck driver who was coming from the opposite direction. Secondly, it is urged that the compensation awarded is very high and unjustified and unreasonable as the first Respondent was not financially dependent on the deceased Deepak Narayan Saxena.
3. On the other hand, the learned counsel for the first Respondent urges that negligence on the part of Appellant's driver was sufficiently established. It is urged that even if the first Respondent was getting a salary of Rs.12,000/- per month, he would still be financially dependent on his father with whom he was staying.

NEGLIGENCE:

4. With regard to negligence, the Claims Tribunal referred to the testimony of PW4 Kuldeep Kumar Sharma, an eye witness to the incident and Appellant's driver who entered witness box as RW-2. Relevant portion of the judgment is extracted hereunder:

“PW-4 Sh. Kuldeep Kumar Sharma an eyewitness of the accident has tendered in evidence his examination-in-chief by way

of affidavit Ex.PW4/A, wherein he has testified that on 03.10.2009 at about 11:15 A.M. he along with his wife Smt. Mamta Sharma and children was going from Delhi to Garhmukteshwar for holy bath in a UP Roadways bus bearing registration No.UP- 25 T 9428. He has fully supported the claim of petitioner in respect of rash and negligent driving of the offending bus driven by respondent No.1 and owned by Respondent No.2 resulting into the accident in question. He has testified in respect of injuries of his wife, 20 other passengers and death of two other passengers and that he informed the Police about the accident. On being cross-examined by Ld. Counsel for Respondent he testified that he boarded the bus from Anand Vihar, ISBT. He denied the suggestion that the accident had taken place due to rash and negligent driving of driver of Truck. He denied the suggestion that the bus was proceeding on his correct side and the Truck came on the wrong side and had caused the accident.

RW-2 Sh. Thakur Das, driver of the offending vehicle has tendered in evidence his examination-in-chief by way of affidavit and has testified that he is not guilty and he has been wrongly and falsely implicated in the accident. He testified that on 03.10.2009 he was driving the UPSRTC bus bearing registration No.UP 25 T 9428 as an employee of Uttar Pradesh State Road Transport Corporation at a normal speed and that the accident was solely caused due to the rash and negligent driving of Truck. On being cross-examined by Ld. Counsel for petitioner he admitted that he was arrested and chargesheeted by the police for rash and negligent driving in the accident in question. He admitted that he did not lodge any complaint to any of the authorities in respect of his alleged false implication.

Certified copy of criminal case (comprising copy of chargesheet, FIR, site plan, Postmortem report) placed on record clearly shows that respondent No.2/Driver of the offending vehicle i.e. bus has been arrested, charge-sheeted by the police and is

facing trial. All this also prima facie goes to show rashness and negligence of Respondent No.2/driver of the offending vehicle.”

5. I have before me the record of criminal case FIR No.874/2009 P.S. Garhmukteshwar registered under Section 279, 379 AND 204A IPC. The site plan clearly reveals that the Appellant's driver had come on the right side of the carriage way and had struck against the truck. Admittedly, the other carriage way was closed. Thus, PW-4's testimony is amply supported by the site plan. It may be noted that in a claim petition under Section 166 of the Motor Vehicles Act, 1988, negligence has to be proved on the test of preponderance of probability which has been amply done by Respondent no.1. The finding on negligence therefore, cannot be faulted.

QUANTUM OF COMPENSATION:

6. It is proved on record and is also not disputed during the course of hearing of the appeal that deceased Deepak Narayan Saxena was working as a clerical assistant in NDMC, Palika Kentra, New Delhi. His salary was proved to be Rs.3,10,380/- per annum. At the same time, Respondent no.1, who is the adopted son of deceased Deepak Narayan Saxena was residing with him as a member of his family and was earning a salary of Rs.12,000/- per month. Since Respondent no.1(Claimant) was himself earning, it cannot be said that he was completely financially dependent on the deceased, however, at the same time, it may be noted

that in a conservative Indian society, children remain dependent on their parents if the parents are earning handsome income.

7. In *Keith Rowe v. Prashant Sagar & Ors.*, MAC APP. No.601/2007 decided on 15.01.2001, this Court relying on the judgment of Karnataka High Court in *A. Manavalagan v. A. Krishnamurthy & Ors.*, 2005 ACJ 1992 held that when in a family of two members staying together, both are earning and have no dependents, the compensation is to be granted only under the head of loss of estate, which is to be taken 1/3rd of the deceased's income. It was held that no loss of dependency would arise in such a case.
8. In these circumstances, the first Respondent was really not entitled to loss of dependency, but he would be entitled to a sum as loss to estate which was the savings of the deceased.
9. In the instant case, the Claims Tribunal while relying on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 had deducted 50% towards the personal expenditure of the deceased, deducted the actual amount towards Income Tax, applied the multiplier of 9 as per the age of the deceased and computed the loss of dependency as Rs.15,38,748/-. The Claims Tribunal further awarded a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate. The deceased was an employee of NDMC. In the

circumstances of the case, particularly when Respondent no.1 had just a meagre income of Rs.12,000/- per month, I am inclined to hold that the deceased was spending not more than 50% on himself and rest of the amount was either being saved or spent on Respondent no.1. Thus, Respondent no.1 would be entitled to 50% of the deceased's income towards loss to estate. I do not find any ground to interfere with the amount of compensation computed but instead of loss of dependency, the same shall go under the head of loss to estate. The overall amount of Rs.16,73,748/- cannot be said to be excessive or exorbitant; I am not inclined to interfere with the impugned judgment.

10. In view of the discussion above, I do not find any merit in the appeal and the same is accordingly dismissed.
11. The awarded amount shall be held in Fixed Deposit/released to the Claimant in terms of orders passed by the Claims Tribunal.
12. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 05, 2015
pst