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

Date of Decision: 05th May, 2016

\+ **MAC.APP. 51/2013**

ANJU & ORS ..... Appellants

Through: Mr. O. P. Mannie, Adv.

versus

VINOD KUMAR SHARMA & ORS ..... Respondents

Through: Mr. R. C. Mahajan, Adv. for R-4.
Ms. Garima Prashad, Adv. for R-2.

AND

\+ **MAC.APP. 98/2013**

UTTRAKHAND TRANSPORT CORPORATION ..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

ANJU & ORS. ..... Respondents

Through: Mr. R. C. Mahajan, Adv. for R-3.

AND

\+ **MAC.APP. 99/2013**

UTTRAKHAND TRANSPORT CORPORATION ..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

SUNIL MISHRA & ANR ..... Respondents

Through: Mr. R. C. Mahajan, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sandeep Kumar (husband of first appellant in MAC appeal no. 51/2013) was driving a motorcycle bearing registration no. DL-7SBA-0731 (motorcycle) with Sunil Mishra (first respondent in MAC appeal no.99/2013) riding on the pillion on 23.05.2009. When they had reached in the area described as Karkar Model, Pool Chauraha within the area of police station Link Road Ghaziabad, Uttar Pradesh, the motorcycle was involved in a collision with bus bearing registration no.UA-07J-0762 (the bus) of Uttranchal State Road Transport Corporation (USRTC). As a result of the mishap both suffered injuries and Sandeep Kumar died in the consequence. Two accident claim cases were instituted, one (MAC petition no.218/2010) by the dependent family members, (the appellants in MAC appeal no.51/2013) on account of death of Sandeep Kumar and the other (MAC petition no.1047/2010) by Sunil Mishra, (first respondent in MAC appeal no.99/2013), instituted on 06.06.2009 and 08.07.2009. In both the cases, it was alleged that the accident had occurred due to negligent driving of the bus. The driver of the bus (an employee of USRTC), USRTC and Oriental Insurance Company Ltd. (the insurer) were impleaded as respondents, the last party admittedly having issued an insurance policy in respect of the bus covering third party risk for the period in question.

2. The motor accident claims tribunal (the tribunal) held inquiry, clubbing both the cases and, by a common judgment rendered on 27.09.2012, the case of the claimant in each case about negligence on the part of the bus driver having caused for accident was upheld. This finding is no longer under challenge and has, therefore, attained finality.

3. The tribunal assessed the compensation in the case of death of Sandeep Kumar in the sum of ₹7,82,200/- which is inclusive of non-pecuniary damages in the form of ₹25,000/- towards loss of love & affection, ₹10,000/- each towards loss to estate and loss of consortium and ₹5,000/- towards funeral expenses, besides ₹7,32,160/- calculated as loss of dependency after assuming the income of the deceased at ₹4400/-, it being the minimum wages of a skilled worker and adding the future prospects of increase to the extent of 30%, deducting one third towards personal and living expenses and applying the multiplier of 16.

4. The claimants in the case of death by their appeal (MAC appeal no.51/2013) submit that the loss of dependency has not been properly worked out in as much as multiplier of 17 should have been applied as the age of the deceased was proved to be 29 years. It is also submitted that the non-pecuniary damages and the rate of interest at the rate of 7.5% per annum granted are inadequate.

5. *Per contra*, the counsel for USRTC and the insurer argued that the addition of future prospects was erroneous as there was no proof of any progressive rise or regular income, the earnings having been assessed notionally.

6. Before the tribunal, the insurer had taken the plea that there was breach of terms and conditions of the insurance policy as the bus was not covered by a valid permit. The tribunal noted that USRTC had failed to bring on record any valid permit in respect of the bus and on that basis accepted the plea of the insurer and while directing to satisfy third party claimant granted it recovery rights.

7. By its appeals (MAC appeal nos. 98/2013 & 99/2013) USRTC challenges grant of recovery rights submitting, *inter-alia*, that it is a public transport corporation and, therefore, is governed by the provision contained in Section 103 of the MV Act which is to be read with U.P. State Road Transport Services (Development) Rules, 1974, which continued to govern the State of Uttranchal and that under the said notification the permits are issued in respect of notified area/route and there is no occasion for USRTC to insist on permits *vis-a-vis* specific vehicles.

8. Having heard all sides, it is found that the contentions of the claimants in the case of death of Sandeep Kumar must be accepted as discussed hereinafter.

9. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a

larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

10. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

11. Since the income of deceased was calculated notionally on minimum wages and there is no proof of any progressive rise or regular earnings, the loss of dependency has to be worked out without any further addition over and above the minimum wages. The age of the deceased being 29 years, the multiplier of 17 would apply, after deducting one half (1/2) towards personal and living expenses. Thus, the loss of dependency is calculated as (4400x2/3x12x17) ₹5,98,399/-, rounded off to ₹6,00,000/-.

12. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the awards of ₹1,00,000/- each on account of loss of consortium and loss of love & affection and ₹25,000/- each towards loss of estate and funeral expenses are added. Thus, total compensation payable in the case of death of Sandeep Kumar is ₹8,50,000/-.

13. Following the consistent view taken by this court[see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], rate of interest in both the cases is increased to nine percent (9%) from the date of filing of the respective petition till realization.

14. The awards are modified accordingly.

15. The plea of USRTC in its appeals against recovery rights must be accepted. It is not in dispute that valid permits had been issued in favour of USRTC in respect of notified areas and notified routes. It is not the case of the insurer that the bus was driven beyond the notified area or notified route. In these facts and circumstances, the findings of breach of terms and conditions of insurance policy and consequent grant of recovery rights to the insurer against USRTC are set aside.

16. The insurer shall satisfy the awards modified as above by requisite deposits with the tribunal.

17. The statutory deposits, if made, shall be refunded.

18. All the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016
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