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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th April, 2016

+ **MAC.APP. 36/2013**

CHANDER PRAKASH JOSHI Appellant
Through: Mr. N K Jha, Adv.

versus

DARA SINGH & ORS. Respondents
Through: Mr. Daleep Dhyani, Adv. for R-3

+ **MAC.APP. 265/2013**

UTTARAKHAND STATE TRANSPORT CORPN AND ANR ...Appellants
Through: Mr. Daleep Dhyani, Adv.

versus

CHANDRA PRAKASH JOSHI AND ANR Respondents
Through: Mr. N K Jha, Adv.

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

R.K.GAUBA, J (ORAL):

1. Chander Prakash Joshi, then 26 years old, a driver by avocation, was traveling in bus bearing No.UK-07PA-1197 of Uttarakhand State Road Transport Corporation (USRTC) on 23.08.2011. When the bus had reached in the area of Joshaf Nagar (Isha Nagar) Bilaspur, District Rampur, U.P, at about 5 AM, it came to be involved in a collision against truck bearing No.UP 25T 3572 (truck). As a result of this collision, Chander Prakash Joshi suffered injuries and was moved to hospital where he remained under treatment during which his right leg above knee had to be amputated

rendering him permanently disabled. He filed an accident claim case (suit No.21/12) on 30.01.2012 before the motor accident claim tribunal (tribunal) impleading, amongst others, USRTC as a respondent, in addition to Dara Singh, the driver of the bus and an employee of USRTC (appellant in MAC.APP.No.265/2013) seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). On notice being issued USRTC appeared and filed written statement seeking to contest, taking the position that the accident had occurred because the truck had come from the front side at a very high speed to hit the bus, this, as against the case of Chander Prakash Joshi (claimant) that the bus had hit the truck which was stationary on side of the road.

2. The tribunal by judgment dated 12.10.2010, on the basis of evidence led, upheld the case of the claimant about negligence on the part of the bus driver and awarded compensation in the sum of Rs.13,85,700/- with interest at 9% per annum from the filing of petition, calculating it thus :

Medical expenses	:	Rs. 20,000/-
Pain & sufferings & enjoyment of life	:	Rs. 50,000/-
Special diet, attendant & conveyance charges	:	Rs. 32,000/-
Loss of income	:	Rs. 49,000/-
Future loss of income on account of disability	:	Rs. 11,84,700/-
<u>Loss of amenities</u>	:	<u>Rs. 50,000/-</u>
<u>Total</u>	:	<u>Rs.13,85,700/-</u>

3. USRTC which has been burdened with liability to satisfy the award is in appeal (MAC.APP.No.265/2013) seeking to assail the judgment on the ground that the negligence was on the part of the truck driver rather than

that of the bus driver. It is also submitted that the tribunal while calculating the loss of future income has wrongly assumed the minimum wages of a skilled worker (Rs.8,122/-) without any basis or evidence having been adduced in support. The appellant refers particularly to the observation in para 18 of the impugned judgment that the claimant had not filed any document as to his qualification or income.

4. *Per contra*, the claimant, by his appeal (MAC.APP.No.36/2013) seeks enhancement of the compensation on the ground that the disability on account of amputation above knee had been certified to be to the extent of 80% by a board of doctors of Pt. Madan Mohan Malaviya Hospital of the Govt. of NCT of Delhi (page 255 of the tribunal's record). It is the submission of the counsel that the tribunal has fallen in error by assuming the functional disability only to the extent of 55%. It is also the submission of the claimant that the award under the non-pecuniary heads of damages is on lower side.

5. Having heard both sides and having gone through the tribunal's record, this Court finds both the appeals to be unmerited and liable to be dismissed.

6. The evidence on record included the statement of the claimant (PW1) affirming on oath that the bus driver was driving the said vehicle at a break neck speed of 80 km/hr and that the bus had collided against the truck which was stationary on the left side of the road. The USRTC while contesting the case did not examine its driver to prove the contention that the truck had come from the front side at high speed to hit against the bus. The evidence of PW1 that the truck was stationary at the relevant point of

time has gone virtually unchallenged. In these circumstances, there is no case made out for finding of any fault on the part of the truck driver to be returned.

7. Though the claimant did not lead any formal evidence as to his avocation as a driver in the sense he did not examine any person who may have engaged him for such purposes, he had proved on record his driving licenses which shows clearly that he is a qualified driver. In these circumstances, the tribunal took the correct view by assuming his income notionally on the basis of minimum wages payable to a skilled worker.

8. The disability certificate dated 12.04.2012 certified the extent of disability to be 80% in relation to the right lower limb. It is well settled that in computing the loss of income (present or future) the tribunal has to make an assessment as to the effect on the earning capacity. Having regard to the facts and circumstances, the view taken by the tribunal seems to be just and proper. In the fact situation at hand the award under the non-pecuniary heads of damages is also found to be adequate.

9. Thus, both the appeals are dismissed.

10. The statutory deposit, if made, by USRTC shall be refunded.

**R.K. GAUBA
(JUDGE)**

APRIL 19, 2016/VLD