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

Date of Decision: 26th April, 2016

+ **MAC.APP. 98/2014**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION
..... Appellant

Through: Ms. Garima Prashad & Mr. Shadab
Khan, Advs.

versus

MUMTAZ KHANAM & ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 5.

AND

+ **MAC.APP. 41/2015**

MUMTAZ & ORS Appellants

Through: Mr. Anshuman Bal, Adv.

versus

UPSRTC Respondent

Through: Ms. Garima Prashad & Mr. Shadab
Khan, Advs. for respondent.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Shamim Khan, aged 32 years suffered injuries in a motor vehicular accident that occurred on 18.09.2012 involving negligent driving of a motor

vehicle described as bearing registration no.UP-85Z-9681 (the offending vehicle) and died in the consequence. The offending vehicle was owned by U. P. State Road Transport Corporation (UPSRTC) and was admittedly insured against third party risk and driven by its employee Jagdish, both of whom were impleaded as respondents in the claim petition (suit no.22/2013) instituted by dependent family members of the deceased Shamim Khan on 02.04.2013. The tribunal held inquiry and, by judgment dated 29.11.2013, upheld the case of the claimants (appellants in MAC appeal no.41/2015) that the accident had occurred due to negligent driving of the offending vehicle. It awarded compensation in the sum of ₹15,49,240/- with interest at the rate of seven & half percent (7.5%) per annum in favour of the claimants, the said amount including ₹1,00,000/- each towards loss of love & affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss of estate, besides ₹13,14,240/- towards loss of dependency which was worked out on the basis of minimum wages of ₹7020/- on which increase to the extent of 30% was added towards future prospects, calculation having been made on the multiplier of 16, after deducting one fourth towards personal and living expenses.

2. UPSRTC, by its appeal (MAC appeal no.98/2014), questions the finding about negligence contending that the evidence of eye witness Mohd. Kalimuddin (PW2) was not reliable as he was a relative and first information report (FIR) showed no eye witness was immediately available. The appellant UPSRTC also questions the addition of future prospects.

3. *Per contra*, the claimants by their appeal (MAC appeal no.41/2015) submit that the awards towards loss of estate and rate of interest are inadequate.

4. The contention of UPSRTC about negligence must be rejected. Merely because PW2 is close relative, it does not mean that his evidence cannot be accepted. Mention in the FIR that no eye witness was immediately available cannot lead to the conclusion that accident could not have been seen by PW2. The evidence of PW2, upon perusal is found to be worthy of reliance. Thus, the finding on the issue of negligence cannot be disturbed.

5. 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 SCC166.

6. 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. Lalita 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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

7. In absence of proof of progressive rise in the income, there is no occasion for any addition being made on that account. Thus, monthly loss of income is calculated as $(7020 \times 3/4)$ ₹5265/- and the total loss of dependency is calculated as $(5265 \times 12 \times 16)$ ₹10,10,880/-, rounded off to ₹10,11,000/-.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the award towards loss of estate and funeral expense in the sum of ₹25,000/- each and ₹1,00,000/- each on account of loss of love & affection and loss of consortium are added. Therefore, the total compensation payable in the case comes to $(10,11,000 + 2,50,000)$ ₹12,61,000/-.

9. 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.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

10. The award is modified accordingly.

11. By order dated 31.01.2014, UPSRTC had been directed to deposit entire awarded amount, and out of the same 80% was allowed to be released to the claimants. The Registrar General was directed to keep the remaining amount in the form of FDR with UCO bank, Delhi High Court branch, New Delhi initially for a period of six months with periodic renewal.

12. The Registrar General shall now recalculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess in deposit to UPSRTC.

13. The statutory deposit, if made by UPSRTC, shall be refunded.

14. The appeals are disposed of in above terms.

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

APRIL 26, 2016
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