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

Date of Decision: 10.05.2016

+ **MAC.APP. 104/2013 and CM No.1026/2015**

UTTAR PRADESH STATE ROAD TRANSPORT

CORPORATION

..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab
Khan, Advocates

versus

BHUPENDER SINGH

..... Respondent

Through: Mr. S.B. Pandey and Mr. Ajay Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The respondent (claimant) was travelling on a motor cycle bearing registration no.HR-20P-2349 (motor cycle) on 27.07.2008 from Ramalla to Biral, in District Baghpat, U.P., when there was a collision between the said motor cycle and the bus bearing registration no.UP-12K-5640 (bus) of Uttar Pradesh State Road Transport Corporation (UPSRTC). As a result of the said mishap, the claimant was injured, and suffered amputation of his right leg below knee rendering him permanently disabled. He filed an accident

claim petition (suit no.469/11) on 17.09.2008 before the Motor Accident Claims Tribunal (tribunal) impleading UPSRTC, the owner, and Bittoo Rathi, the driver of the bus, as respondents.

2. The tribunal held inquiry and, by judgment dated 17.11.2012, upheld the case of the accident having occurred due to negligence on the part of the bus driver, holding both the said respondents to be jointly and severely liable to compensate. The tribunal awarded compensation in the sum of Rs.10,35,945/- with interest at the rate of 9% p.a. from the date of filing of the petition till realization, calculating it thus :-

Permanent disability of the petitioner (as calculated in last sub-para of para no.8(d) of the judgment	₹ 6,74,444/-
Medicines and medical treatment	₹0,14,703/-
Loss of wages	₹0,21,798/-
Loss of amenities of life	₹1,00,000/-
Pain and suffering	₹1,00,000/-
Disfigurement	₹1,00,000/-
Conveyance	₹0,15,000/-
Special Diet	₹0,10,000/-
Total	₹10,35,945/-

3. The UPSRTC which has been burdened with the prime responsibility to pay the compensation is in appeal questioning the finding recorded on the issue of negligence and also raising grievance about the computation of

compensation. It submits that the tribunal has wrongly assumed the disability to the extent of 70% as certified by the Medical Board vide certificate dated 31.03.2009 (Ex. PW2/1) to be functional disability in relation to the full body. It is argued that since the claimant has suffered amputation below knee to the extent of one-third of the lower leg, the case would fall under serial no.21 of part-II of the first schedule appended to the Employees' Compensation Act, 1923 wherein the percentage of loss of earning capacity in such cases is specified to the extent of 50%.

4. The appellant further submits that in calculating the loss of future income due to disability while assuming the income notionally on the minimum wages of unskilled worker, the tribunal wrongly added 30% towards future prospects. The appellant also questions the award under the non-pecuniary heads of damages submitting that they are unduly high.

5. While arguing on the issue of negligence, the counsel for the appellant referred to the site plan (appended at page 153 of the tribunal's record) which had been prepared by the local police during investigation of the corresponding criminal case. She submitted that this site plan demonstrates that the negligence was on the part of the motor cycle rider rather than the driver of the bus.

6. The above issue has been examined in light of the above-said site plan read alongside the oral testimony of the claimant appearing as PW-1 and of the bus driver appearing as R1W1. It is clear from the material on record that both the vehicles were moving in the same direction. The bus driver, in his testimony vaguely claimed that the motor cycle had suddenly started and taken a "wrong turn". During the cross-examination of PW-1, no such

suggestion was given. The only suggestion relevant to the issue at hand was to the effect that the accident had taken place due to his own negligence which was neither here nor there. The site plan, on the other hand, reveals a different story. It shows that the bus was moving on the extreme right of the road which would be the lane meant for traffic from the opposite direction. The motor cyclist, in contrast, was in the correct lane though in the portion of the road where fast traffic would be moving. From the facts and circumstances brought out by the said material and the oral testimony, it appears that the driver of the bus had overtaken the motorcycle by moving to the extreme right of the road but for some reason could not control it and ended up on the loose ground on the roadside after hitting the motorcycle. The negligence on the part of the bus driver has thus rightly been inferred by the tribunal. The finding on this score does not call for any interference.

6. 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.

7. 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.

8. The claimant did not prove by any evidence the nature of his avocation or the income generated therefrom. His oral word can not be sufficient. In absence of proper proof in this regard and about the progressive rise in income, loss of future earning capacity due to disability suffered will have to be computed without the element of future prospects.

9. There is merit in the contention of the appellant that disability to the extent of 70% assessed in relation to part of body cannot be treated as functional disability affecting the earning capacity. The loss of earning capacity is thus to be assessed as per the Employees’ Compensation Act to the extent of 50%. The injuries were suffered at the age of 29 years and thus applying the multiplier of 17, loss of future earnings is computed as (Rs.3,6,33 x 50 / 100 x 12 x 17) Rs.3,70,566/-.

10. It is noted that the claimant did not lead any evidence as to the provision for artificial limb. In all cases where amputation of limb has been suffered, awards are generally made for artificial limb to be procured. In the facts and circumstances at hand, an amount of ₹ 1 Lakh must be added towards expenses required for artificial limb.

11. Given the nature of injuries suffered, this court finds no substance in the argument against the non-pecuniary heads of damages as awarded in the impugned judgment. Therefore, the total compensation in the case comes to (₹ 3,70,566/- + ₹14,703/- + ₹ 21,798/- + ₹ 1,00,000/- + ₹1,00,000/- + ₹1,00,000/- + ₹ 15,000/- + ₹ 10,000/- + ₹ 1,00,000/-) ₹ 8,32,067/- rounded off to ₹ 8,35,000/-. Needless to add, it shall carry interest as awarded by the tribunal.

12. The award is modified accordingly.

13. By order dated 01.02.2013, the appellant had been directed to deposit the entire awarded amount with upto date interest which was ordered to be kept in fixed deposit initially for a period of one year to be renewed periodically. By order dated 09.09.2013, an amount of ₹5 Lakh was allowed to be released to the claimant from the deposited amount. The Registrar General shall now calculate the amount payable to the claimant in terms of the modified award and release the same to the claimant. The balance deposited in excess shall be refunded with statutory deposit, if made.

14. The appeal and the pending application are disposed of in above terms.

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

**MAY 10, 2016
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