$~R-59 & 59A

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

Date of Decision: 03.05. 2016

\+ MAC.APP. 474/2007

DTC ..... Appellant

Through: Mr.J.N.Aggarwal, Adv.

versus

MAHENDRI DEVI & ORS. ..... Respondents

Through: Mr. Mr.Nitinjya chaudhry, Adv. for R-1 to 5.

\+ MAC.APP.378/2016

MAHENDRI DEVI & ORS ..... Appellants

Through: Mr. Mr.Nitinjya chaudhry, Adv..

versus

DTC ..... Respondent

Through: Mr. J.N.Aggarwal, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dharampal, aged above 40 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 16.02.1999, statedly on account of fall while boarding a bus bearing registration No. DEP-9988 (offending vehicle), of Delhi Transport Corporation (DTC), the appellant. His wife and other dependant family members, then seven in number, inclusive of first to fifth respondents instituted an accident claim case (suit

No. 623/99) on 22.09.1999 seeking compensation under Sections 166 & 140 of the Motor Vehicle Act, 1988 (the M.V. Act) alleging that the death had occurred due to accident on account of negligence on the part of the bus driver. The Tribunal held inquiry and, by judgment dated 19.03.2007, upheld the case of the claimants about death having occurred due to negligent driving of the bus. It awarded compensation in the total sum of ₹7,55,000/- with interest @ 7% per annum from the date of the filing of the petition, which is inclusive of dependency loss of ₹7,20,000/- besides ₹30,000/- as composite sum on account of loss of love and affection and consortium and ₹5,000/- towards funeral expenses.

2. DTC, which was burdened with the liability to pay the compensation, has come up with appeal (MACA 474/2007) questioning the findings returned by the Tribunal regarding negligence on the part of the bus driver. It moved application (C.M.No.10526/2007) seeking liberty to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), mainly contending that certain entries in the complaint book (kept in the bus) which relate to the observations recorded by some of the witnesses present at the scene need to be proved. It also questions computation of compensation mainly regarding the dependency loss arguing that assumption of notional income of the deceased on the minimum wages of a skilled worker was incorrect and that adding of future prospects to calculate the loss of dependency after deducting only ₹881/- towards personal & living expenses was wrong.

3. *Per contra*, the claimants by their appeal (MACA 378/2016), registered on the basis of cross-objections (C.M.No. 936/2009) presented earlier seek enhancement of compensation arguing that the evidence

regarding the income of the deceased to the tune of ₹5,000/- per month should have been accepted and that the personal & living expenses should have been deducted to the extent of 1/5th. It is also their grievance that the non-pecuniary damages and the rate of interest levied by the Tribunal are inadequate.

4. The contentions of DTC about there being negligence on the part of the deceased cannot be accepted. The argument that possibility of the deceased having been crushed under the rear wheel of the bus on account of fall from the rear door being remote is based on misreading of the evidence. The testimony of the eye-witness Constable Anil Kumar (PW-2), a local police official who was present at the scene on his official motorcycle on patrolling duty, clearly reveals that the deceased had suffered injuries on the head on account of fall. He did not say that his head had come to be crushed under the rear wheel of the bus.

5. The claim that the deceased was earning ₹5,000/- per month as a book binder was not properly proved. V.P.Mandal (PW-3), a partner in Mandal DTP Systems Pvt. Ltd., only affirmed that the deceased was earning ₹2,500/- to ₹3,000/- per month from firm for the job of book-binder. Though it was pleaded that the deceased was working similarly with some other such firms, no evidence to that effect was adduced. In these facts and circumstances, there is no better way for calculation of the earnings except on the basis of minimum wages. The contention of DTC that the minimum wages of an unskilled worker should be adopted, however, cannot be accepted. The job of a book-binder is a skilled one. Therefore, minimum wages of ₹2772/- were correctly adopted by the Tribunal.

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 SCC166.

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. In absence of any proof about any progressive rise in the income and the fact that the income has been assessed notionally on the basis of minimum wages. The dependency loss has to be computed without adding the benefit of future prospects.

9. Since the multiplier of 15 was correctly adopted by the Tribunal, the dependency loss is calculated as (₹2772x4/5x12x15) ₹3,99,168/-, rounded

off to ₹4 lacs. The accident had occurred in 1999. Following the view taken in the case of *Madhu Marwaha & Anr. Vs. Dal Chand & Anr.(FAO 102/2001 decided on 01.02.2016),* non-pecuniary damages in the sum of ₹50,000/- each towards loss of love & affection and loss of consortium and ₹10,000/- each on account of funeral expenses and for loss to estate need to added. Thus, the total compensation comes to (₹ 4,00,000 + 1,20,000) ₹5,20,000/-. Following the consistent view taken by this court [see *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*. in MAC.APP. 165/2011 dated 22.02.2016], the rate of interest is increased to 9% per annum from the date of filing of this petition till realization.

10. By order dated 07.08.2007 (in MACA 474/2007), the appellant/DTC had been directed to deposit the entire awarded amount with interest within the period specified and the Registrar General was directed to keep it in fixed deposit receipt initially for a period of six months. The Tribunal by the impugned judgment had directed certain parts of the award apportioned in favour of the different claimants to be kept in fixed deposit receipts. By order dated 19.03.2009, the entire awarded amount with accrued interest deposited by the DTC was remitted to the Tribunal with liberty to release the same excluding the amounts directed to be deposited in fixed deposit receipts which were ordered to be held in the name of the claimants with a right to receive periodical interest therefrom. Since the compensation awarded by the Tribunal has been reduced, it is directed that the shares of the claimants other than the first respondent (the widow) shall be restricted to the amounts already received by each of them. The Tribunal shall recalculate the amount payable under the modified award and release the balance, if any, to the first respondent. The remaining amount lying in

deposits, shall be refunded to the DTC. If the Tribunal finds there is any shortfall, the same shall be recoverable in accordance with law. The statutory amount, if deposited by the DTC, shall be refunded only upon satisfaction of the award in favour of the claimants.

11. Both appeals are disposed of in the above terms.

R.K. GAUBA

(JUDGE)

MAY 03, 2016
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