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

Date of Decision: 26th April, 2016

+ **MAC.APP. 775/2014**

U P STATE ROAD TRANSPORT CORPORATION Appellant

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

versus

BABU KHAN & ANR Respondents

Through: Mr. R. K. Bachchan, Adv. for respondents.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Yunis Khan, aged 21 years, a bachelor died in a road accident on 11.02.2010 involving bus bearing registration no.UP-25AT-1209 (the offending vehicle) of Uttar Pradesh State Road Transport Corporation (UPSRTC). His parents (first and second respondents) filed an accident claim case on 30.10.2010 before the motor accident claims tribunal (the tribunal) seeking compensation on the averments that the accident had been caused due to negligent driving of the bus by the employee of UPSRTC. The tribunal held inquiry and, by judgment dated 10.05.2014, upheld the case of the claimants. It awarded compensation in the sum of ₹9,79,928/- with interest at the rate of 9% per annum from the date of filing of petition

till realization in favour of the claimants, calling upon UPSRTC to pay. The said award included ₹1,00,000/- towards loss of love & affection and ₹25,000/- towards funeral expenses, besides loss of dependency worked out at ₹8,54,928/- on the notional income of ₹5278/- per month to which 50% was added towards future prospects, one half having been deducted on account of personal and living expenses and multiplier of 18 applied, having regard to the age of the deceased.

2. By the appeal at hand, UPSRTC questions the computation of compensation on the ground that the element of future prospects could not have been added. It is also argued that the choice of multiplier was wrong in as much as father and mother of the deceased while submitting the claim petition had declared their age as 47 years and 42 years respectively which, in the submission of the appellant, should have been the basis, the multiplier of 14 being the appropriate one.

3. 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.

4. 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.

5. Since there was no formal proof adduced as to the engagement of the deceased in any regular employment with progressive rise in the income, loss of dependency has to be calculated on the basis of minimum wages of ₹5278/- per month taken as the notional income. After deducting 50% towards personal and living expenses, the monthly loss of dependency comes to $(5278/2)$ ₹2639/- and the total loss of dependency is worked out as $(2639 \times 12 \times 14)$ ₹4,43,352/-, rounded off to ₹4,44,000/-. It is noted that no award was made towards loss to estate. An amount of ₹25,000/- under that head is added. Therefore, the total compensation comes to $(4,44,000 + 1,50,000)$ ₹5,94,000/-.

6. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

7. By order dated 27.08.2014, UPSRTC had been directed to deposit the entire awarded compensation with up-to-date interest with the Registrar General and out of such deposit, 60% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of one year with provision of renewal. The Registrar General shall calculate 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.

8. The statutory deposit, if made, shall be refunded.

9. The appeal is disposed of in above terms.

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

APRIL 26, 2016
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