

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

Date of decision: November 15, 2016

+ **MAC.APP. 328/2015 & C.M. 6328/2015**

MUNESH & ORS. Appellants

Through: Mr. Vaibhav Kumar, Advocate

Versus

UTTAR PARDESH STATE ROAD TRANSPORT
CORPORATION

.... Respondent

Through: Ms. Garima Prashad, Advocate

+ **MAC.APP. 635/2014**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION

.... Appellant

Through: Ms. Garima Prashad, Advocate

Versus

MUNESH & ORS.

.... Respondents

Through: Mr. Vaibhav Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

%

ORAL

1. The above captioned two appeals are directed against the common impugned Award of 17th April, 2014 granting compensation of

₹16,44,600/- to respondents-claimants on account of death of one *Vijender Kumar* on 7th March, 2011. The facts as noted in the impugned Award, in short are that on 7th March, 2011, appellant's bus was plying on route from *Shamli* to *Merrut* and at about 10:00 a.m., some passengers had de-boarded from the said bus at *Itawa* bus stop and thereafter, the said bus started moving and had struck against a person, who came in front of the bus and the said person had sustained injuries and was taken to hospital where he had died after about two weeks. The claimants are the widow and the two minor sons of the deceased, who was aged about 40 years at the time of accident.

2. The learned Tribunal on the basis of evidence recorded has returned the finding that the accident in question took place due to rash and negligent driving of the bus in question by the driver of appellant and proceeded to Award the compensation under the following heads:-

<i>"Loss of dependency</i>	:	₹13,33,800/-
<i>Loss of consortium</i>	:	₹50,000/-
<i>Love and affection</i>	:	₹50,000/-
<i>Loss of Estate</i>	:	₹10,000/-
<i>Funeral expenses</i>	:	₹10,000/-
<i>Medicines & Medical Treatment</i>	:	₹1,90,800/-
<i>Total</i>	:	₹16,44,600/-"

3. The above captioned first appeal [MAC.APP 328/2015] is by the claimants, who seek enhancement of the compensation whereas in the second appeal [MAC.APP 635/2014], owner of the bus in question is seeking setting aside of the impugned Award. By way of C.M.

6328/2015, appellants-claimants seek condonation of delay of 236 days in filing MAC.APP 328/2015 by them. The explanation furnished for the delay occasioned provide sufficient cause to condone the delay. The application is allowed and delay is condoned. With the consent of counsel for the parties, both these appeals have been heard together and are being disposed of by this common judgment.

4. The common impugned Award is assailed by learned counsel for appellant- *Uttar Pradesh State Road Transport Corporation* on the ground that the finding of negligence returned in the impugned Award is not borne out from the evidence on record. It is submitted that the solitary eyewitness (*PW-2*) in his evidence has stated that the bus in question was being driven in rash and negligent manner and had crossed over to the wrong side of the road and had crushed into his son. It is pointed out that in the cross-examination, this witness (*PW-2*) has deposed that he along with another person was standing alone on the other side of the road on the bus stop. It is submitted that evidence of this solitary eye witness (*PW-2*) is contradictory and so, finding of negligence ought to be set aside. Regarding the quantum of compensation, it is submitted by learned counsel for appellant that 30% towards future prospects have been erroneously granted by the learned Tribunal, as the income of deceased has been assessed on minimum wages and in such a case, no future prospects are to be granted. To submit so, reliance is placed upon a decision of 12th January, 2015 of a Coordinate Bench of this Court in MAC.APP189/2014 *HDFC Ergo General Insurance Co. Ltd. Vs. Smt. Lata Devi & ors.* and another decision of 27th May, 2015 in MAC.APP 343/2013 *U.P. State Road Transport Corporation Vs. Ganga*

Sagar & ors. It is further submitted by learned counsel for appellant that deduction of 1/4th towards personal expenses is uncalled for, as the claimants are three in number and so, 1/3rd ought to be deducted towards the personal expenses of the deceased. Thus, it is submitted that the impugned Award deserves to be set aside.

5. To the contrary is the submission of learned counsel for respondents-claimants, who submits that there is no infirmity in the impugned Award and further submits that respondents-claimants are entitled to enhancement of compensation, as there is Certificate of Employment of the deceased, which has been erroneously ignored by the learned Tribunal. It is submitted that once the Certificate of Employment is taken into consideration, then the gross income of the deceased ought to have been taken to ₹18,000/- and so, compensation needs to be suitably enhanced.

6. It is further submitted by learned counsel for respondents-claimants that compensation granted for loss of consortium is wholly inadequate because as per decision in *Rajesh & ors. Vs. Rajbir Singh & ors.* 2013 (6) SCALE 563, loss of consortium ought to be minimum ₹1,00,000/- instead of ₹50,000/- and the funeral expenses ought to be ₹25,000/- instead of ₹10,000/-. It is next submitted that the medical expenses incurred on the medical treatment of the deceased ought to be suitably enhanced, as some of the medical bills were misplaced. So, it is submitted that compensation awarded ought to be reasonably enhanced. Nothing else is urged by either side.

7. Upon hearing and on perusal of the impugned Award, evidence on record and the decisions cited, I find that evidence of the solitary eye

witness (PW-2) is indeed contradictory. In the chief examination, eye witness (PW-2) has stated that the bus in question had crossed over to the wrong side of the road and had crushed his son whereas in the cross-examination, he has deposed that the deceased was standing alone on the bus stand on the other side of the road. To reconcile the contradiction, attention of this Court is drawn to the site plan of spot, prepared in the criminal proceedings, which is placed on record by respondents-claimants, to indicate that the place of accident is not the road but the *kachha path* along side of the road. In such a situation, the manner in which accident took place as indicated in the site plan of the spot, appears to be plausible.

8. During the course of hearing, learned counsel for appellant had sought to project that it is a case of contributory negligence. In face of the evidence of eye witness (PW-2) coupled with the site plan of the spot, I find no hesitation in rejecting this submission of there-being contributory negligence on the part of the deceased. This Court is of the considered opinion that findings on the negligence aspect in the impugned Award does not call for any interference. The certificate of employment of deceased relied upon by respondent-claimants to claim enhancement under the head "*Loss of Dependency*" is of no avail as it is not reliable in view of the undisputed fact that it was obtained from a ex-serviceman after the death of injured.

9. On the quantum of compensation assessed, this Court finds that grant of 30% towards future prospects is uncalled for because there is no evidence to indicate that deceased had any future prospects. While excluding grant of 30% towards future prospects, this Court deems it

appropriate to grant some compensation while taking into inflation aspect and accordingly annual income of deceased is rounded off to ₹89,000/- and ₹11,000/- is added towards inflation. Thus, while applying multiplier of 14, by taking annual income as ₹1,00,000/- and after deducting 1/3rd towards personal expenses, the compensation awarded stands reduced from ₹13,33,800 to ₹10,00,000/- (Rupees Ten Lacs only).

10. Under the head of '*loss of consortium*', compensation amount granted appears to be on the lesser side. In view of Supreme Court decision in *Rajesh (Supra)*, compensation for loss of consortium is enhanced from ₹50,000/- to ₹1,00,000/-. Since the funeral of the deceased was performed in a village, therefore, the amount granted towards funeral expenses is not interfered with. However, the compensation granted towards medical treatment is enhanced from ₹1,90,800/- to ₹2,00,000/-, as it is quite possible that some of the medical bills do get misplaced. Thus, the total compensation, payable to the respondents-claimants would be ₹13,17,000/- only.

11. So far as the rate of interest granted is concerned, it is certainly on the lesser side. Although in *Rajesh (Supra)*, interest @7.5% p.a. has been granted but Supreme Court in a later decision in *Anjani Singh & ors. Vs. Salauddin & ors.* 2014 ACJ 1565 (SC) has granted the interest @9% p.a. So, rate of interest is accordingly enhanced from 7.5% p.a. to 9% p.a.. The impugned Award stands modified accordingly.

12. Appeal No.635/2014 was entertained subject to deposit of ₹10,00,000/- by Uttar Pradesh State Road Transport Corporation and the said amount was released to respondents-claimants as per the impugned Award. Now, the remaining awarded amount be released to respondents-

claimants in terms of modified Award within a period of six weeks. The statutory deposit, if any, made by insurer be refunded.

13. In the aforesaid terms, the above captioned appeals and application are disposed of.

(SUNIL GAUR)
JUDGE

NOVEMBER 15, 2016

r

