

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

Date of decision: December 06, 2016

(i) + **MAC.APP. 393/2009**

VIJAY KUMAR RASTOGI Appellant
Through: Ms.Rekha Rustagi, Advocate

Versus

UP STATE ROADWAYS TRANSPORT CORPORATION Respondent
Through: Ms. Garima Prashad & Mr.Shadab
Khan, Advocates

(ii) + **MAC.APP. 509/2009**

UP STATE ROADWAYS TRANSPORT CORPORATION Appellant
Through: Ms. Garima Prashad & Mr.Shadab
Khan, Advocates

Versus

VIJAY KUMAR RASTOGI & ORS. Respondents
Through: Ms.Rekha Rustagi, Advocate

(iii) + **MAC.APP. 725/2011**

MANGI LAL GUPTA Appellant
Through: Ms.Rekha Rustagi, Advocate

Versus

UP STATE ROADWAYS TRANSPORT CORPORATION Respondent

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

(iv) + **MAC.APP. 507/2009**

UP STATE ROADWAYS TRANSPORT CORPORATION

..... Appellant

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

Versus

MANGI LAL GUPTA & ORS.

..... Respondents

Through: Ms.Rekha Rustagi, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

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1. In the above captioned first appeal, enhancement of compensation is sought by injured- *Vijay Kumar*. The above captioned second appeal is its cross appeal. Whereas in the above captioned third appeal by injured- *Mangi Lal Gupta* enhancement of compensation is sought and its cross appeal is the above captioned fourth appeal.

2. With the consent of learned counsel for the parties, the above captioned four appeals have been taken up for hearing together, as it is stated that these appeals arise out of one vehicular accident. Vide this common judgment, these four appeals are being disposed of.

3. The impugned Award, which is under challenge in the above captioned four appeals is of 4th April, 2009, vide which compensation of

₹5,59,584/- with interest @7% p.a. has been granted to injured- *Vijay Kumar* and compensation of ₹4,53,131 with interest at the same rate has been granted to injured- *Mangi Lal Gupta*.

4. The factual background of this case, as noted in the impugned Award, is as under:-

“The facts of the petitioners cases in brief are that on 26.06.2005 Sh. Vijay Kumar Rastogi (hereinafter referred to as the injured in first case) along with his father-in-law Sh. Mangi Lal Gupta (hereinafter referred to as the injured in the second case) was going in his car No. HR-26-N-0786 to Village Mudia Dhureki, District Badayun, U.P. and when they reached ROP Brij Ghat, opposite Sharda Nursery, at about 7.00A.M. then a UP Roadways Bus No. UP-25-G-9132 being driven at high speed, rashly and negligently by respondent No.1 came from opposite side and hit the car while wrongly overtaking another vehicle. As a result the car of the petitioner fell into deep on the side of the road. Both the injured got struck in the car and sustained grievous injuries. They were removed to Bharat Nursing Home from where they were shifted to Lok Priya Hosptial, Merrut, U.P. Petitioners claimed a sum of Rs.41,21,445/- and Rs.28,29,000/- respectively as compensation from the driver and owner of the offending vehicle.”

5. The learned Motor Accident Claims Tribunal has held the driver of the bus of U.P.State Road Transport Corporation (*hereinafter referred to as the “UPSRTC”*) negligent and has also held that the driver of the

Maruti Car i.e. injured- *Vijay Kumar* was not negligent. On the basis of the evidence led by the parties, the impugned Award has been rendered, which is under challenge in the above captioned four appeals.

6. At the final hearing, learned counsel for UPSRTC submits that there was contributory negligence on the part of injured- *Vijay Kumar Rastogi*, who was driving the car in question, as he had seen UPSRTC bus from a distance of 60-70 meters overtaking another vehicle and so, in such a situation injured- *Vijay Kumar Rastogi* ought to have avoided the accident. It is next contended by learned counsel for UPSRTC that income tax return for the year in question has not been filed, which would have shown that injured- *Vijay Kumar Rastogi* had not got salary for eleven months when he had not worked for this period. It is also submitted that tax paid on the salary earned has to be deducted, which has not been done by the learned Tribunal and upon doing so, the net income of injured- *Vijay Kumar Rastogi* would come to ₹36,000/- and not ₹40,000/- for 11 months. It is next contended by learned counsel for UPSRTC that injured- *Vijay Kumar Rastogi* was performing the same job in the same capacity at a different station and so, there was no functional loss due to the disability suffered by him and so, the compensation granted on this account deserves to be suitably reduced.

7. It is further contended that the injured- *Vijay Kumar Rastogi* was in the age group of 36-40 years and as per Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, the multiplier to be adopted is of 15 but the learned Motor Accident Claims Tribunal has applied the multiplier of 16.

Regarding the grant of compensation of ₹1,00,000/- under the head “*Loss of Life and Limb*” and grant of compensation of ₹50,000/- under the head “*Pain and Sufferings*”, it is submitted by learned counsel for UPSRTC that the compensation granted under the head “*Loss of Life and Limb*” is unjustified. Lastly, it is submitted by learned counsel for UPSRTC that it has come in the evidence of employer of injured- *Vijay Kumar Rastogi* that he had taken reimbursement of ₹16,000/- under the head “*Medicclaim of Employees Bill’s Given to Insurer*” and so, this amount deserves to be deducted from the cost of medicine granted by the learned Motor Accident Claims Tribunal.

8. So far as the compensation granted to injured- *Mangi Lal Gupta* is concerned, it is submitted by learned counsel for UPSRTC that the disability suffered by him is 54% of the right upper limb but it cannot be taken that functional disability suffered by him is more than 50% and so, the compensation granted to him deserves to be appropriately reduced. It is also pointed out by learned counsel for UPSRTC that the compensation of ₹1,50,000/- has been granted to injured- *Mangi Lal Gupta* under the similar head “*Pain and Suffering*” and “*Loss of Enjoyment of Life and Limb*”, which ought to be under one head and under this head, the compensation of ₹50,000/- is sufficient and so, the compensation under the head of “*Loss of Enjoyment of Life and Limb*” ought to be set aside. Thus, it is submitted that the compensation awarded deserves to be substantially reduced. Nothing else is urged on behalf of UPSRTC.

9. On the other hand, learned counsel for claimants- *Vijay Kumar Rastogi* and *Mangi Lal Gupta* submits that while granting compensation

to injured- *Vijay Kumar Rastogi*, taxable income of injured- *Vijay Kumar Rastogi* has been taken into consideration and denial of commission income is unwarranted. It is submitted that no compensation has been granted to injured –*Vijay Kumar Rastogi* on account of damage of his car, which was to the extent of ₹80,000/- and so, this amount of compensation ought to be granted to injured- *Vijay Kumar Rastogi*. It is also submitted by learned counsel for injured-claimants that grant of compensation under the two heads “*Pain and Suffering*” and “*Loss of Enjoyment of Life and Limb*” is justified because loss of enjoyment of life has to be treated as *loss of amenities* and under this head, compensation is payable as per decision of Supreme Court in *Kavita Vs. Deepak* (2012) 8 SCC 604 and rather the compensation awarded under these two heads is on the lower side and it should be suitably enhanced and no case for reduction of compensation is made out.

10. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that contributory negligence cannot be attributed to the injured- *Vijay Kumar Rastogi* for the reason that on the highway, if a vehicle suddenly overtakes another vehicle, then in such a situation, it is not possible to avoid the accident even if the offending vehicle is seen from the distance of 60-70 meters. So, this Court is of the view that the learned Tribunal has rightly held that the bus in question was the offending vehicle.

11. Regarding the deduction of tax paid from the net income of injured *Vijay Kumar Rastogi* is concerned, I find that the total income of injured- *Vijay Kumar Rastogi* as per the tax return (*Ex. PW-6/F*) is ₹77477.50 and

after deduction of tax of ₹4,496/- the net income has been rightly taken into consideration by the learned Motor Accident Claims Tribunal. The disability of 25% suffered by injured *Vijay Kumar Rastogi* has been rightly taken to be the functional disability while keeping in view that the injured *Vijay Kumar Rastogi* was working as the Medical Representative. No case for enhancement of compensation while taking the gross income of injured *Vijay Kumar Rastogi* is made out, as net income has to be taken into consideration while assessing the compensation in such cases. Regarding the application of multiplier of 15 is concerned, I do find that in case of injured *Vijay Kumar Rastogi* multiplier of 15 ought to have been adopted but by adoption of multiplier of 16, the difference in the compensation worked out is marginal and the same is set off by the fact that future prospects of injured *Vijay Kumar Rastogi* has not been taken into consideration and therefore, this Court is not inclined to interfere with the awarded compensation on this account.

12. Regarding grant of compensation under the two heads “*Pain and Suffering*” and “*Loss of Enjoyment of Life and Limb*” is concerned, I find that in view of decision of Supreme Court in *Kavita (Supra)*, the head “*Loss of Enjoyment of Life and Limb*” needs to be reclassified as “*Loss of amenities*” and that the compensation granted under this head as well as under the head of “*Pain and Suffering*” needs to be neither reduced nor enhanced. Such a view is being taken in view of kind of disability suffered by injured *Vijay Kumar Rastogi*. So far as reimbursement of medical bills of ₹16,000/- under the head “*Mediclaim of Employees Bill’s Given to Insurer*” in respect of injured *Vijay Kumar Rastogi* is concerned,

I find that there is no cross-examination of this injured on this aspect and so, on this account, compensation granted under the head of '*cost of medicine*' is not required to be interfered with.

13. Regarding compensation of ₹80,000/- sought by injured- *Vijay Kumar Rastogi* for damage to his car is concerned, I find that grant of compensation under this head is not warranted for the reason that during the course of hearing, attention of this Court is not drawn to any document to show that ₹80,000/- was incurred by injured- *Vijay Kumar Rastogi* to get his car repaired. Thus, in the considered opinion of this Court, the compensation granted to injured *Vijay Kumar Rastogi* by the learned Tribunal is just and reasonable and is not required to be reduced or enhanced.

14. Regarding injured- *Mangi Lal Gupta*, I find that he is a tailor by profession and he had suffered disability to the extent of 54% of the right upper limb and in such a case, the functional disability of injured *Mangi Lal* has been rightly assessed by the learned Motor Accident Claims Tribunal and in his case also grant of compensation under two heads "*Pain and Suffering*" and "*Loss of Enjoyment of Life and Limb*" does not appear to be unreasonable or insufficient. The compensation granted to injured- *Mangi Lal Gupta* as under the head of "*Loss of Enjoyment of Life and Limb*" needs to be reclassified under the head of *Loss of Amenities of Life*. No case for enhancement of or reduction of compensation granted to injured- *Mangi Lal Gupta* is made out, as this Court is of the considered opinion that grant of compensation to this injured is also reasonable and fair. However, rate of interest granted is on

the lower side. In view of Supreme Court's decision in *Jitendra Khimshankar Trivedi Vs. Kasam Daud Kumbhar and others*, (2015) 4 SCC 237 rate of interest is enhanced from 7% per annum to 9% per annum. To this extent only, impugned Award is modified.

15. Consequentially, the above captioned four appeals are accordingly disposed of while partly modifying the impugned Award to the extent indicated above. The compensation be now disbursed to claimants in the ratio indicated in the impugned Award, if not already done.

16. The statutory deposit made by U.P.State Road Transport Corporation be refunded as per rules.

(SUNIL GAUR)
JUDGE

DECEMBER 06, 2016

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