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

Date of Decision: 15th January, 2016

+ MAC.APP. 822/2011

**RAJASTHAN STATE ROAD TRANSPORT CORPORATION
& ANR**

..... Appellants

Through Ms. Ritu Bhardwaj, Adv.

versus

AARTI

..... Respondent

Through Mr. S N Parashar, Adv.

+ MAC.APP. 823/2011

**RAJASTHAN STATE ROAD TRANSPORT CORPORATION
& ANR**

..... Appellants

Through Ms. Ritu Bhardwaj, Adv.

versus

SATPAL

..... Respondent

Through Mr. S N Parashar, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these motor accidents claim appeals arise out of judgment dated 14.02.2011 of Motor Accidents Claim Tribunal (“the Tribunal”) – Central District Delhi in two connected claim petitions under Sections 166 read with 140 of Motor Vehicles Act, 1988 (“MV Act”), one

registered as suit No.168/2010 respecting the death of Monika and the other registered as suit No.169/2010 respecting the death of Nikhil in motor vehicular accident which statedly took place on 05.03.2010 involving bus of the first appellant bearing registration no.RJ-14-IP-4740 (hereinafter referred to as “the bus”) admittedly driven by the second appellant in the area of Police Station Sadar Palwal, District Palwal, Haryana, forming subject matter of FIR No.89/2010 registered there. The grievance of the appellants is that the bus was not involved and the driver was not negligent.

2. The respondents herein are the parents of the two deceased persons. They (hereinafter referred to as “the claimants”) had filed the two claim petitions seeking compensation, *inter alia*, alleging that the accident had occurred on account of rash/negligent driving of the bus by Jasbir Singh (the second appellant), an employee engaged by the first appellant for driving the bus on the route in question. The appellants, while contesting the two claim petitions, had taken the defence that there was no collision between the bus driven by the second appellant and the motorcycle bearing registration No.8S-AK-8185 (hereinafter referred to as “the motorcycle”) which was driven by Nikhil (the deceased) and on which Monika (the deceased) was travelling as the pillion rider. It was claimed that there was no question of any rash or negligent act on the part of the second appellant for it to have resulted in the fatal accident giving rise to cause of action for compensation to be claimed.

3. The Tribunal, by the common judgment dated 14.02.2011, rejected the defence of the appellants upholding the case about involvement of the bus in the fatal accident as also the contention of the

claimants about it having occurred on account of rash/negligent driving of the bus by the second appellant rendering both the appellants liable to compensate.

4. The compensation in the case of death of Nikhil was assessed in the sum of Rs.5,42,720/- which was awarded with interest @ 7.5% from the date of filing of the petition (12.04.2010) till realisation and apportioned in favour of the claimants.

5. On the other hand, compensation respecting the death of Monika was assessed in the sum of Rs.6,63,880/- which was awarded with interest @7.5% per annum from the date of filing of the petition (12.04.2010) till realisation.

6. Since the quantum of compensation awarded in the case of Monika is questioned by way of cross-objections by the claimants, it may be noted that the financial dependency was worked out as Rs.6,38,880/- to which non-pecuniary damages under the separate heads viz. loss of love and affection, funeral expenses and loss of estate were added in the sums of Rs.10,000/-, Rs.5,000/- and Rs.10,000/- respectively.

7. The cross-objections preferred by the claimants in the afore-said case are to the effect that the loss of dependency should have been worked out accepting the claim that the deceased (Monika) was earning Rs.15,000/- per month as beautician from a beauty parlour located in a mall on Ring Road, Delhi in which regard salary certificate (Ex.PW-1/12) along with salary vouchers (Ex.PW-1/13) had been submitted. It is also submitted in the cross-objections that the non-pecuniary damages as awarded in the said case are on the lower side.

8. The denial of involvement of bus or negligence is common feature in both the cases, the defence having been reiterated by the appellants in the two appeals. Reference is made mainly to the evidence of the second appellant, who had appeared during the inquiry as RW-1. It has been argued that the evidence of RW-1 could not have been brushed aside in that he had explained that the collision had occurred between the motorbike of the two deceased persons and, not with the bus driven by him but, a car which they were trying to overtake. In the said deposition, RW-1 had also claimed that on noticing the car and the motorcycle colliding against each other and the motorbike falling down on the road, he had immediately applied brakes turning the bus towards the central verge and thereafter he with the assistance of passengers of the bus had helped the motorcyclist being shifted to the hospital. He claimed that he had been wrongly implicated in the criminal case.

9. On careful consideration of the submissions of the appellants, this Court finds no reasons as to why the view taken by the Tribunal should be disturbed. The material on record includes copies of the corresponding criminal case that had been registered by the police vide FIR No.89/2010 under Sections 279, 337, 304A of Indian Penal Code in Police Station Sadar Palwal, District Palwal, Haryana. Rakesh Kumar (PW-3), a close relative of the two deceased persons, was an eye-witness to the accident. He testified during the inquiry before the Tribunal on the strength of his affidavit (Ex.PW-3/A) affirming that he was also moving on a separate motorcycle with his wife Anita as the pillion driver, in the direction of Mathura, along side the motorcycle driven by his brother-in-law Nikhil on the pillion of which his sister-in-law Monika was riding. His evidence clearly shows that the

motorcycles had reached in the area of village Bamni Khera within the jurisdiction of Police Station Sadar Palwal, District Palwal, Haryana, when the bus of the first appellant driven by the second appellant had come from the front side and had hit the motorcycle of Nikhil rendering him and Monika fall down and sustain injuries. The police investigation found the second appellant to be responsible for the collision. He was accordingly arrested and on completion of investigation sent up for prosecution.

10. The theory of a car being the other vehicle involved in the collision is a defence taken by the second appellant. But in such regard it is solely his word that is relied upon. There is no reason why his version be preferred or the evidence of PW-3 corroborated by the corresponding record of the criminal case investigated into by the police should be disbelieved. It has to be borne in mind that in the inquiries into such claim petitions, based on liability in tort, the standard of proof is preponderance of probabilities. This Court does not find any substance in the defence to disbelieve the evidence adduced by the claimants and, thus, confirms the findings recorded by the Tribunal holding the appellants liable to pay compensation.

11. Coming to the cross-objections, the claim based on the salary certificate (Ex.PW-1/12) and salary vouchers (Ex.PW-1/13) adduced by the claimants to show that Monika was earning Rs.15,000/- per month is found to have been rightly rejected by the tribunal. These certificates were not strictly proved. The employer who issued the said documents was not examined. In the facts and circumstances, the learned tribunal was left with no option but to calculate the loss of dependency on the

basis of minimum wages payable to a matriculate, which criterion was correctly adopted.

12. There is, however, scope for enhancement on account of non-pecuniary damages. It is found that the award on the said score is on the lower side.

13. The accident in the case of *Rajesh V. Rajbir Singh* (2013) 9 SCC 54 had occurred on 05.10.2007. In the said case, also a case of fatality, non-pecuniary damages in the sum of Rs.1 lakh and Rs.25,000/- were awarded under the heads of loss of consortium (since there the widow was the claimant) and funeral expenses respectively. As the deceased in the present case was a daughter of marriageable age, there is no justification for increasing the amount on account of loss to estate. However, the award on account of loss of love & affection and funeral expenses is increased to Rs.1 lakh and Rs.25,000/- respectively.

14. In the result, the compensation stands increased by an amount of Rs.1,10,000/- raising it to Rs.7,73,880/- (Rupees Seven Lakh Seventy Three Thousand Eight Hundred and Eighty). Ordered accordingly.

15. The appellants had deposited the amount awarded by the tribunal with the Registrar General of this Court in terms of the interim orders. Out of the said deposited amount, 50% is stated to have already been released to the claimants, the balance lying in FDR. The said balance amount shall also be now released to the claimants with up-to-date accrued interest in terms of the impugned awards.

16. The appellants are directed to deposit the enhanced portion of the award with the tribunal within 45 days of this order, along with interest @ 7.5% p.a. calculated w.e.f. 23.03.2013, the date on which cross-objections were submitted, till realisation. Upon such deposit being

made, the entire amount shall be paid to the mother (Aarti wife of Satpal Singh).

17. The appeals with cross objections stand disposed of with above directions/observations.

18. Statutory deposits, if made, shall be refunded after discharge of liability by the appellants.

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

**JANUARY 15, 2016
VLD**