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

Date of Decision: 15th March, 2016

+ **MAC APPEAL No.867/2011**

UP STATE ROAD TRANSPORT CORPORATION Appellant
Through: Ms. Garima Prashad, Adv.

Versus

HEERA DEVI & ORS. Respondents
Through: Mr.Rajesh Kr. Chaurasia, Adv. for R-
1 to R-5.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Shiv Singh, aged about 40 years, was driving Qualis car bearing registration No. HR 38E 5566 (the car) carrying certain passengers, on way from New Delhi to Uttrakhand on 29.11.2008 at about 5.00 a.m.; when the car reached in the area of Pitanjali Yoga Pith Flyover Bahadarabad near District Haridwar Road, there was a head-on collision involving a UP roadways bus bearing registration No. UP 15 AT 1276 (the bus) coming from the opposite direction. Some of the passengers and the driver (Shiv Singh) of the car suffered injuries. Shiv Singh died as a result of the said injuries. His widow, children and mother brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) which registered it as suit No. 853/2008. The claimants (first to fifth respondents herein) had impleaded

UP State Road Transport Corporation (the registered owner of the bus) and Sanjeev Kumar (driver of the bus) as respondents. On notices being issued, the said respondents contested the claim petition, *inter alia*, attributing the negligence on the part of the car driver (deceased Shiv Singh) as the cause for the head-on collision.

2. The claim case was inquired into in the course of which the first claimant (widow) Heera Devi appeared as witness (PW-1), also examining Mahesh Singh (PW-2), one of the passengers in the car at the time of the accident, he being an eye witness. On the other hand, the contesting parties examined Sanjeev Kumar, the driver of the bus as witness (RW-1) mainly to affirm on oath the facts indicative of the car driver being negligent in driving.

3. The tribunal, by judgment dated 30.11.2010, rejected the contention of the appellant and the bus driver (second respondent herein) and held the latter responsible for the accident. The tribunal assessed the compensation in the sum of Rs. 8,85,500/- in favour of the claimants and directed the appellant and the driver to be jointly and severally liable, calling them upon to pay compensation along with interest @ 7% per annum from the date of filing of the petition (20.12.2008) till realization.

4. The appellant has come up in appeal raising the issue that the evidence of RW-1 was wrongly rejected and the word of PW-2 was unfairly preferred ignoring the fact that the latter was an interested witness he being a relative of the deceased and also on the ground that, in a head-on collision, the tribunal should have at least apportioned the responsibility for the accident equally amongst the two drivers, placing reliance in this context on *Bijoy Kumar Dugar vs. Bidya Dhar Dutta & others.* (2006) 3 SCC 242. The

appellant also contends that since no formal proof of employment or earnings was furnished, the tribunal adopted the minimum wages of a skilled worker to assess the loss of dependency, but then rounded it to ₹ 4,200 per month and added the component of future prospects of increase without any evidence in support.

5. *Per contra*, the claimants have argued that the tribunal has correctly appreciated the evidence on record and that the averment of RW-1 in his deposition that the car driver was found later to have fallen asleep was baseless. It is argued that the road in question at the place of accident is not divided by a central verge and, thus, the evidence of PW-1 has been correctly accepted as the true statement of sequence of events and there is no cause for interference. The claimants further pointed out that the tribunal has awarded non-pecuniary damages in the sum of ₹ 10,000/- each for loss of love & affection, loss of consortium and loss to estate besides funeral expenses at ₹ 5,000/- which, in their submission, are highly inadequate.

6. Having heard both sides and having gone through the tribunal's record, this Court is of the opinion that there is substance in the contention of the appellant that in the present case there was contributory negligence on the part of the car driver. Suggestion of RW-1 in his statement that the car driver had fallen asleep while driving may be without any foundation but the fact remains that it is car which had come in the path of the bus rather than the other way round. The tribunal's record includes copies of the record of the investigation of the corresponding criminal case registered as first information report No. 212/2008 of police station Bahadarabad District Haridwar, Uttarakhand (collectively proved as P-X) including site plan

prepared by the investigating police officer showing the lay out of the road and the place where the collision took place. The said site plan (page 143 of the tribunal's record) clearly shows that the car was moving from south to north while the bus had approached the scene from the opposite directions *i.e.* north to south. The collision took place just before the small bridge over pebbled road below. The place where the two vehicles collided against each other is towards the right of the centre of the road which undoubtedly is undivided. This would mean the car had come in the carriage -way which was meant for traffic from north to south and, thus, was in a wrong lane. The fact that the car had come in the wrong lane meant for the traffic from the opposite direction itself shows that it would have moved on the wrong side in the process of overtaking another vehicle which is what has been the contention of the appellant and its employee (bus driver) all along.

7. For the foregoing reasons, this Court holds that the accident had occurred resulting in head-on collision on account of contributory negligence on the part of the car driver, the liability apportioned to the extent of 50%.

8. There is further merit in the contention of the appellant with regard to the element of future prospects. 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.

9. 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. There is no evidence adduced to show that the car driver (deceased Shiv Singh) was a regular employee or that his income was on progressive rise over the period. The petition, as well the evidence adduced, shows that he was working on fixed salary. In these circumstances, the loss of dependency has to be worked out without such element being factored in.

10. Having regard to the fact that the deceased was survived by five members of his family as dependants, $\frac{1}{4}^{\text{th}}$ of his income has to be deducted towards personal & living expenses. This would mean loss of dependency was ₹ (4,200 X $\frac{3}{4}$) ₹ 3,150/- per month. The tribunal correctly adopted 15 as the multiplier, since the deceased was 40 years old. Therefore, total loss of dependency is calculated at (₹ 3,150 x 12 x 15) ₹ 5,67,000/-.

11. There is merit in the submission of the claimants, on the other hand, that the award under the non-pecuniary heads of damages is highly inadequate. The counsel for the appellant argued that since no appeal has been filed, this contention should not be considered. This Court does not

agree. Since the appellant has questioned the computation of compensation, the issue is at large. It is the duty of this Court to bring in correction and to ensure that the compensation awarded is just and adequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the awards of ₹ 1,00,000/- each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards funeral expenses and loss of estate are added. Therefore, the total compensation payable in the case comes to (₹ 5,67,000 + 2,50,000) ₹ 8,17,000/-

12. The compensation is reduced accordingly to ₹ 8,17,000/-. At the same time it is noted that the tribunal has granted interest only @ 7.5 % per annum. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

13. In view of the finding about the contributory negligence to the extent of 50%, the appellant and the sixth respondent (Sanjeev Kumar) shall be liable to pay only 50% of the awarded compensation with proportionate interest to the claimants.

14. The tribunal had specified the shares of each of the claimants by mentioning the amounts to be released to them. Since the compensation has been reduced and as a result of the finding of contributory negligence the amount(s) actually receivable would be even less than what was apportioned, the directions in such regard have to be suitably modified.

15. By order dated 15.11.2011, the appellant had been directed to deposit the entire awarded amount with interest within the period specified in the form of fixed deposit with UCO Bank, Delhi High Court branch. By order dated 18.02.2013, 50% out of the said deposit was allowed to be released. The remaining is still lying with the bank.

16. In above facts and circumstances, it is directed that Registrar General shall calculate the amounts payable to the respective claimants (collectively) in terms of the award modified as above and release the balance, if any outstanding, from the said deposit to the respondent (widow) only, refunding the excess to the appellant with statutory deposit, if made. If any excess has been released, the appellant shall be entitled to its reimbursement by the respective claimants, for which it may proceed in accordance with law.

17. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 15, 2016

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