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

Date of Decision: 12th May, 2016

+ **MAC.APP. 497/2013**

U P STATE ROAD TRANSPORT CORPORATION Appellant

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

versus

PUNAM JOSHI & ANR Respondents

Through: Mr. K K Dubey, proxy for Mr. Anshuman Bal, Adv.

+ **MAC.APP. 1095/2013**

SEEMA & ORS Appellants

Through: Mr. K K Dubey, proxy for Mr. Anshuman Bal, Adv.

versus

U P STATE ROAD TRANSPORT CORPORATION..... Respondent

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

+ **MAC.APP. 505/2013**

U P STATE ROAD TRANSPORT CORPORATION..... Appellant

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

versus

DOLLY & ORS Respondent

Through: Mr. K K Dubey, proxy for Mr. Anshuman Bal, Adv.

+ **MAC.APP. 759/2013**

U.P STATE ROAD TRANSPORT CORPORATION..... Appellant

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

versus

SEEMA & ORS Respondent

Through: Mr. K K Dubey, proxy for Mr.
Anshuman Bal, Adv.

+ **MAC.APP. 906/2013**
PUNAM JOSHI & ORS

..... Appellant

Through: Mr. K K Dubey, proxy for Mr.
Anshuman Bal, Adv.

versus

UPSRTC

..... Respondent

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

+ **MAC.APP. 907/2013**
DOLLY & ORS

..... Appellant

Through: Mr. K K Dubey, proxy for Mr.
Anshuman Bal, Adv.

versus

UPSRTC

..... Respondent

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

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 28.03.2012, Kailash was driving a tempo bearing registration No.UP 16AT 3311 (tempo) from Dadri to Muradabad. Rohit Joshi and Sonu were travelling with certain other persons in the said tempo. In the area of Kishan Degree College, Sambhawali, Uttar Pradesh, the tempo had a break-down. As Kailash was trying to restore the vehicle to life for further movement, bus bearing No.UP 32CN 9935 (the bus) of Uttar Pradesh State Road Corporation (UPSRTC) driven by its employee (driver), Bharat Singh, statedly came at a high and rash speed from the side of Hapur and hit against

the stationary tempo causing injuries to Kailash, Rohit Joshi and Sonu, all of whom were moved to the hospital where they consequently died. Three accident claim petitions were instituted before the motor accident claims tribunal (tribunal) each seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act); first (MAC petition No.72/12) filed by parents (claimants) of Rohit Joshi who was a bachelor aged 21 years; second (MAC petition No.74/12) by wife and other dependent family members (claimants) of Sonu, aged 26 years; and the third (MAC petition No.75/12) by the wife and other family members (claimants) of Kailash Chand, who was aged 29 years.

2. In each of the abovesaid cases Bharat Singh (driver) and UPSRTC (owner) were impleaded as respondents on the plea that the deaths had been caused in the accident on account of negligence on the part of the bus driver. The petitions were clubbed by tribunal for inquiry in the course of which the respondents contested on the averment that there was no negligence on the part of the bus driver as he had driven the vehicle abiding by the rules of traffic and further that the collision took place because the driver of another vehicle (tractor trolley) had suddenly come at a high speed from the opposite side, he having taken a sharp turn, the driver of the bus was constrained to apply emergency break but the pressure pipe of the bus got burst resulting in the vehicle going out of control and ending up hitting against the tempo which was stationary on roadside. Bharat Singh, the bus driver, appeared as witness (R1W1) during the inquiry to affirm the said set of facts on the basis of his affidavit (Ex.R1W1/A).

3. The tribunal rejected the defence plea and found that the claimants had proved that the accident had occurred due to negligence on the part of bus driver. It considered the question of compensation and found in each of the three cases that there was no clear proof as to the nature of avocation or income. It therefore proceeded to assess the income on the basis of minimum wages, in the matters relating to the deaths of Rohit Joshi and Sonu for the unskilled workers (6,700/-) and in the case of Kailash Singh for skilled worker (8,110/-). The tribunal added 30% in each case towards future prospects of increase and adopted the appropriate multiplier, according to the age of the mother in the case of claim on account of death of Rohit Joshi (a bachelor) and according to the age of the deceased persons in the other two cases. After calculating the loss of dependency, it added Rs.25,000/- towards loss of love & affection, Rs.10,000/- towards loss to estate and Rs.5,000/- towards funeral expenses in each case besides Rs.10,000/- each in the latter two cases on account of loss of consortium. Thus, compensation was awarded in the case of death of Rohit Joshi in the sum of Rs.8,23,900/-, in the case of death of Sonu in the sum of Rs.14,61,020/- and in the case of death of Kailash in the sum of Rs.16,63,100/-. In each case, UPSRTC was directed to pay the said compensation amounts with interest at 7.5% per annum from the respective date of filing of the petition till realization.

4. The UPSRTC has challenged the awards in the above mentioned three cases by separate appeals (MAC.APP.No.497/13, 505/13 and 759/13) mainly submitting that there was no negligence on the part of the bus driver, the accident having occurred solely due to the negligence of the driver of the

tractor trolley, who could not be identified. The appellant UPSRTC also questions the addition of the element of future prospects for calculating the loss of dependency in each case. It further states that Kailash could not have been treated as a skilled worker as the material on record only showed that he was in possession of the learner's license. At the same time it submits that the minimum wages as applicable in Delhi could not have been applied arguing that there is nothing on record to show that the deceased persons were working for gain in Delhi.

5. The claimants in the three cases have come with their own appeals (MAC.APP.No.1095/13, 906/13 and 907/13), and have argued that the awards under the non-pecuniary heads of damages and the rate of interest are inadequate.

6. The submission of UPSRTC on the issue of negligence cannot be accepted. The evidence on record clearly shows that the tempo, stationary on roadside, was hit by the bus which had come at a break-neck speed. The theory of a tractor trolley having suddenly come and taken a sharp turn is just in the air. Except for the word of Bharat Singh, there is nothing available to affirm the said fact. Even if the said sequence of events narrated by Bharat Singh were to be accepted, the fact remains that the speed at which the bus was being driven was so high that he was unable to control it as to be able to avoid collision against another vehicle. A professional driver is not expected to lose control over the vehicle when another motorist is rash on the road so as to allow it to hit against vehicle at roadside. The negligence in driving on the part of Bharat Singh is writ large on these facts and circumstances.

7. There is no merit in the contention of the appellant that there is nothing on record to show that the deceased persons were working for gain in Delhi. The very cause title shows that their families are residents of different localities of Delhi. In these circumstances, there is no reason why they should be denied the benefit of minimum wages applicable in Delhi.

8. 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 SCC 166.

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. 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.

10. Indeed, in each of these cases, no clear proof was adduced as to the nature of avocation of the deceased persons or the level of the earnings. Thus, the tribunal was left with no option but to fall back on the rates of minimum wages to arrive at proper calculations regarding loss of dependency. The absence of proof regarding progressive rise in income, however, means that the element of future prospects cannot be factored in. The loss of dependency in each case therefore, will have to be worked out afresh. This Court does not accept the contention about the rate of minimum wages with regard to the case of Kailash Chand. The very fact that he was driving the tempo shows that he would be covered by the category of a skilled workman and thus, the rate of minimum wages adopted by the tribunal in that case cannot be questioned.

11. Before one proceeds to calculate the compensation in each case, it must be noted that the wages under the non-pecuniary heads of damages are inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense deserve to be granted. In the cases of death of Sonu and Kailash, further amount would need to be awarded in the sum of Rs.1 lakh towards loss of consortium.

12. In view of the above, the loss of dependency in the case of Rohit Joshi is calculated as $(6,700 \div 2 \times 12 \times 15)$ Rs.6,03,000/-. Upon non-pecuniary damages in the sum of Rs.1,50,000/- being added, the total compensation in

that case comes to (6,03,000 + 1,50,000) Rs.7,53,000. The award in the case of death of Rohit Joshi is thus reduced accordingly.

13. In case of death of Sonu, the loss of dependency is computed as $(6,700 \times 3 \div 4 \times 12 \times 18)$ Rs.10,85,400/- rounded off to Rs.10,86,000/-. Adding Rs.2,50,000/-, the total compensation in the case of death of Sonu comes to Rs.13,36,000/-. The award is reduced accordingly.

14. In the case of death of Kailash chand, the dependency loss is computed as $(8,110 \times 3 \div 4 \times 12 \times 17)$ Rs.12,40,830/- rounded off to Rs.12,41,000/-. Adding Rs.2,50,000/- under the non-pecuniary heads of damages, the total award comes to Rs.14,91,000/-. It is modified accordingly.

15. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization in each case.

16. It is noted that the tribunal had apportioned the awards in each of these cases by specifying the amounts that would fall to the share of each claimant.

17. By orders passed on 27.05.2013, 28.05.2015 and 21.08.2013 in MAC.APP.Nos.497/2013, 505/2013 and 759/2013 respectively, UPSRTC had been directed to deposit the entire awarded amounts with up-to-date interest with the Registrar General of this Court within the period specified. By the said orders in the first two cases, 80% of the awarded amount was released in favour of the claimants and in the third case 60% of the awarded

amount was released to the claimants, the balance in each matter having been directed to be put in fixed deposit receipt in UCO Bank, Delhi High Court Branch, New Delhi for period of six months to be renewed periodically.

18. Since the awards in each case have been reduced, the directions about the apportionment of the compensation need to be reconsidered. In the facts and circumstances of all these cases, it is directed that the amounts already received by the other claimants in each of these cases shall be treated as their share in the compensation, the entire balance now to be released under the modified awards to go to the first claimant in each case i.e. mother in the case of Rohit Joshi and wives in the case of Sonu and Kailash.

19. The Registrar General shall calculate the amounts payable to the claimants under the awards modified as above and release the balance, if any, to the respective claimants, refunding the excess deposited, if any, to UPSRTC along with statutory deposit, if made, in each case. If any further amount is liable to be paid, UPSRTC shall be obliged to deposit the same with the tribunal within 30 days making it available to be released to the respective claimants.

20. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
VLD