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

Date of Decision: 17th March, 2016

+ **MAC.APP. 1210/2012**

SHAKUNTLA GAUTAM Appellant

Through: Mr. O.P. Mannie, Adv.

versus

RAVINDER KUMAR & ORS. Respondents

Through: Mr. Shadab Khan, Adv.

+ **MAC.APP. 1261/2012**

UP STATE ROAD TRANSPORT CORP. Appellant

Through: Mr. Shadab Khan, Adv..

versus

SHAKUNTLA GAUTAM & ANR. Respondents

Through: Mr. O.P. Mannie, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dr. Chhaya Gautam, an unmarried person, a qualified dentist holding the degree of bachelor of dental surgery (BDS) working as lecturer in department of Conservative Dentistry, DJ College of Dental Sciences & Research, Modi Nagar, UP, suffered injuries in a motor vehicular accident that had occurred at about 4.15 p.m. on 15.3.2010 at Ghugna Mor. A motor

cycle bearing No. UP 81P 4999 (motorcycle) on which she was riding was involved in a collision against a bus bearing registration No. UP 14AE 9360 (the offending vehicle) of UP State Road Transport Corporation (UPSRTC) (appellant in MAC Appeal No. 1261/2012) and died as a consequence. Her parents (appellants in MAC Appeal No. 1210/2012) brought a claim petition under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) on 19.5.2010 whereupon it was registered as suit No. 348/2011 (2010). According to the case set up by the claimants, the accident had occurred due to rash/negligent driving of the offending vehicle by its driver Ravinder Kumar (first respondent in MAC Appeal No. 1210/2012) and, therefore, he and UPSRTC were jointly and severally liable.

2. The tribunal, held inquiry in the course of which the allegations of rash/negligent driving of the offending vehicle were denied and it was instead claimed that the accident had occurred due to fault on the part of the motorcycle rider. The tribunal rejected the said plea and found the driver of the offending vehicle responsible, it assessed the loss of dependency in the sum of ₹ 11,70,000/- and added ₹ 5,000/- each towards funeral expenses, loss of consortium and loss of love & affection to award ₹ 11,85,000/- as compensation with interest @ 9% per annum, directing the UPSRTC and the driver to pay.

3. By their appeal, the claimants contend that the capacity of the deceased to earn more in future should have been considered and, thus, the award under the heads of loss of dependency is inadequate. They also submit that non-pecuniary damages awarded by the tribunal are unduly low.

4. *Per contra*, the UPSRTC in its appeal, submits that since the motorcycle rider was also equally responsible, he should have been added as a party and the liability should have been apportioned. It is the submission of the UPSRTC that the salary at ₹10,000/- has been wrongly assumed to be the earnings.

5. The tribunal assessed the loss of dependency thus:

“19. As regards the quantum of compensation PW1 stated that deceased was Dentist and she was working as a Lecturer in D. J. Dental College and Research and was getting salary of ₹ 10,000/- per month, besides this she was also earning ₹ 20,000/- from private practice and in due course of time she would have been earned more than ₹ 80,000/- per month. She also stated that the deceased was contributing her entire income for household expenses. She further stated that the deceased had completed her Dental Course from D. J. College of Dental Sciences and Research and ₹ 9 Lacs were spent on her tuition fee. Besides this the petitioners were paying ₹ 20,000/- per month for boarding and ₹ 20,000/- on her tuition fee. She further stated that a total sum of ₹ 12,00,000/- (₹ Twelve Lacs) were spent on education of deceased. She proved the educational qualifications of deceased i.e. her marksheets of BDS examination of Dr. Bhim Rao Ambedkar University, Agra as Ex. PW1/6 to PW1/9, the provisional certificate of Kendriya Vidyalaya (XII standard) certifying that she had passed senior secondary certificate examination of XII standard as Ex. PW1/10, the senior school examination certificate EX. PW1/11, secondary school examination certificate Ex. PW1/12, certificate of Delhi Dental Council Ex. PW1/13, All India Secondary School examination certificate Ex. PW1/14 and the receipts of fee. The petitioners also proved the salary certificate of deceased by examining Sr. Assistant G. M. Legal D. J. College of Dental Science and Research who stated that deceased was their permanent employee and proved the salary certificate Ex. PW3/2 and appointment letter Ex. PW1/26. PW1 further stated that the deceased was earning ₹ 20,000/- from

private practice and in due course of time she would have been earned more than ₹ 80,000/- per month. However no proof of earning by private practice has been filed. Thus in view of the testimony of PW-1 that deceased was working as a Lecturer in D. J. Dental College and Research and was getting salary of ₹ 10,000/- per month and as no evidence to the contrary was brought on record by respondents to dispute the same. However there is no cogent proof of earning ₹ 20,000/- by private practice. Thus I hold that the deceased was earning ₹ 10,000/- per month.

20. The Hon'ble Supreme Court in the case of Sarla Verma V's. DTC (2009) 6 SCC 121 has stated that the principles relating to 'addition to income towards future prospects. It was hold that wherever the deceased was below 40 years of age and had a permanent job 50% should be added towards future prospects. Thus, 50% is to be added towards future prospects as deceased was around 27 years and has a permanent job. After adding 50% the deemed income of deceased would have been (₹ 10,000/- + 50%) = ₹15,000/-.

21. As deceased was unmarried 1/2 is to be deducted towards personal and living expenses of the deceased and the multiplier is applied with reference to the age of mother of deceased in view of judgment of SarlaVerma Vs DTC (2009) 6 SCC 121. After deduction of 1/2 out of ₹ 15,000/- the contribution of the deceased to his family would have been ₹7,500/-. According to the ration card on the date of accident the age of mother of deceased was 50 years, thus, the multiplier applicable is of 13. The loss of dependency is thus computed to be as ₹7,500/- x 12 x 13 = ₹11,70,000/-".

6. In the considered view of this Court, the approach of the tribunal to the issue cannot be faulted. The salary certificate clearly showed the total emoluments to be in the sum of ₹ 10,000/- per month. The element of conveyance allowance, in the given facts and circumstances, has to be treated

as part of the earnings since it correspondingly saves the person in question the expenditure he would otherwise be incurring.

7. The assessment of loss of dependency has to be made on the basis of proof of his income at the time of the death. The tribunal by adding the future prospects to the extent of 50% has taken care of the capacity of the deceased to earn more in future.

8. There is, however, merit in the grievance of the claimant with regard to the non-pecuniary heads of damages. 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 ₹1 lakh on account of love and affection and ₹25,000/- each towards loss of estate and funeral expenses are added. It may be observed here that there was no occasion for loss of consortium to be considered by the tribunal, as the deceased was a bachelor. In above view, the award would stand increased by ₹ 1,35,000/- . Needless to add, it shall carry interest as levied by the tribunal.

9. This Court does not find merit in the plea of UPSRTC with regard to the negligence of the motorcycle rider. For purposes of the claim of the parents of the deceased, the pillion rider was a third party. Even if it were to be assumed that the motorcycle rider was negligent to some extent, it would mean a case of composite negligence. It is the choice and prerogative of the claimants to proceed against either of the two drivers and the owner of the respective vehicles.

10. Thus, the award is modified as above. In the given facts and circumstances, it is directed that the effect of increase shall be payable only to the mother (first appellant in MAC Appeal No. 1210/2012).

11. By order dated 14.12.2012 in MAC Appeal No. 1261/2012, the UPSRTC was directed to pay the awarded amount with proportionate interest with the tribunal whereupon the execution was stayed. By order dated 6.5.2013, the direction was modified and instead the UPSRTC was directed to deposit the amount with the Registrar General of this Court and 50% was allowed to be released to the claimants with direction for the balance to be kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, initially for a period of six months to be renewed periodically. The Registrar General shall arrange for a balance also to be released in terms of the impugned judgment, modified as above. UPSRTC shall deposit the amount payable in terms of the enhancement with the tribunal within 30 days whereupon it shall be released in accordance with the above directions.

12. The statutory deposit, if made, shall be refunded.

13. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 17, 2016

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