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

Date of Decision: 4th April, 2016

\+ **MAC.APP. 1061/2013**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

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

versus

HADEESUN NISHA & ORS

..... Respondent

Through Mr. Peeush Sharma, Adv. for R-1 to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Babban Ahmad was driving motor vehicle bearing registration No.DL 1M 2461 (truck) from Haridwar to Delhi on 24.07.2010 when at about 5.30 AM, it met with an accident involving bus No.UP 14 AT 8350 (the bus) owned by the appellant (UPSRTC). Babban Ahmad died as a result of injuries suffered. His widow and other dependent members of his family (first to fifth respondents herein) instituted an accident claim case (MACT No.114/11) before the motor accident claims tribunal (tribunal) impleading the appellant and its driver (Omvir) as party respondents alleging, *inter alia*, that the accident had occurred due to rash/negligent driving of the bus.

2. The tribunal, by judgment dated 01.10.2013, upheld the contention of the claimants with regard to the negligence and awarded compensation in

the sum of ₹2013,000/- calculating it, thus:

Pecuniary Damages:		
1) Loss of dependency	--------------	Rs. 17,28,000/-
2) Funeral charges	--------------	Rs. 25,000/-
3) Loss of Estate	--------------	Rs. 10,000/-
4) Loss of consortiunn	--------------	Rs. 1,00,000/-
Non Pecuniary Damages:		
5) Loss of love, company and affection etc.	--------------	Rs. 1,00,000/-
6) Loss of gratuitous services	--------------	Rs. 50,000/-
Total		Rs. 20,13,000/-

3. Adding interest at 9% per annum, the appellant was directed to pay the compensation. The appellant, feeling aggrieved, has come up in appeal before this Court. Though a number of contentions were urged in the appeal, at the hearing, it is only loss of dependency calculated by the tribunal which is questioned.

4. The tribunal accepted the evidence of Sanjeev Kochar (PW3) to the effect that deceased was employed by M/s. Nagpur Golden Transport Company, in which he (PW3) is a partner. According to him, the deceased was holding a valid driving licence (PW3/1) and had been engaged as a driver for the last two years at wages of ₹8,000/- per month. The tribunal added the element of future prospects to the extent of 50% and on that basis worked out a loss of dependency with the multiplier of 16 taking into account that the deceased was 34 years old on the relevant date.

5. On appraisal of the evidence led before the tribunal, this Court finds substance in the grievance of the appellant. Though PW3 claimed to be a partner in the firm which had employed the deceased, no records of the firm showing such engagement of the deceased as driver of the truck or the wages paid to him or any other documents reflecting the terms and

conditions of the service were produced in corroboration. Mere oral word of the witness could not have been treated as sufficient.

6. In the above facts and circumstances, the minimum wages of ₹6448/- payable to a skilled worker at the relevant point of time should have been treated as the benchmark.

7. 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.

8. 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. This applies to present case.

9. Since the deceased was married having family, the number of dependents being five, deduction to the extent of $1/4^{th}$ was rightly made on

account of personal and living expenses. Thus, the loss of monthly dependency comes to (6448 x 3 ÷ 4) ₹4836/-.

10. Thus, on the multiplier of 16 total loss of dependency comes to (4836 x 12 x 16) ₹9,28,513/- rounded off to ₹9,30,000/-.

11. The award of ₹50,000/- under the head of loss of gratuitous services was unnecessary and improper. On the other hand, the loss of estate deserves to be awarded in the sum of ₹25,000/-.

12. Thus, the total compensation payable in the case comes to (9,30,000 + 2,50,000) ₹11,80,000/-. The compensation is accordingly reduced. It shall carry interest as levied by the tribunal.

13. The tribunal had apportioned compensation awarded by it by specifying the amounts falling to the share of different claimants. Since the award has been reduced, the said apportionment needs to be readjusted. The tribunal had apportioned ₹3 lakh each to the two minor children (Master Salaman and Master Sharukh). Their shares are reduced to ₹2 lakhs each. The shares awarded in the sum of ₹3 lakhs to the mother (fourth respondent) and ₹50,000/- to the father (fifth respondent) are maintained while the entire balance shall fall to the share of widow (first respondent).

14. The insurance company had informed the Court on 20.11.2013 that the tribunal had issued the attachment of warrant to realize the amount awarded. The court directed 60% of the awarded amount to be released at that stage. The balance would, thus, still be lying with the tribunal. It shall now recalculate the amounts payable to the claimants in terms of the award modified as above and release the same, refunding the excess, if any to the appellant with statutory deposit, if made. Conversely, if any amount remains outstanding, the appellant shall be duty bound to deposit the same

with the tribunal within 30 days for it to be released.

15. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 04, 2016
VLD