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

Date of Decision: 22nd March, 2016

+ **MAC.APP. 532/2013**

U P STATE ROAD TRANSPORT CORPORATION THROUGH:
ITS REGIONAL MANAGER

..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

SMT SARASWATI & ORS

..... Respondents

Through: Mr. S. N. Parashar, Adv. for R-1 to 5.

AND

+ **MAC.APP. 1028/2014**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

OMWATI & ORS

..... Respondents

Through: Ms. Aruna Mehta, Adv. for R-1 to 3.

AND

+ **MAC.APP. 93/2015 & CM APPL. 1601/2015**

OMWATI & ORS

..... Appellants

Through: Ms. Aruna Mehta, Adv.

versus

U P STATE ROAD TRANSPORT CORPORATION

..... Respondent

Through: Ms. Garima Prashad, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 01.01.2012, at about 06:25 PM, a motor vehicular accident occurred involving two motor vehicles namely motorcycle bearing registration no.DL-13SK-3074 (the scooter) and U.P. State Roadways bus bearing registration no.UP-14AT-8603 (the bus). Two persons were moving on the motorcycle at the time of the collision, they being Nitin and Ravi, both aged 22 years, each of whom died in the consequence. While Nitin was married and survived by wife and other members of the family which include mother, father, younger sister and younger brother, Ravi was a bachelor and was survived by his mother, sister and brother. Two claims petitions were brought before the motor accident claims tribunal (the tribunal) on 16.01.2012, one by the dependant family members of Nitin, it having been registered as petition no.26/2012 and the other by dependant family members of Ravi, it having been registered as MAC case no.32/2012. In each of the said cases, it was alleged that the accident had occurred due to rash/negligent driving of the bus by its driver (Krishan Pal). The claimants sought compensation praying that the said driver Krishan Pal be held liable, he being the principal tort-feasor and Uttar Pradesh State Road Transport Corporation (UPSRTC) being impleaded as the registered owner of the bus and the employer of the driver and, therefore, being the person vicariously

liable. The claim petitions were resisted by UPSRTC and its driver on the plea that the accident had occurred due to negligence on the part of the motorcycle rider.

2. From the proceedings recorded before the tribunal in both the cases, it appears that they were inquired into together for some period. In the claim case arising out of death of Nitin, his mother Bhagwan Devi appeared as witness (PW1), on the strength of her affidavit (Ex.PW1/A). On the other hand, in the claim case arising out of death of Ravi, his mother Omwati appeared as witness (PW1) on the basis of her affidavit (Ex.PW1/A). She also examined additionally Om Prakash (PW2) and Satya Prakash Gupta (PW4) to prove necessary facts with regard to the age, nature of avocation and earnings of the deceased.

3. In both the cases, Ct. Sanwar Mal was examined as the local police official who was present at the scene of occurrence, he being engaged in patrolling duty in the area and thus an eye witness. In the first case, he was examined as PW2 while in the other case, he was examined as PW3, his evidence based on his affidavit(s) being essentially the same.

4. On the basis of evidence adduced, the tribunal passed two separate judgments. In the case arising out of death of Nitin, the judgment was passed on 16.02.2013 while in the other case the judgment was passed on 19.09.2014. In both the judgments, the tribunal upheld the contention of the respective claimants, primarily based on the evidence of Ct. Sanwar Mal that the accident had occurred due to negligence of the driver of the bus, thereby repelling the contention and evidence of Krishan Pal, the driver-cum-employee of UPSRTC stating facts to the contrary.

5. In the claim case arising out of death of Nitin, the tribunal awarded compensation in the sum of ₹14,11,685/- with interest at the rate of seven & half percent (7.5%) from the date of the filing of the petition. In the other case arising out of death of Ravi, the tribunal awarded compensation in the total sum of ₹14,49,144/- with interest levied at the rate of nine percent (9%) from the date of filing of the petition till realization. Noticeably, in the first said case, aside from the loss of dependency, the tribunal granted non-pecuniary damages in the sum of ₹10,000/- each under the heads of loss of consortium, loss of estate and funeral expenses, besides, ₹25,000/- towards loss of love & affection. In the other case relating to the death of Ravi, in contrast, the tribunal awarded ₹1,00,000/- towards loss of love & affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss of estate. Clearly, the approach of the tribunal in both these cases arising out of same set of circumstances, *albeit* with some difference in the relevant facts concerning the status in life and earnings of the deceased persons, has not been consistent.

6. The party which was held liable to pay (UPSRTC) has come up in appeals (MAC appeal no.532/2013 & MAC appeal no.1028/2014) to question the findings recorded by the tribunal on the issue of negligence, also raising grievances about calculation of compensation.

7. In the case relating to the death of Nitin, the appellant (UPSRTC) submits that the tribunal adopted minimum wages payable to an unskilled worker but thereafter added 30% of prospects of future increase to calculate the loss of dependency which, per the submissions, was erroneous. It is further argued that the father, brother and sister of Nitin could not have been

treated as dependants and, therefore, the deduction on account of personal & living expenses should have been to the extent of one third (1/3) rather than one fourth (1/4) as applied by the tribunal. It is at the same time noted that the tribunal has wrongly taken ₹6442/- as the minimum wages payable to an unskilled worker. The minimum wages as in force at that point of time was ₹6656/-.

8. In the case relating to death of Ravi, the contention of the appellant (UPSRTC) is that the tribunal having adopted minimum wages of Rs.8112/- payable to a skilled worker (it was proved at the inquiry that the deceased was working as mason), future prospects to the extent of fifty percent (50%) were added, impermissibly so. It is further submitted that the tribunal fell into error by adopting the multiplier of 18 on the basis of age of the deceased. It is argued that the proper approach would have been to adopt the age of the claimant as the basis.

9. Per contra, the claimant in the case relating to death of Ravi, have come up in their own appeal (MAC appeal no.93/2015), to submit that a case for enhancement of compensation is made out, the argument essentially being that the deduction on account of personal & living expenses to the tune of fifty percent (50%) was incorrect because the deceased was survived by three members of the family. The learned counsel representing the claimants in the said case referred to *M. Mansoor & Anr. vs. United India Insurance Company Ltd. & Anr*, (2013) 15 SCC 603, contending that the approach of the tribunal in selection of the multiplier on the basis of age of the deceased cannot be faulted.

10. During the course of arguments, it was pointed out that in each of these two cases, presented at the same time, though on petitions drafted by two different counsel, it was pleaded that the deceased in each case was a pillion rider while the other person who had died (which would be the person on account of whose death, the compensation is claimed in the other case) was the driver. Indeed, this seems to be the state of pleadings and the evidence led. This discrepant approach in the presentation of the facts would have been of some import but for the fact that through the evidence adduced on record during the inquiries in each of these claim petitions, it has been brought out vividly that the accident had occurred not on account of the negligence of the person who was driving the motorcycle but wholly and squarely on account of negligent driving of the bus by Krishan Pal, the employee of UPSRTC.

11. Undoubtedly, Krishan Pal in both these cases appeared as witness to resist the claims, his position being that the collision had taken place for the reason the motorcycle rider had tried to overtake the bus from the wrong side. Suitable suggestions in the cross-examination were given by the claimants in both cases which were denied. But, noticeably, when Ct. Sanwar Mal appeared, during the cross-examination by UPSRTC and its driver, it was suggested to him that the accident had occurred not on account of fault of anyone but because the motorcycle had slipped on the road, it having rained some time prior to the mishap.

12. In the face of the above state of evidence, the question as to who out of the two (i.e. Nitin and Ravi) was driving the motorcycle is rendered inconsequential. The fact remains that the evidence of Ct. Sanwar Mal

affirming that the accident had occurred due to negligence on the part of the bus driver is worthy of reliance and must be accepted.

13. Thus, this court does not find any good reasons to interfere in the findings on the question of negligence recorded by the tribunals in the two judgments.

14. This brings one to the question of computation of compensation. Indeed, there is substance in the grievances of the appellant (UPSRTC) that the element of future prospects of increase could not have been factored in.

15. 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.

16. 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.

17. The income of the deceased in each of these cases was assessed notionally on the basis of minimum wages payable at that point of time. With no evidence having come in to show any periodic increase to which the deceased persons would have been entitled prior to their demise, there is no reason why such element should be considered or taken on board. Therefore, the loss of dependency has to be worked out in the case of death of Nitin on the minimum wages of ₹6656/- and in the case of death of Ravi, on the minimum wages of ₹8112/- per month.

18. This court does not find any merit in the contention of UPSRTC that the brother or sister could not be treated as dependants. This also applies to similar argument respecting father of Nitin in the first appeal. Noticeably, when the claimants appeared in the witness box, no such suggestions were given. It is pertinent to note that the siblings who were joined as claimants are quite young in age at the threshold of adulthood and, therefore, there was nothing wrong in the approach of the tribunal in accepting their case that they were also financially dependant on their respective elder brothers.

19. Thus, the deduction on account of personal & living expenses in the case of death of Nitin was correctly done to the extent of one fourth (1/4). In contrast, in the case of death of Ravi, the tribunal fell into error by deducting to the extent of one half (1/2). The correct approach in that case would be to deduct to the extent of one third (1/3).

20. There is no grievance raised with regard to the adoption of the multiplier of 18 in the case of death of Nitin, inasmuch as he is survived by dependants that include his widow. In the other case, however, the approach of the tribunal cannot be upheld. Ravi was an unmarried person. It is well settled that in such cases, the loss of dependency is to be computed on the basis of multiplier according to the age of the deceased, or that of the claimant, whichever is higher [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180]. Since the age of mother in that case was 51 years, she being the prime dependant, multiplier of 11 would have to be applied.

21. In above view, in the claim case arising out of death of Nitin, the loss of dependency is calculated as $(6656 \times 1/4 \times 3 \div 4)$ ₹4992/-. On the multiplier of 18, the total loss of dependency comes to $(4992 \times 12 \times 18)$ ₹10,78,272/-, rounded off to ₹10,79,000/-.

22. In the case of death of Ravi, monthly loss of dependency is calculated as $(8112 \times 2 \div 3)$ ₹5408/-. The total loss of dependency on the multiplier of 11 would come to $(5408 \times 12 \times 11)$ ₹7,13,856/-.

23. Following the law laid down *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150,

in the case of death of Nitin, ₹1,00,000/- each on account of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the said case comes to (10,79,000+ 2,50,000) ₹13,29,000/-.

24. Since Ravi was an unmarried person, there is no occasion for loss of consortium to be compensated. Therefore, non-pecuniary damages under the other heads, in the total sum of ₹1,50,000/- are added. Thus, the total compensation in that case comes to (7,14,000+1,50,000) ₹8,64,000/-.

25. There is no reason why interest should be levied at a rate lower than what was awarded in the case of death of Ravi. Thus, it is directed that in both the cases, the awards shall carry interest at the rate of nine percent (9%) per annum from the date of filing of the respective petitions.

26. The awards of compensation in both the cases are reduced accordingly. There shall be apportionment in the manner directed by the tribunal in the respective judgments.

27. In MAC appeal no.532/2013, the appellant had been directed by order dated 31.05.2013 to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified. Out of such deposit, eighty percent was allowed to be released. In MAC appeal no.1028/2014, similar order was passed on 14.11.2014 though only sixty percent (60%) was allowed to be released.

28. The Registrar General is directed to calculate the amounts payable to the claimants in both these cases in terms of the awards modified as above and release the same from the balance lying in respective deposits, refunding

the excess to the appellant UPSRTC in each case, with statutory deposits, if made.

29. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
ssc

