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

Decided on: 22nd August, 2017

\+ MAC.APP. 102/2014

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION ..... Appellant

Through: Mr. Garima Prashad and Mr. Shadab Khan, Advocates

versus

SUGI DEVI & ORS ..... Respondents

Through: None

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

JUDGMENT (ORAL)

1. Banarsi Gupta, aged about 44 years, suffered injuries on 09.08.2009 sometime around 8.15 p.m. in the area of bus terminus at Sarai Kale Khan within the jurisdiction of police station Hazrat Nizamuddin and was taken to All India Institute of Medical Sciences, Trauma Centre (AIIMS). He was declared dead at about 9.40 p.m., the efforts to assist him medically having failed. The accident claim case (suit no.152/11/09) was instituted on 18.09.2009 by his wife and other members of the family dependent on him, they being the respondents impleading the appellant as the second respondent on the allegations that the deceased had suffered injuries due to negligent driving of a bus bearing registration no.UP-84F-9516 by its employee

/ driver Brij Mohan who was also shown in the fray as the first respondent before the tribunal.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 02.12.2013, upheld the case of negligent driving of the bus by the employee of the appellant, this on the basis of eye witness account of Yogender Pandey (PW-2), rejecting the evidence led on behalf of the appellant by the testimonies of the said driver (R1W1) and conductor Pramod Kumar Pandey (R2W1). The tribunal assessed and awarded compensation in the sum of Rs.8,82,501/- and directed the appellant to pay the same with interest at the rate of 9% p.a. The said amount of compensation includes Rs.6,47,501/- calculated towards loss of dependency, this besides Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.

3. The appeal questions the impugned judgment on the contention that there was no involvement of the bus nor any negligence on the part of its driver, per the submissions of the appellant, PW-2 having been falsely propped up. Reference is made to the fact that the said witness would not speak of any other person being present at the scene, the police proceedings also not reflecting his presence at the crucial time.

4. The appellant also questions the computation of compensation on the ground that the deceased was a resident of District Kushi Nagar, U.P. and, therefore, the tribunal's assessment on the basis of minimum wages of Delhi was improper. It is also the contention that

the tribunal wrongly factored in the element of future prospects to the extent of 30% without there being any evidence of regular earnings, the income having been assumed on the basis of minimum wages.

5. Inspite of notice, the respondents have not appeared at the hearing to put in contest.

6. The learned counsel for the appellant has been heard and with her assistance, the tribunal's record has been perused.

7. The contention about the non-involvement of the bus or there being no negligence on the part of the driver cannot be accepted. The involvement of the bus was reflected in the FIR based on *rukka* sent in less than six hours from the place of occurrence by ASI Ganga Prakash in the wake of DD no.18 which had been recorded at 8.15 p.m., the input being that the victim had fallen off the bus. It may be that the police official was unable to locate any eye witness immediately at the spot. But then, his focus would be also on the victim who had already been taken to the hospital. A copy of the MLC (page 337 of the tribunal's record) shows that the deceased had been brought to the hospital by PCR officials. He was still alive at that stage. The MLC shows that he had swelling in pelvic region. In these circumstances, it is not correct that he had not suffered any injuries or that the death is on account of cardiac arrest which had also supervened. The copy of the post mortem examination report (page 339 of the tribunal's record) reveals that the death was due to hemorrhagic shock as a result of pelvic bony injury. Such injury was possible by fall from a bus. This itself belies the evidence of the witnesses presented by the appellant during the inquiry disowning any

case of fall. The involvement of the bus by its full description is duly recorded in the FIR. The said input is confirmed by the testimony of PW-1, it revealing that the deceased was in the process of alighting from the bus when its driver put the vehicle in sudden motion thereby rendering him lose balance and falling down suffering injuries.

8. It is not correct on the part of the appellant to assume that the deceased was working for gain from his native place in the State of Uttar Pradesh. His wife who appeared as a witness is on record to state that he would come to Connaught Place in New Delhi to earn his livelihood as a hawker. In these circumstances, the tribunal has correctly gone by the minimum wages of unskilled workers as in vogue in Delhi.

9. 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.

10. 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.

11. Since there was no formal proof of the actual earnings in a regular avocation of the deceased, the addition of the future prospects was not correct. Thus, the loss of dependency will have to be recomputed without such element being added. The tribunal correctly deducted one-fourth towards personal and living expenses and applied the multiplier of 14. The loss of dependency is, thus, calculated as (Rs.3,953/- x 3 / 4 x 12 x 14) Rs.4,98,078/-, rounded off to Rs.4,99,000/-.

12. It is noted that the loss of estate has not been properly taken care of. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, the said award is increased to Rs.25,000/-. Adding the other components of the compensation awarded by the tribunal, the total compensation payable comes to (Rs.4,99,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- +Rs.25,000/-) Rs.7,49,000/-.

13. The award is modified accordingly. It shall carry interest as levied by the tribunal.

14. It is noted that the tribunal had specified the amounts falling to the shares of the different claimants. By order dated 31.01.2014, the

appellant had been directed to deposit the entire awarded amount with up-to-date interest and out of such deposit, 80% was allowed to be released. Since the compensation has been reduced, it is directed that the amounts already released to the claimants other than first respondent shall be treated as their share in the compensation, the entire balance now to go to the first respondent / Sugi Devi (widow) only. The Registry shall calculate the amount payable to the claimant in terms of the modified award, releasing the balance in terms of above directions, refunding the excess in deposit with statutory deposit to the appellant.

15. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 22, 2017
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