$~R-474 & 475

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th November, 2017

\+ MAC.APP. 320/2012

UTTRAKHAND TRANSPORT CORP. ..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

POOJA & ORS ..... Respondents

Through: None.

\+ MAC.APP. 939/2017

POOJA & ORS ..... Appellants

Through: None.

versus

UTTRAKHAND TRANSPORT CORP. ..... Respondents

Through: Ms. Garima Prashad, Adv.

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

JUDGMENT (ORAL)

1. Poonam Chand, aged 26 years 7 months, earning his livelihood as a cobbler was riding on the pillion of motorcycle bearing registration no. DL 7S-AS-0695 (the motorcycle) with Chander Prakash (PW-2) on 07.08.2010 when it came to be involved in an accident with bus bearing registration no. UA 07J 0762 of Uttrakhand Transport Corporation, and suffered injuries. As a result of injuries suffered, Poonam Chand died. His wife and five other members of the

family dependent upon him, they being appellants in MAC Appeal No. 939/2017, also first to sixth respondents in MAC Appeal no. 320/2012 instituted accident claim case (MACT 316/10) on 13.10.2010. The Tribunal held inquiry and, by judgment dated 15.11.2011, held that the accident had occurred due to negligent driving of the bus. It awarded compensation in the total sum of Rs. 12,51,301/-, fastening the liability, *inter alia,* on the appellant Uttrakhand Transport Corporation with interest @ 7.5% per annum, the said amount inclusive of Rs. 12,11,301/- towards loss of dependency and Rs. 10,000/- each towards loss of love & affection, loss of consortium, loss to estate and funeral expenses.

2. The appeal of Uttrakhand Transport Corporation is pressed only on the issue of calculation of loss of dependency, the contention being that the Tribunal fell into error by adding the element of future prospects of increase to the extent of 50% against income notionally assessed with the help of minimum wages (Rs.5,278/-) of an unskilled worker. *Per contra,* the appeal of the claimants sought compensation to be enhanced primarily on the ground that the income of Rs. 10,000/-, should be accepted and that the non-pecuniary damages awarded are inadequate.

3. Both appeals were put in the list of 'regulars' to come up on their own turn. When they are taken up, there is no appearance on behalf of the claimants.

4. The learned counsel for the Uttrakhand Transport Corporation has been heard and the record has been perused with her assistance.

5. There is no evidence led by the claimants from which the pleadings about the income of the deceased being in the range of Rs. 10,000/- per month could be accepted. It was, however, proved that he was earning his livelihood as a cobbler. In these circumstances, the minimum wages of semi-skilled worker (Rs. 5850) should have been adopted as the benchmark. Following the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in SLP (C) 25590/2014, *National Insurance Company Ltd. Vs. Pranay Sethi and Ors*., the element of future prospects to the extent of 40% only can be added. Computed thus, after making deduction of 1/4th towards personal & living expenses, and applying the multiplier of 17, the loss of dependency is worked out as (5850 x 140 ÷100 x 3 ÷4 x 12 x 17) Rs. 12,53,070/-, rounded off to Rs. 12,54,000/-.

6. The non-pecuniary damages awarded by the tribunal will also have to be brought in *sync* with dispensation in *Pranay Sethi* (supra). Thus, instead of the awards made by the tribunal, damages in the amounts of Rs. 15,000/- each towards loss of estate and funeral expenses and Rs. 40,000/- towards loss of consortium are added. The total compensation is computed as (12,54,000 + 15,000 + 15,000 + 40,000) Rs. 13,24,000/- (Rupees Thirteen Lakhs Twenty Four Thousand Only). The award is modified accordingly.

7. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016

in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

8. By order dated 26.03.2012 in MAC Appeal No. 320/2012 Uttrakhand Transport Corporation has been directed to deposit the entire awarded amount with the Registrar General. By subsequent order dated 01.10.2012, 50% was permitted to be released to the claimants. The balance shall also now be released to the claimants. Uttrakhand Transport Corporation shall be obliged to deposit the remainder of its liability under the modified award with the tribunal within thirty days. The entire enhanced portion with effect of increase in corresponding interest shall fall to the share of first claimant (Pooja) for it to be released to her in the form of interest bearing fixed deposit account initially for a period of five years with right to draw periodic interest.

9. The statutory amount shall be refunded.

10. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 14, 2017
nk