$~14 to 16 *(common order)*

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

Decided on: 18th September, 2017

\+ **MAC.APP. 107/2017 and CM APPL.4193/2017**

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

Through: Ms. Garima Prashad, Advocate with Mr. Shadab Khan, Advocate

versus

SABRA & ANR ..... Respondents

Through: Mr. Yogesh Swaroop, Advocate with Mr. Alok K. Palai, Advocate

\+ **MAC.APP. 109/2017 and CM APPL.4260/2017**

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

Through: Ms. Garima Prashad, Advocate with Mr. Shadab Khan, Advocate

versus

GULBAHAR & ORS ..... Respondents

Through: Mr. Yogesh Swaroop, Advocate with Mr. Alok K. Palai, Advocate

\+ **MAC.APP. 113/2017 and CM APPL.4409/2017**

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

Through: Ms. Garima Prashad, Advocate with Mr. Shadab Khan, Advocate

versus

SHAMA & ORS ..... Respondents

Through: Mr. S.M. Zulfiqar Alam, Advocate with Ms. Ranny, Advocate

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

JUDGMENT (ORAL)

1. On 14.10.2011, a motor vehicular accident took place involving two vehicles colliding with each other, one being bus bearing registration No.UP-84-T-0385, of Uttar Pradesh State Road Transport Corporation (UPSRTC), the appellant in these three connected appeals and, the other, a motorcycle bearing registration No.DL-5S-AE-2437, which was being driven by Mehfooz, carrying on the pillion two persons, they being Raju Khan @ Rafiq and a child named, Master Sahil. Due to the said accident, all the three persons on the motorcycle died. Four claim cases came to be instituted, two of them (MACT No.467/2011, New No.14736/2015 and MACT No.71/2012) on account of death of Mehfooz, the third one (MACT No.468/2011, New No.14735/2015) on account of death of Raju Khan @ Rafiq and the fourth being (MACT No.469/2011, New No.14737/2015) on account of death of the child Master Sahil. It may be mentioned here that out of the two claim petitions seeking compensation on account of death of Mehfooz, the first one was instituted by the parents of the deceased, they being first and second respondents (in MAC APP.107/2017) and the other, for and on behalf of wife and two minor children of the deceased, they being first to third respondents (in connected MAC APP.113/2017).

2. The tribunal held inquiry and decided all the four claim cases by common judgment dated 28.11.2016 accepting the claims about the

accident having occurred due to negligence on the part of the driver of the bus of UPSRTC. Awards of compensation were granted. In the case of claim by the parents of deceased Mehfooz, his mother (first respondent in MAC APP.107/2017) having been given fifteen per cent (15%) share in the compensation, the balance having been apportioned in favour of the wife and two minor children of the deceased (respondent 1 to 3 in MAC APP 113/2017). The award of compensation in the case of death of the child Master Sahil has not been assailed by any appeal. The award on account of death of Raju Khan @ Rafiq has, however, been challenged in MAC APP.109/2017.

3. In the two claim cases arising out of death of Mehfooz, it is argued that there was element of contributory negligence on the part of the deceased motorcyclist in that two vehicles had collided head-on. It is the grievance of the appellants that no deduction on such account was made.

4. Having heard the learned counsel and having gone through the record, this court finds no substance in the appeal. There is ample evidence showing that the driver of the bus had lost control over his vehicle. It is not only that the bus swerved off the road and had gone into the roadside ditch, but also that the driver had come out of the vehicle even while the accident was happening. Whether he fell off the driver's seat due to the accident or he had jumped out to save himself is beside the point. The very fact that he came out even at the time when the bus was in the process of colliding against the motorcycle shows that the vehicle was not under his control. This brings home

the element of negligence on the part of bus driver as is the finding rightly returned by the tribunal. In these circumstances, this court is not impressed with the plea of contributory negligence.

5. The appellant is, however, also aggrieved with the element of future prospects of increase in income having been added to the compensation awarded on account of deaths of Mehfooz and Raju Khan @ Rafiq.

6. 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.

7. 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 12.01.2015, 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.

8. Concededly, in both the cases no formal proof of regular engagement of the deceased persons in any employment, much less such employment as would earn them periodic rise in income, was brought on record. Therefore, the element of future prospects has to be kept out.

9. The loss of dependency in both the cases, thus, is to be re-calculated. Having regard to the age of the deceased persons and the nature of avocation explained in the respective claims, minimum wages of unskilled workers (Rs.6656/-) were taken as the bench mark and the multiplier of 17 was applied, after deduction of one-fourth towards personal and living expenses, the calculations of loss of dependency in each case being identical. The same is re-calculated as (6656/- x 3/4 x 12 x 17) Rs.10,18,368/- rounded off to Rs.10,19,000/- (Rupess Ten Lakhs Nineteen Thousand Only).

10. It is noted that the awards by the tribunal under the non-pecuniary heads of damages at Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.10,000/- towards loss to estate, besides Rs.25,000/- towards funeral expenses are inadequate. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary heads of damages in the sum of Rs.1,50,000/- each towards

loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added.

11. Thus, the total compensation payable in each case on account of deaths of Mehfooz and Raju Khan @ Rafiq shall be in the total sum of (10,19,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.14,19,000/- (Rupees Fourteen Lakh Ninteen Thousand Only).

12. The awards are modified accordingly. Needless to add, they shall carry interest as levied by the tribunal. The apportionment of the awards as made by the tribunal shall remain undisturbed.

13. By identical orders dated 03.02.2017, the operation of the impugned awards was stayed, subject to the appellant depositing the entire awarded amounts with interest with the tribunal. The tribunal shall release from out of the said deposited amount, the amounts payable to the respective claimants in terms of the modifications ordered above, refunding the excess to the appellant UPSRTC.

14. The statutory amount shall also be refunded in each case to the appellant.

15. All the appeals along with accompany applications are disposed of accordingly.

R.K.GAUBA, J.

SEPTEMBER 18, 2017
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