

\$~R-350

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

Decided on: 24th October, 2017

+ **MAC APPEAL 519/2011**

UPSRTC

..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

MANJU YADAV & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 01.11.2008, the motor vehicular accident took place involving collision between two vehicles one being Maruti Van bearing registration no. DL-3C-AW-0291 (van) and the other bus bearing registration no. UP-15-Z-9773 (bus). The collision resulted in Sanjay Yadav, driving the van, suffering injuries that proved fatal. The bus admittedly belonged to the appellant and driven by its driver Imamuddin at the relevant point of time. The first to fifth respondents (collectively, the claimants) instituted accident claim case (suit no. 609/2008) on 21.11.2008 seeking compensation on the grounds that the accident had occurred due to the negligent driving of the bus by the said Imamuddin. During the inquiry before the tribunal, the claimants examined, besides other witnesses, Narendra Singh

(PW2) deposing as an eye witness, he being a passenger in the van at the relevant point of time. The appellants also examined their driver Imamuddin (R1W1) to state that the accident had occurred due to negligence on the part of the van driver (i.e the deceased).

2. The tribunal, by its judgment on 22.01.2011, held that the accident had occurred due to negligent driving of the bus. It awarded compensation in the total sum of Rs.8,84,150/- it inclusive of Rs.8,49,150/- towards loss of dependency, Rs.10,000/- each towards loss of love and affection, loss of consortium and loss to estate and Rs. 5,000/- towards funeral expenses. The liability to pay the said amount was fastened upon the appellant.
3. By the appeal at hand, the correctness of the findings on the issue of negligence is questioned. It is also the contention of the appellant that the tribunal was in error while calculating the loss of dependency by adding the element of future prospects of increase against the income notionally assessed on the basis of wages of an unskilled worker (Rs.3690/-) per month.
4. Having heard the learned counsel on both sides and having gone through the tribunal's record, this Court is of the view that the appeal must fail.
5. While arguing, it was initially submitted on behalf of the appellant that no evidence about the sequence of events leading

to the collision was adduced, reliance being placed only on the record of the corresponding criminal case. When it was pointed out to the counsel that the tribunal has referred to the evidence of PW2, a passenger in the van, she turned her argument around to state that it was a case where contributory negligence should have been considered. This plea also is without substance. Negligence on the part of bus driver as the sole reason for the collision has been vividly brought out by the testimony of PW2. It was the bus which was moving at a rash speed of 70 Km per hour. The evidence of R1W1 about collision having taken place due to improper attempt of van driver to overtake the bus having being rejected, the conclusions reached by the tribunal do not call for any interference.

6. While submissions of the appellant about error in addition of the element of future prospects in income, may be correct, against the backdrop of the fact that the income had been assumed with the help of minimum wages, it is noted that the tribunal ignored the fact that the evidence had brought out clearly that the deceased was earning his livelihood as a machine man. In this view of the matter, the minimum wages of semi-skilled workers should have been used as the benchmark.
7. The awards under the pecuniary heads of damages as noted above are found to be grossly inadequate. Going by the ruling in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and

Shashikala V. Gangalakshamma (2015) 9 SCC 150, awards under the head of loss of love & affection and loss of consortium should have been to the extent of 1,00,000/- each and those on account of funeral expenses and loss to estate to the extent of 25,000/- each. If this were to be the method of calculation, the compensation awarded by the tribunal cannot be said to be excessive. Hence this Court finds no reason for interference in the award of compensation.

8. In the foregoing facts and circumstances, the appeal is dismissed.
9. The appellants had been directed by order dated 30.05.2011 to deposit the entire awarded amount with upto date interest with the Registrar General and from out of such deposit 50% was permitted to be released. The balance in deposit shall be now released to the claimants.
10. The statutory amount shall be refunded.

OCTOBER 24, 2017
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R.K.GAUBA, J.