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

Decided on: 26th October, 2017

+ **MAC APPEAL No. 964/2013**

UP STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

ANJU SHARMA & ORS.

..... Respondents

Through: Ms. Mariya Mumtaz, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Harish Kumar Sharma, aged 45 years, working in a private entity to earn his livelihood, was riding on the pillion of motorcycle bearing registration no. DL 8S AC 9965 (the motorcycle) at about 6.30 p.m. on 03.03.2011, the motorcycle having come down on the loop of the flyover bringing the traffic from across Yamuna to the ring road on the side of Inter State Bus Terminus (ISBT) at Kashmere Gate, Delhi. It is stated that the motorcycle was hit, from behind, by bus bearing registration no. UP 15 AT 0449 (the bus) of Uttar Pradesh State Road Transport Corporation (UPSRTC), its driver at the relevant point of time being Brij Pal (the driver). As a result of the collision, Harish Kumar Sharma suffered injuries and died in the consequence. His wife and other members of the family dependent on him, they

being the respondents in appeal (collectively, the claimants) instituted accident claim case (suit no. 139/2011) on 18.04.2011 impleading the said driver (Brij Pal) and the Regional Manager of the appellant UPSRTC as party respondents.

2. It appears the proceedings had been initiated originally on the basis of detailed accident report (DAR) submitted by the police which had also registered a criminal case concerning the fatal accident. The tribunal, on the basis of proceedings taken out at that stage wherein the driver Brij Pal had appeared and filed his pleadings, also appearing as his own witness (RW1), passed a judgment dated 05.11.2011 returning a finding that the accident had occurred due to negligence of the bus driver. It awarded compensation in the sum of Rs. 35,38,352/- holding the appellant and the said driver jointly and severally liable, the liability to pay having been fastened primarily against the appellant.

3. The appellant, however, moved an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) which was allowed by the tribunal, by its order dated 16.05.2013, though on the condition that it (the appellant) would deposit the amount awarded by the judgment dated 05.11.2011 with upto date interest within the period specified.

4. In the proceedings taken out in the wake of the aforesaid order, whereby the judgment passed on 05.11.2011 had been vacated, the appellant also participated by submitting its written statement denying the involvement on the part of its bus or negligence on the part of its driver.

5. After further inquiry, the tribunal rendered a fresh judgment dated 02.09.2013 now awarding the compensation in the total sum of Rs. 47,69,900/-, fastening the liability to pay the same alongwith interest levied thereupon on the appellant. The prime reason for increase in the compensation awarded by the subsequent judgment apparently is that while in the first go, the tribunal had declined to grant any element of future prospects it has added such factor to the extent of 30% while computing the loss of dependency in the fresh award.

6. The appeal by UPSRTC challenges the finding on the question of involvement of the bus or negligence on the part of its driver. In the alternative, it submits that the motorcyclist was also responsible in that the site plan would show he having come in the way of the bus which was in the process of entering into ISBT. The learned counsel for the appellant has taken this Court through the evidence including the testimony of the motorcycle rider Kamal Gogwani (PW-1) who had deposed on the strength of his affidavit (Ex.PW-1/A).

7. Having perused the record, this Court finds no substance in the plea urged by the appellant. The evidence of PW-1 about the bus having hit the motorcycle from behind has gone unimpeached. The driver of the bus, Brij Pal, an employee of the appellant, had taken a vague defence in his pleadings attributing negligence to the motorcyclist without elaborating in any manner the reasons for such assertion. He stated in his affidavit on the strength of which he testified that there was no accident caused by the bus. It is during cross-examination at the hands of the appellants in the revived

proceedings that the theory of the motorcycle having fallen into a pit and the injuries being suffered on account of pipe in the said pit were raised. Such suggestions do not have any foundation in the pleadings. In these circumstances, the conclusion reached by the tribunal on the issue of involvement of the bus and the negligence on the part of Brij Pal, the driver of the appellant, do not call for any interference.

8. On the question of computation, the appellant submits that the evidence about the employment of the deceased with M/s Cosmic Nutracos Solutions Pvt. Ltd. is concocted. The counsel submitted that it is not believable that the deceased would have joined the services of the said entity just two months prior to the occurrence. It is noted that the witness from the said entity was examined by the appellant itself. The witness in question Gulshan Arora (R2W1) is the Manager (Accounts) in the said company and proved the relevant record pertaining to the employment of the deceased. Noticeably, during the entire testimony, no suggestion was given by the appellant that the record had been fabricated, the focus of the appellant essentially being to ascertain the terms and conditions on which the deceased was engaged. In these circumstances, it is not fair on the part of the appellant to now raise such contentions.

9. The appellant is also aggrieved with the inclusion of special allowance of Rs. 9,000/- as part of the income. Since the documents proved by R2W1 prove such allowance to be a part of the emoluments regularly earned by the deceased there is no good reason why such component should be kept out.

10. The grievance of the appellant about the inclusion of future prospects of increase in income is again devoid of substance. If the tribunal had committed the error in its previous order dated 05.11.2011 by excluding such component, it cannot be said that there is no occasion for it to rectify the mistake committed, particularly because the testimony of R2W1 had come on board later, such evidence clearly showing the fact that the deceased had been engaged with the above said employment on regular and permanent basis, the element of progressive rise being inherent in such terms.

11. In the foregoing facts and circumstances, the impugned judgment cannot be faulted. There is no good reason for any interference. The appeal is found devoid of substance and is dismissed.

12. By order dated 25.10.2013, 30% of the amount already deposited with the tribunal was allowed to be released to the claimants. The balance lying in deposit with the tribunal shall also now be released to the claimants in terms of the judgment of the tribunal. The appellant shall be obliged to satisfy the award in entirety by depositing the balance if any, of its liability within thirty days.

13. The statutory deposit shall be refunded after proof is shown of the award having been satisfied.

R.K.GAUBA, J.

OCTOBER 26, 2017

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