

\$~R-405

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

Decided on: 6th November, 2017

+ **MAC APPEAL No. 948/2011**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Ms. Garima Prashad, Adv.

versus

PHOOL KUMARI & ORS.

..... Respondents

Through: Mr. Sanjeev Srivastava, Adv.
for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Dharmender, aged 20 years, a bachelor, working for gain as an electrician, was present in the area of Bus Terminus at Ajmeri Gate, Delhi on 03.08.2009, when he came to be crushed to death upon being sandwiched between two buses, both of Uttar Pradesh State Road Transport Corporation (UPSRTC), one bearing registration no.UP 32 CN 0906 and the other bearing registration no. UP32 CN 0926. While the first said bus was stationary, the second said bus was moving, it being driven by Lal Singh, an employee deployed by UPSRTC. His mother and minor sisters, they being the respondents (collectively, the claimants), instituted accident claim case (suit no. 348/2009) on 11.09.2009 seeking compensation on the averments that the driver of

the second above-mentioned bus had been negligent. The tribunal held inquiry and upon its conclusion, by judgment dated 06.06.2011, upheld the said case awarding compensation in the total sum of Rs. 5,47,720/-, it inclusive of Rs. 5,22,720/- as loss of financial dependency, Rs. 10,000/- each towards loss of love & affection and loss to estate and Rs. 5,000/- on account of funeral expenses. The liability to pay the said amount was fastened on UPSRTC (the appellant) with levy of interest @ 7.5% per annum.

2. The present appeal was filed by UPSRTC questioning the finding on the issue of negligence and also raising grievances about the computation of compensation under the head of loss of dependency, primarily on the contention that the minimum wages prevalent in Delhi could not have been invoked since the claimants have been residents of District Fatehpur, UP and further that the sisters were wrongly taken as dependents, this resulting in error on account of personal expenses to the extent of 1/3rd.

3. The learned counsel for the appellant has been heard and the record perused. This Court finds that the questions raised about the correctness of the conclusions on the issue of negligence are unjust and unfair. The evidence of Constable Ravi Kumar (PW-2), who was a local police official on duty inside the bus terminus has brought out vividly the circumstances in which the death was caused upon the victim being crushed between the two buses, one stationary and the other moving. The claim was filed against the driver of the bus which was moving. The appellant made no effort to examine the said driver to bring out his version. It may be that PW-2 was not an eye-witness.

But then, it is not necessary that in order to bring home a claim for compensation under Section 166 Motor Vehicles Act, 1988, the evidence of an eye-witness must always be produced. The tribunal has gone by the principle of preponderance of probabilities and for sound reasons. In these circumstances, the plea to above effect must be rejected.

4. Having heard the learned counsel for the appellant on the question of computation of compensation, she was asked to reconsider her submission in the light of the decision of a Constitution Bench of the Supreme Court dated 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* The counsel, however, would not like to seek fresh instructions and insisted that the appeal may be considered on the submissions, as presented.

5. It may be observed that instead of being reduced, the compensation in the present case requires to be enhanced. It is noted that the tribunal failed to consider the evidence of the mother based on her affidavit (Ex.PW-1/A) that the deceased was working as an electrician in Delhi. In these circumstances, the minimum wages of an unskilled worker could not have been invoked. While it is true that there is no proof of any special training undertaken, given the nature of the job in which he was engaged, minimum wages of semi-skilled workers should have been adopted as the benchmark, the same being in the sum of (Rs.4119) per month during the relevant period.

6. Following the ruling in *Pranay Sethi* (supra) of the Supreme Court, the element of future prospects of increase in income to the

extent of 40% will have to be added. In *Pranay Sethi* (supra), the Constitution bench has upheld the decision of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. In these circumstances, the multiplier will have to be adopted according to the age of the deceased which, in the present case, would be 18.

7. Undoubtedly, the claim being on account of death of a bachelor, the deduction on account of personal & living expenses could not have been restricted to $\frac{1}{3}^{\text{rd}}$ but should have been to extent of 50%. Thus, the loss of dependency is recalculated as $(4119 \times 140 \div 100 \times (\frac{1}{2}) \times 12 \times 18)$ Rs. 6,22,792.80/-, rounded off to Rs. 6,23,000/-.

8. Following the dispensation on the non-pecuniary heads of damages, as per ruling in *Pranay Sethi* (supra), the amount of Rs. 15,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation in the case comes to $(6,23,000 + 15,000 + 15,000)$ Rs. 6,53,000/- (Rupees six lakhs fifty three thousand only).

9. In above facts and circumstances, the award stands increased to Rs. 6,53,000/-. It shall carry interest as levied by the tribunal. It is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of first respondent Phool Kumari (mother) only.

10. By order dated 24.10.2011, the appellant was directed to deposit the entire awarded amount with interest. By order dated 30.08.2012, 50% was permitted to be released to the claimants. The balance shall also now be released to the claimants. The appellant is directed to deposit the remainder of its liability in terms of the modification

ordered above with the tribunal within 30 days making it available to be released to the claimants.

11. The statutory amount is forfeited as costs to be made over to the Delhi High Court Legal Services Committee.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 06, 2017

nk

