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

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Judgment delivered on: 17.05.2017

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MAC.APP. 583/2016

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Ms. Nupur Kumar for Ms. Garima
Prashad, Advs.

Versus

ZELAH DEVI & ANR

..... Respondent

Through: Mr. Jatinder Kumar, Adv. for R-1 & R-
2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the MACT order dated 06.04.2016 passed in MAC No. 423 of 2016 whereby the Tribunal has awarded an amount of Rs.17,48,843/- to the respondents - relatives of the motor vehicle accident victim Munna Kumar, involving the appellant's vehicle.

2. On 08.05.2014 at around 12:30 am when the deceased Munna was returning home after an office party, he was hit by the appellant - UP Roadways' bus which was being driven at a high speed. He sustained grievous injuries and ultimately succumbed to the injuries on 13.05.2014. An FIR was registered against the driver of the bus under sections 279/304A of the Indian Penal Code at P.S. – Sector-39, NOIDA. The accident was corroborated by an eye witness Mr. Navneet Rai, PW-2 who was a colleague of the deceased Munna and both of them were returning from the same

office party. PW-2 had deposed that they left the party on separate vehicles at midnight on 08.05.2014. Munna was about 500 meters away from Golf Course Road when the offending bus hit him.

3. In the joint written statement, filed on behalf of the appellant – owner of the bus and its driver, it was contended that no accident had taken place on account of rash and negligent driving by the driver, the bus was plying from Anand Vihar to Agra; its driver was abiding all traffic rules and regulations - taking all major and minor precautions and was driving at a normal speed; that at about 12:00 am (night) when the bus reached Sector-37, Noida, near Golf Course, suddenly a motorcycle rider came from the conductor's side in a rash and negligent manner and applied the breaks of his motorcycle near the bus and lost balance, he fell down on the road and sustained injuries.

4. The appellant further contends that the injuries recorded in the post-mortem report show that the deceased had received abrasion only on the right side of his body, therefore he is the one who hit against the moving bus and not the other way round. This contention *ex facie* is untenable, since when a vehicle crashes against another moving vehicle with great force, the impact tends to leave some evidence of the collision on both the vehicles and also on the injured, not just a mere abrasion. The abrasions received by the victim suggest that he was hit by the bus from behind at a very high speed. Furthermore, it is difficult to fathom how the bus driver could have seen someone come from the left side of the bus in midnight traffic, hit the bus and fatally injure himself; this, if at all, must have happened in a split of a second while the driver was purportedly looking ahead on the road. Therefore, his story is implausible. The Tribunal considered the aforesaid

aspect as under:

“11.As per Postmortem Report of Vardhman Mahavir Medical College & Safdarjung Hospital, the cause of death of deceased was opined as "Due to shock as a result of cranio cerebral damage due to head injury consequent upon bluntforce impact with all injuries antemortem in nature and produced due to blunt force". The Petitioners examined Sh. Navneet Rai as an eye witness of the accident as PW-2. PW-2 testified that on 08.05.2014, he was going home at Sangam Vihar from Noida on his motorcycle. He testified that deceased Munna Kumar, who was working as his colleague, was also on his own motorcycle ahead of him. He testified that suddenly, a UP Roadways Bus bearing no. UP-85SU-9078 came from behind in a high speed and hit the motorcycle of Munna Kumar due to which, he fell down and suffered accidental injuries. He testified that he got the injured admitted to Kailash Hospital. He testified that deceased was wearing the helmet at the time of accident. He testified that the accident took place due to high speed of the driver of the offending bus. He stated that police recorded his statement same day and FIR Ex.PW2/l was registered on his statement. It is pertinent to mention that nothing otherwise could be elicited from the cross examination of PW-2 so as to contradict his version. He negated the suggestion that he was not witnessed to the accident. He negated the suggestion that the accident had taken place due to negligent driving of the deceased himself. As such, the testimony of this witness is truthful and reliable.

12.1 have gone through the statement of the driver, who deposed by way of an affidavit and stated that it was the deceased who suddenly came in front of the offending bus while driving his motorcycle and got crushed thereunder. In his cross examination, he

stated that he was facing trial in a criminal case registered against him in which he was chargesheeted as an accused. The statement of the driver is a mere bald statement unaccompanied by any document. I have also perused the criminal case record, the statement of eye witness and the Chargesheet filed in case FIR No. - 494/14 at Police Station Sector-39, Noida, U.P. against the Respondent no.1. The facts are supported and corroborated by 10 of the case who had conducted the investigation in the matter with no explanation whatsoever having come forth as to why the offending bus should struck against the motorcyclist ahead of it instead of slowing down, the negligence on the part of the driver is writlarge. I am placing reliance upon the judgment of Hon'ble Apex Court in Parmeshwari v. Amir Chand, (2011) 11 SCC 635 and Kusum Lata v. Satbir, (2011) 3 SCC 646.

13. In a judgment of Hon'ble Delhi High Court in United India Insurance Company Ltd. Vs. Deepak Goel & Ors., 2014 (2), T.A.C. 846 (Dd.), it was held that in a case, where FIR is lodged, chargesheet is filed, then the documents mentioned above are sufficient to establish the fact that the driver of the vehicle in question was negligent in causing the accident particularly when there was no defence available from his side.

14. It is observed that there is nothing on record to show that the Petitioners had any enmity with the driver of the offending vehicle so as to falsely implicate him in the case. The issue thus stands decided in favour of Petitioners holding that the accident happened as a result of negligent driving by the Respondent no.1 in which Sh. Munna @Munna Kumar sustained fatal injuries.”

5. It is clear that the Tribunal had considered the following facts (i) as per the Post Mortem Report, the deceased had died due to blunt force trauma (ii) the eyewitness's statement that the bus hit the deceased from behind stood corroborated (iii) the FIR records the driver's liability and (iv) the investigation conducted supported and corroborated the fact that the driver of the bus was rash and negligent. In view of the aforementioned analysis, the Court finds no reason to interfere with the Tribunal's conclusion if the appellant's liability.

6. The award is further impugned on the ground that in the absence of any certification it could not be proved that the deceased was skilled enough to be awarded a compensation on the basis of minimum wages for a skilled person. It is argued that the correct compensation should have been computed on the basis of minimum wages for an unskilled person. No evidence is on record to conclude that the deceased was working as a driver. The employer of the deceased had stated that the latter was working as a staff driver, however, no Driving Licence was brought on record. Therefore, the conclusion drawn by the Tribunal that the deceased was a skilled driver is without basis. The Tribunal had taken the salary of the deceased as Rs.10,374/- per month on the basis of the Minimum Wages Act. This is erroneous. The applicable compensation would be the minimum wages of an unskilled workman. The Court notes that as per the evidence of the employer i.e. Mr. Sandeep Kumar Sinha, Manager of M/s.Mykind Vacations Pvt. Ltd. the last drawn salary of the deceased was Rs.9,000/- per month. Salary records of the deceased for the period from June, 2013 to April, 2014 were brought on record as Ex. PW3/1. The Certificate of Authenticity of the computer generated record under Section 65B of the Evidence Act was

exhibited as Ex. PW3/2. In the circumstances, the salary of the deceased would be taken to be at Rs.9,000/- per month. The computation of compensation would have to be recomputed as under: Rs.9,000 – (1/3 personal expenses) = Rs.6,000/- x 12 x15 = Rs.10,80,000/- apropos “loss of dependency”. It is so ordered.

7. The learned counsel for the appellant further submits that the compensation amounts awarded in his case under the heads: (i) Medical Bills; (ii) Loss of Consortium; (iii) Loss of Love and Affection and (iv) Loss of Estate are on the higher side. The Court is unable to agree with this argument and finds it untenable in view of the judgment of the Supreme Court in *R.D. Hattangadi v. M/S Pest Control (India) Pvt. Ltd. and Ors* 1995 SCC(1) 755 and the judgment of this Court in *R.K. Malik And Ors. v. Kiran Pal And Ors., III (2006) ACC 261*. In the present case compensation amounts awarded under the non-pecuniary heads are fair and just.

8. The appeal is disposed off in the above terms.

9. The statutory amount be released to the appellant.

10. The compensation as computed above shall be released to the beneficiaries of the Award as specified therein.

NAJMI WAZIRI, J

MAY 17, 2017/acm