

\$~R-268

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

Decided on: 26th September, 2017

+ **MAC APPEAL No. 804/2010**

**UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION**

..... Appellant

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

versus

BIJENDRA NARAIN WAHAL

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first respondent, a retired bank employee, then aged about 62 years, suffered injuries in a motor vehicular accident that occurred on 20.03.2008. He instituted accident claim case (MACT No.19/2010) on 10.02.2009 impleading the Uttar Pradesh State Road Transport Corporation (UPSRTC) and its employee Krishan Kumar (driver) as respondents with the allegations that the accident had occurred due to negligent driving of bus bearing registration No.UP-16P-9745 (the bus) of the UPSRTC (the appellant) by its said employee. The appellant and its employee contested the claim case, taking the position that the accident had occurred due to negligence on the part of the claimant himself since he had tried to board the bus

while it was taking a turn at traffic light of Sector 37 bus stand from the front door and had slipped in the process to come under its wheels.

2. The tribunal, on the basis of evidence led, by judgment dated 24.07.2010, held the driver (employee) of the appellant guilty of negligence and awarded compensation in the total sum of Rs.6,83,269/- calculating it thus:-

Sl. No.	Head	Amount in (Rs.)
1.	Compensation towards pain and suffering	70,000/-
2.	Loss of amenities	50,000/-
3.	Disfigurement and loss of expectation of life	60,000/-
4.	Loss of income during treatment	18,000/-
5.	Loss of earning capacity due to disability	1,76,400/-
6.	Attendant charges for four months	16,000/-
7.	Expenses towards unpaid medical bills	2,55,869/-
8.	Expenses towards physiotherapy	10,000/-
9.	Expenses towards artificial limb	17,000/-
10.	Compensation towards conveyance and special diet (without bills)	10,000/-
	Total	6,83,269/-

3. The liability to pay the amount of compensation has been fastened on the appellant.

4. By the appeal at hand, UPSRTC questions the correctness of the finding on the issue of negligence pointing out that its driver had also

appeared as a witness (RW1) to narrate the sequence of events, insisting that the account given by him was truthful.

5. Having heard the learned counsel and having gone through the tribunal's record, this court finds no substance in the contention to above effect.

6. The very fact that the position taken by the appellant is that the claimant had tried to board the bus from the front door shows that the driver was aware of such effort on the part of the passenger. If that were the case, it was his bounden duty to bring the vehicle to a halt to either take the passenger on board or desist him from taking such unnecessary risk. It is inherent in the narration that the claimant had come under the wheels of the bus of the appellant. However, the statement of RW1 cannot be treated as the gospel truth. As per the version of the claimant he was waiting for the bus at the proper station when the bus in question had come at fast speed and had hit him, it even trying to flee away from the spot but being forced to do so by the public persons who had gathered. The tribunal has set out sound reasons to accept the testimony of PW-1 as the one more acceptable, going by the preponderance of probability, also having regard to the fact that the bus driver was prosecuted on the criminal charge in the corresponding criminal case by the police. In the given facts and circumstances, this court declines to interfere with the findings returned by the tribunal on the subject.

7. The appellant also questions the calculation of loss of earning capacity due to disability on the basis of finding of the tribunal that the

claimant was earning Rs.6,000/- per month from a private employment submitting that the certificate (Ex.P-4) of M/s. Denis Apparels to such effect was not in *sync* with the pleadings of the claimant wherein he had claimed to be earning salary from a private chartered accountant firm.

8. Even if above said certificate were to be ignored, there is ample evidence to show that the claimant had the potential to earn atleast in the region of the assessment of his earnings made by the tribunal. As pointed out by the counsel for the appellant itself, the claimant had proved that he was a retired bank employee, his pension being in the sum of Rs.42,480/- per annum. Going by such documentary proof about the income from pension, the income from regular employment, post-retirement from bank, has been correctly evaluated by the tribunal and calls for no interference.

9. The last point pressed by the appellant is that though the claimant had deposed that he had taken treatment in Prayag Hospital which had resulted in total bills of Rs.3,31,128/-, while calculating the medical expenditure, the tribunal went by the total sum of Rs.4,41,047/- indicated by the medical bills. This court finds no error in the said calculation. The bill raised by Prayag Hospital, the medical institution where part of the treatment was undertaken, does not represent the entire expenditure towards treatment. The tribunal has correctly gone by the total medical bills.

10. The appeal is wholly devoid of substance and is dismissed.

11. By order dated 29.11.2010, the appellant had been directed to deposit the entire awarded amount with upto date interest with the Registrar General and from out of such deposit, seventy five per cent (75%) was allowed to be released. The balance lying in deposit shall also now be released to the claimant in terms of the impugned award.

12. The statutory amount shall be refunded to the appellant.

13. The appeal stands disposed of in above terms.

SEPTEMBER 26, 2017

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R.K.GAUBA, J.



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