$~R-271 & 272

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

Decided on: 26th September, 2017

\+ MAC APPEAL No. 819/2010

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION ..... Appellant

Through: Ms. Garima Prasahad & Mr. Shadab Khan, Advs.

versus

BIMLA DEVI & ORS. ..... Respondents

Through: Mr. O.P. Mainee, Adv. for R-1 & 2.

\+ MAC APPEAL No. 363/2015

BIMLA DEVI & ORS. ..... Appellants

Through: Mr. O.P. Mainee, Adv.

versus

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION ..... Respondents

Through: Ms. Garima Prasahad & Mr. Shadab Khan, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manish Verma, aged 19 years, concededly a matriculate and bachelor, suffered injuries in a motor vehicular accident that occurred on 02.12.2007 due to negligent driving of bus bearing registration no.

UP 21N 0629 of Uttar Pradesh State Road Transport Corporation (UPSRTC) and died in the consequence. His widowed mother and sibling, they being appellants in MAC Appeal No. 363/2015 (collectively, the claimants) instituted accident claim case (suit no. 235/09/08) on 15.01.2008. The tribunal held inquiry, and by judgment dated 11.08.2010 awarded compensation in the total sum of Rs. 11,49,225/- directing the UPSRTC (appellant in MAC Appeal No. 819/2010) to pay with interest @ 7.5% per annum, calculating it thus:-

S.No.	Heads	Compensation
1.	Medical Expenses	Rs. 3,12,830/-
2.	Loss of dependency	Rs. 8,11,395/-
3.	Loss of estate	Rs. 10,000/-
4.	Funeral expenses	Rs. 5,000/-
5.	Loss of love & affection	Rs. 10,000/-
	Total	Rs. 11,49,225/-

2. UPSRTC is in appeal to question the calculation of loss of dependency on the ground that the element of future prospects of increase in income to the extent of 50% was wrongly added. On the other hand, the claimants by their appeal contend that the compensation awarded is deficient because deduction of personal &

living expenses should have been to the extent of 1/3rd and that non-pecuniary damages awarded are deficient.

3. The claimants had submitted before the tribunal that the deceased had joined the services of Employer Financial Services, the proprietor whereof had appeared in the evidence as a witness named Parveen (PW-3) to prove, amongst others, the letter of appointment (Ex.PW-3/C) and the salary slip (Ex.PW-3/A). It is noted that the document (Ex.PW-3/C) was only a letter of offer for the deceased to take over the position of trainee-cum-sales executive at a gross salary of Rs. 6,750/- per month, his regular employment being contingent upon completion of training after six months. Clearly, the deceased served the said firm as trainee sales executive hardly for two months.

4. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.,* (2015) 9 SCC 166.

5. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*),

this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.)* decided on 12.01.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are "self-employed" or engaged in gainful employment at a "fixed salary" is clarified by a larger bench of the Supreme Court.

6. In the above facts and circumstances, there being no clear evidence of regular employment much less of regular rise therein, the element of future prospects is kept out. Since it is a case of claim on account of death of a bachelor, deduction on account of personal & living expenses will have to be to the extent of 50%. Calculated accordingly, with the multiplier of 13, correctly chosen by the tribunal on the last wages of Rs.6935/-, the loss of dependency is recomputed as (6935 ÷ 2 x 12 x 13) Rs. 5,40,930/-.

7. The grievance of the claimants about the inadequacy of the non-pecuniary damages is correct. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1,00,000/- on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Putting together all the components of the compensation including medical expenses awarded by the tribunal, the total compensation is recomputed as (3,12,830 + 5,40,930 + 1,00,000 + 25,000 + 25,000)

Rs. 10,03,760/-, rounded off to Rs. 10,04,000/- (Rupees Ten Lakhs Four Thousand Only). The award is modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (9%) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

9. By order dated 03.12.2010 in MAC Appeal No. 819/2010, the UPSRTC had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this Court and from out of such deposit fifty per cent (50%) was allowed to be released to the claimants. The registry shall now calculate the balance now payable to the claimants under the modified award refunding the excess, it any, to the UPSRTC. In case, there is deficiency, the UPSRTC will be obliged to pay the same with the tribunal within thirty days.

10. The statutory amount shall be refunded.

11. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 26, 2017
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