

\$~R-543 & 543A

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

Decided on: 22nd November, 2017

+ MAC APPEAL 753/2012 and CM 12191/2012

UP STATE ROAD TRANSPORT
CORPORATION

..... Appellant

Through: None

versus

AVDHESH SINGH & ANR

..... Respondents

Through: Ms. Kavita Tyagi for Mr. Navneet
Goyal, Advocate

+ MAC APPEAL 372/2015

AVDHESH SINGH & ANR

..... Appellants

Through: Ms. Kavita Tyagi for Mr. Navneet
Goyal, Advocate

versus

UP STATE ROAD TRANSPORT
CORPORATION

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Master Karan @ Situ, a child aged 12 years, was travelling with his mother in a bus bearing registration no.UP-30A-5822 from Hardoi in U.P. to Delhi on 02.06.2008, the bus concededly belonging to Uttar Pradesh State Road Transport Corporation(UPSRTC) driven by its

employee, Saravjit Singh. The driver had lost control over the vehicle and it ended up hitting against a stationary bus, this resulting in the child receiving injuries which proved fatal.

2. On accident claim case (MACT 1067/08/10) instituted on 24.07.2008 by his parents (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 01.05.2012 awarded compensation in the sum of Rs.3,75,000/- directing the UPSRTC to pay with interest at the rate of 9% p.a. holding the bus driver negligent. The tribunal also added Rs.30,000/- as counsel fee to the award.

3. The UPSRTC has challenged the judgment by MACA 753/2012, *inter alia*, contending that its vehicle was not involved in the accident and that the award is excessive. *Per contra*, the claimants have filed cross-objections, which were registered as an appeal (MACA 372/2015), seeking enhanced compensation.

4. These appeals were clubbed and put in the list of 'Regulars, to come up on their own turn as per orders dated 23.03.2016. When they are called out for hearing, there is no appearance on behalf of UPSRTC. The learned counsel for the claimant has been heard and with her assistance the record perused.

5. The plea of the UPSRTC about its vehicle not being involved in the accident cannot be accepted in view of the unchallenged testimony of Smt. Poonam Singh (PW-2). The case involved death of a child in a fatal accident and, thus, the compensation has to be determined in accordance with the principles laid down by this court in MACA 554/2010, *Chetan Malhotra Vs. Lala Ram*, decided on 13.05.2016.

The accident having occurred during financial year 2008-2009, the cost inflation index of 582 would apply. On the assumed income of Rs.15,000/- taken with the help of the Second Schedule to Motor Vehicles Act, 1988 and with the multiplier of 15, the compensation is calculated at $[Rs.15,000/- \times 582/331 \times 2/3 \times 15 \times 2]$ Rs.5,27,492.44, rounded off to Rs.5,28,000/- (Rupees Five lakh and twenty eight thousand only).

6. The compensation is awarded accordingly. It shall carry interest as levied by the tribunal.

7. There being no justification for inclusion of the counsel's fee, the directions to that effect in the impugned judgment are set aside.

8. By order dated 20.07.2012 in MACA 753/2012, UPSRTC had been directed to deposit the entire awarded amount with up-to-date interest excluding counsel fee with UCO Bank, Delhi High Court branch and, by subsequent order dated 31.01.2013, fifty percent (50%) of such amount was permitted to be released to the claimants. Since the compensation has been enhanced, the Registry shall take steps to ensure that the balance is also released to the claimants. It is directed that the entire enhanced portion of the award shall fall to the share of the second claimant (Poonam Devi) only.

9. The UPSRTC is directed to satisfy the enhanced award as modified above by requisite deposit with the tribunal within 30 days, which shall be released to the above mentioned claimant in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

10. The statutory deposit made by UPSRTC shall be refunded upon proof of award having been satisfied is shown.

11. Both the appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 22, 2017

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