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

Decided on: 12th September, 2017

+ MAC.APP. 788/2017 and CM 31741-31742/2017

U.P STATE ROAD TRANSPORT
CORPORATION

..... Appellant

Through: Ms. Garima Prashad, Advocate

versus

KAMLA DEVI & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Roshan Lal was employed as a driver with Uttar Pradesh State Road Corporation (UPSRTC) and was on duty at its Sahibabad Depot, Ghaziabad on 09.06.2015 when he suffered injuries at about 9.45 a.m., proved at the inquiry to have been caused due to the negligent driving of bus bearing registration no.UP-14-DT 2059 also belonging to UPSRTC, it having become the subject matter of investigation of first information report (222/2015) for offences under Sections 279 / 304A of the Indian Penal Code, 1860 registered with police station Link Road, Ghaziabad. His wife and three children, they being first to fourth respondents (collectively, the claimants) instituted an accident

claim case (suit no.433/2016) seeking compensation under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accident Claims Tribunal (Tribunal) of East District of Delhi at Karkardooma on 14.08.2015 impleading, besides the appellant, its employee Mahendra Kumar /fifth respondent, the latter being the driver of the offending vehicle.

2. The Tribunal held inquiry and, on its conclusion, by judgment dated 01.07.2017, has accepted the claim case on the principle of fault liability holding the fifth respondent to have been negligent and to have caused the accident, awarding compensation which has been computed in the sum of Rs.37,75,000/- and directed the appellant, it being held vicariously liable to pay the same to the claimant with interest at the rate of 9% p.a. from the date of filing of the petition.

3. The appeal seeks to assail the above mentioned judgment of the Tribunal on various grounds. The counsel for the appellant having been heard, all such grounds are found to be devoid of merits, this conclusion impelling this Court to dismiss the appeal at the threshold.

4. The accident had concededly occurred in Ghaziabad, U.P., the claim petition having been filed before a Tribunal in Delhi. Exception is taken to the claim petition having been entertained by the Tribunal at Delhi. It is noted from the description of the parties, even in the cause title of the appeal, as indeed of the claim petition before the Tribunal, that first three claimants / respondents have stated that they are residents of Delhi. On being asked, the learned counsel for the appellant fairly conceded that no objection to the place of suing was

taken before the Tribunal. If it were so, such objection cannot be allowed to be taken before the appellate forum in view of the clear inhibition contained in Section 21 of the Code of Civil Procedure, 1908.

5. The next contention urged is that since the deceased was an employee of the appellant, the accident having occurred at the place of duty, the next of kin (the respondents) should have filed a claim petition under the Employees Compensation Act, 1923 and, for this reason, the tribunal should not have entertained the claim petition. Reference is made to Section 167 of the Motor Vehicles Act, 1988 which gives the discretion to the victim to choose the forum whether under the Employees' Compensation Act or under the Motor Vehicles Act, 1988. It is impermissible for the *tortfeasor*, or the person vicariously liable, to insist that the claimant should have chosen the other forum.

6. The counsel for the appellant then submitted that the wife of the deceased had received terminal benefits as was conceded by Raj Kumar Sharma (PW-2), a clerk from the Establishment Department of UPSRTC who was examined at the instance of the claimants to prove the salary and allowances. She, on being asked, however, fairly conceded that the witness from the appellant's office was not called upon to elaborate as to what terminal benefits he was referring to nor was there any effort on the part of the appellant to bring on record any detailed information either on its own or by claimants being called upon to do so. She, however, explained that the son of the deceased /

one of the claimants had been given appointment on compassionate basis. Such appointment, if that were the terminal benefits, cannot be a ground for reduction from the compensation that has been determined as per the settled law on the subject. The son of the deceased would have been appointed on compassionate ground, his father having died in harness. He would be receiving salary for the services rendered. Such salary earned by him for the services rendered cannot be treated as compensation for the death of his father.

7. The next contention urged is that as per the service record (Ex. PW2/1), the date of birth of the deceased was 05.06.1971, in which view he was 44 years old when the death occurred, as is the conclusion reached by the tribunal. The appellant seeks reference to a document in the nature of copy of ration card showing the deceased to be 55 years old as on the date of death. On being asked, the learned counsel fairly conceded that no effort was made to ascertain the basis of the declaration of the age as recorded in the ration card. The declaration for the purpose of ration card being not on any authentic material or verification, the deceased being an employee of the appellant, it is most unfair to now claim that he was 11 years older than what has been reflected by the service records maintained by the appellant itself.

8. The appellant further submits that though the Tribunal accepted that the third and fourth respondents were not dependents, they being married daughters of the deceased, the inclusion of the second respondent (son of the deceased) amongst the claimants was improper

in that he was also working in a private company. The Tribunal has considered this aspect and has given sound reasons in (para 27 of) the impugned order to conclude that even the said son was financially dependent on the deceased. The employment where he was engaged would earn him paltry amount only. Noticeably, this would have been the reason why the appellant itself felt it proper to offer to the said very son a regular employment on compassionate grounds.

9. The claimants had proved through the records of the appellant itself that the gross salary going by the evidence of PW-2 referred to above, included dearness allowance, miscellaneous allowance, city compensatory allowance, house rent allowance and washing allowance. Such allowances being regular, and part of the terms and conditions of the service, they resulting in corresponding savings for the family, have a bearing on the loss of dependency and, therefore, have been rightly included in the calculation. The exception sought to be taken is not fair.

10. For the foregoing reasons, the appeal is dismissed in *limine*. The pending applications also stand dismissed. The appellant is directed to satisfy the award forthwith by requisite deposit with the Tribunal.

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

R.K.GAUBA, J.

SEPTEMBER 12, 2017/yg