

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

Date of Decision: October 09, 2018

+ **MAC. APP. 777/2013 & CM 21034/2018**

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION

..... Appellant

Through: Ms. Garima Prashad and Mr.
Shadab Khan, Advocates

Versus

UMESH DEVI & ORS.

.....Respondents

Through: Mr. Sushant Mukund, Advocate

+ **MAC. APP. 166/2015**

UMESH DEVI & ORS.

..... Appellants

Through: Mr. Sushant Mukund, Advocate

Versus

UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION & ORS.

.....Respondents

Through: Ms. Garima Prashad and Mr.
Shadab Khan, Advocates for
respondent No.1

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 14th March, 2013 vide which compensation of ₹12,33,250/- with interest @ 7.5% *per annum* has been awarded to Claimants.

2. In the above-captioned first appeal, appellant- *Uttar Pradesh State Road Transport Corporation (henceforth referred to as the "Owner")*

seeks reduction in the quantum of compensation granted, whereas in the above-captioned second appeal, enhancement of compensation is sought by Claimants. Since these two appeals arise out of common impugned Award of 14th March, 2013, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in impugned Award are as under:-

“The brief facts, as stated by petitioners, are that on 27.03.2009, Sh. Bir Singh, Baby Preeti and Master Rahul with some other persons were coming by Indica Car no.DL-3CU-1569 from Village Hasan Pur to Delhi and when the Indica Car reached near Koral Use Factory, Gajrola, a vehicle no. UP-53T-7772, driven by respondent no. 1 at a high speed and negligently, hit the Indica car. Sh. Bir Singh, Baby Preeti and Master Rahul sustained serious injuries and Sh. Bir Singh died due to the injuries suffered in the accident.”

3. The Motor Accident Claims Tribunal (*hereinafter referred to as ‘the Tribunal’*) has relied upon the evidence of *Umesh Devi wife of Bir Singh*, who had died in a vehicular accident on 27th March, 2009, and the other evidence on record, to award the compensation as noticed hereinabove. Deceased-*Bir Singh* was aged 42 years on the day of this vehicular accident and as per the evidence of *Umesh Devi (PW-1)*, deceased was owner and driver of Auto-rickshaw. The Tribunal has calculated the ‘*loss of dependency*’ on minimum wages and has deducted 1/4th towards the ‘*personal expenses*’ of the deceased. By applying the multiplier of 14, the ‘*loss of dependency*’ has been assessed at ₹11,46,600/-. Compensation of ₹25,000/- has been awarded under the head of ‘*Loss of love and affection*’ and ‘*Funeral Expenses*’ of ₹5,000/-

have been granted by the Tribunal. Under the head ‘*Loss of Estate*’, compensation of ₹10,000/- has been granted and ₹10,000/- has been granted under the head of “*loss of consortium*” by the Tribunal. The break-up of compensation awarded by the Tribunal to the Claimants is as under:-

1)	<i>Loss of Dependency</i>	:	₹11,46,600/-
2)	<i>Funeral Expenses</i>	:	₹5,000/-
3)	<i>Loss of Estate</i>	:	₹10,000/-
4)	<i>Loss of consortium</i>	:	₹10,000/-
5)	<i>Loss of love and affection</i>	:	₹25,000/-
Total			<u>₹12,33,250/-</u>

4. The challenge to impugned Award by learned counsel for the Owner of the bus in question is on the ground that the deceased had substantially contributed in causing the accident in question. It is submitted that the Tribunal has arbitrarily assessed the income of the deceased at ₹7,000/- per month. It is further submitted that the minimum wages payable to a skilled worker in Delhi were ₹4107/- per month on the day of accident, which ought to have been adopted for assessing the ‘*loss of income*’. It is next submitted that in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition of 25% towards ‘*future prospects*’ ought to have been made by the Tribunal. So, it is submitted that the compensation granted by the Tribunal needs to be suitably reduced.

5. On the contrary, learned counsel for Claimants/legal heirs of deceased refutes the aforesaid stand taken on behalf of the Owner of the

bus in question and submits that the compensation granted by the Tribunal is inadequate. To seek enhancement in quantum of compensation granted by the Tribunal, Claimants' counsel submits that the deceased was also owning an Indica car and was earning handsomely by plying it as a Taxi and so, the income of deceased ought to have been assessed at ₹15,000/- per month. It is submitted that in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, the compensation granted under the '*non-pecuniary heads*' ought to be enhanced.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that this accident was witnessed by *Ram Bharose (PW-2)*, who was travelling alongwith the deceased in the car in question. The evidence of this witness to the effect that the bus in question was coming from the wrong side at a high speed, remains unchallenged. In the face of afore-referred eye-witness account rendered by the *Ram Bharosey (PW-2)*, I find that no reliance can be placed upon self-serving evidence of R1W1-driver of the bus in question, who claims that the bus in question was being driven at a speed of 45 KMs per hour. In the face of evidence of eye-witness (*PW-2*) and FIR of this case, the plea of contributory negligence raised on behalf of owner of the bus in question is hereby repelled.

7. On the aspect of income of deceased, I find that his wife has deposed that the deceased was earning ₹30,000/- to ₹35,000/- per month and he used to pay monthly installment of ₹11,620/- for the auto and ₹5,225/- for Indica car respectively. There is no worthwhile cross-examination of this witness. As per evidence of *PW-4- Sh. Rahul Talwar*,

Manager of M/s.Goodman Auto Deal, deceased was repaying the loan amount in instalments. In light of the aforesaid, there is no justification to assess the income of deceased on minimum wages payable to a skilled worker. The Tribunal has assessed the income of deceased at ₹7,000/- per month. Judicial notice can be taken of the fact that auto-drivers generally earn not less than ₹10,000/- per month. Thus, I find that in the face of evidence of *PW-4-Sh. Rahul Talwar, Manager of M/s.Goodman Auto Deal* and *PW-3-Sh. Mulakh Raj, Proprietor of M/s.Grover Auto Deal*, the income of deceased deserves to be assessed at ₹10,000/- per month.

8. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, addition of 25% towards '*future prospects*' ought to be made. The Tribunal has erred in making addition of 30%. However, the Tribunal has correctly deducted 1/4th towards '*personal expenses*' of deceased and applied the multiplier of 14. Accordingly, the '*loss of dependency*' is reassessed as under:-

$$₹10,000/- \times 12 \times 14 \times 125/100 \times 3/4 = ₹15,75,000/-$$

9. So far as compensation granted by the Tribunal under the '*non-pecuniary heads*' is concerned, it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, compensation granted to Claimants/legal heirs of deceased by the Tribunal under the head of '*Loss of Love and affection*' is disallowed. However, the '*funeral expenses*' are increased from ₹5,000/- to ₹15,000/- and compensation granted under the head '*Loss of estate*' is also increased from ₹10,000/- to ₹15,000/-. The compensation granted under the head of '*loss of consortium*' is also increased from ₹10,000/- to

₹40,000/-. Accordingly, the compensation payable to Claimants/legal heirs of deceased is reassessed as under:-

1)	Loss of Dependency	:	₹15,75,000/-
2)	Funeral Expenses	:	₹15,000/-
3)	Loss of Estate	:	₹15,000/-
4)	Loss of consortium	:	₹40,000/-

Total : ₹16,45,000/-

10. In light of the aforesaid, compensation of ₹12,33,250/- granted by the Tribunal to Claimants/legal heirs of deceased-*Bir Singh* is enhanced to ₹16,45,000/-. A Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, claimants are also entitled to interest @ 9% *per annum*. Hence, the reassessed compensation shall carry interest @ 9% *per annum*. Owner of the bus in question is granted six weeks' time to deposit the enhanced compensation alongwith interest @ 9% *per annum* with the Registrar General of this Court. Thereafter, the reassessed compensation be disbursed to Claimants/legal heirs of deceased in the manner and ratio as indicated in the impugned Award. Statutory deposit be refunded to the owner of the bus in question.

11. While modifying the impugned Award in aforesaid terms, the above-captioned two appeals along with the pending application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 09, 2018

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