

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

Date of Decision: September 12, 2018

+ **MAC. APP. 303/2017 & CM 11875/2017**

+ **MAC. APP. 304/2017 & CM 11902/2017**

+ **MAC. APP. 305/2017 & CM 11906/2017**

+ **MAC. APP. 306/2017 & CM 11965/2017**

UPSRTC

.....Appellant

Through: Mr. Aly Mirza, Advocate

versus

NIRMALA DEVI & ANR.

MASTER DEEPAK & ANR.

RAMESH CHAND SHARMA & ANR.

SANJAY SHARMA & ANR.

.....Respondents

Through: Mr. Yogesh Kashyap and

Mr. R.K.Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned four appeals relate to a vehicular accident which took place on 26th June, 2011, in which respondents-Injured had sustained injuries. Vide common Award of 23rd December, 2016, compensation has been granted to the respondents-Injured by the *Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal')*.

2. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being decided by this common judgment.

3. In the above captioned first appeal, the challenge is to impugned Award, vide which the Tribunal has granted compensation of ₹3,60,000/-

with interest @ 9% to respondent/Injured- *Nirmala* on account of grievous injury sustained by her in this vehicular accident. In the above captioned second appeal, the challenge is to grant of compensation of ₹3,00,000/- with interest @ 9% p.a. to respondent/Injured-*Master Deepak* on account of the injuries sustained by him in this accident. The above captioned third appeal questions impugned Award vide which compensation of ₹7,60,223/- with interest @ 9% p.a. has been granted to respondent/ Injured-*Ramesh* on account of injuries sustained by him in this vehicular accident. In the above captioned fourth appeal, the challenge is to grant compensation of ₹21,06,765/- with interest @ 9% p.a. to injured-*Sanjay*.

4. The factual background of these appeals, as noticed in the impugned Award, is as under :-

“On 26.06.2011 at about 7:30 am, the petitioners namely Sanjay Sharma, Laxmi, Nirmala Devi, Pawan, Ramesh Chand Sharma, Master Deepak and Jyoit had been going to Aligarh from Shahadara on their maruti car bearing no. DL6CF4205, which was driven by petitioner namely Sanjay Sharma. When they reached near Shivam Nursing Home, about ½ km from PS Dadri, Distt. Gautam Budh Nagar, Delhi, all of a sudden the offending roadways bus bearing no. UP 81AA 9788 of Hathras Depot which was being driven by respondent no. 1 at a very high speed, in a rash and negligent manner, came from front side and hit the car of the injured persons. As a result of which petitioners had received injuries. Petitioners were taken to Shivam Nursing Home. Thereafater, petitioner namely Sanjay Sharma was referred to Yashoda Hospital and other petitioners were referred to GTB Hospital. The FIR No. 238/11/u/sec 279/338/427 IPC was also registered at PS Dadri, Gautam Budh Nagar, UP in this respect.”

5. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of Injured persons and the other evidence on record. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to Injured-*Nirmala* is as under:-

Special Diet	₹30,000/-
Conveyance	₹30,000/-
Pain & Suffering	₹1,00,000/-
Loss of amenities of life	₹1,00,000/-
Attendant Charges	₹50,000/-
Compensation for disfiguration	₹50,000/-
Total	₹3,60,000/-

6. The Tribunal has granted lump sum compensation at ₹3,00,000/- to Injured-*Master Deepak*, aged 9 years. The breakup of compensation awarded by Tribunal to Injured-*Ramesh* is as under:-

Loss of income	₹38,532/-
Attendant Charges	₹25,000/-
Loss of future income due to permanent disability	₹4,97,063/-
Medical Expenses	₹3,628/-
Special diet	₹8,000/-
Conveyance	₹8,000/-
Pain & Suffering	₹90,000/-
Loss of amenities of life	₹50,000/-
Compensation for disfiguration	₹40,000/-
Total	₹7,60,223/-

7. The breakup of compensation awarded by Tribunal to Injured-*Sanjay Sharma* is as under:-

Loss of Income	₹51376/-
Attendant Charges	₹30,000/-
Loss of future income due to permanent disability	₹8,55,410/-
Medical Expenses	₹9,09,979/-
Special diet	₹10,000/-
Conveyance	₹10,000/-
Pain & Suffering	₹1,00,000/-
Loss of amenities of life	₹70,000/-
Compensation for disfiguration	₹70,000/-
Total	₹21,06,765/-

8. Learned counsel for appellant-*owner* of the bus in question assails the impugned Award on the ground that bus in question was not involved in this vehicular accident. It is pointed out by appellant's counsel that FIR was registered regarding this accident after two days and the registration number of bus involved is not indicated in the said FIR. It is also pointed out that FIR of this case has been registered at the instance of *Mukul Sharma*, who is the nephew of injured-*Sanjay Sharma*. It is next submitted that *Mukul Sharma* (PW-2), who had provided the registration number of the bus in question, has claimed that he is not an eye-witness to this accident. It is further submitted that after three months of this accident, registration number of bus in question has been provided by *Sanjay Sharma*. It is submitted that even Injured *Ramesh* claims that he had provided the registration number of the bus in question after three days of this accident to *Mukul*, who lodged FIR with the local police. It is pointed out that evidence of above said witness-*Mukul Sharma* is discrepant as at one place he maintains that registration number of bus in question was provided to him by *Sanjay Sharma* and later on, in his

evidence he has stated that the registration number of bus in question was provided by Injured-*Ramesh*. It is pointed out that there is discrepancy *inter se* the evidence of Injured *Sanjay* and witness-*Mukul Sharma* regarding who had provided the registration number of bus in question to local police. It is pointed out that Injured-*Nirmala* in her cross-examination has admitted that she could not note the registration number of bus involved in this accident. So, it is submitted that in view of aforesaid contradiction in the evidence regarding involvement of the bus in question, appellant is not liable to pay awarded compensation.

9. Impugned award is also assailed by appellant's counsel on the ground that the Tribunal has erroneously held driver of bus in question was responsible for causing this accident while observing that appellant had failed to mention the time when the bus had reached Delhi on the day of the accident. It is submitted that appellant's witness i.e. driver of bus in question, has not been examined on this aspect. It is submitted that had it been so done, then the said record could have been produced. Thus, it is submitted that liability to pay the awarded compensation is not of the owner, as negligence of the bus driver does not stand proved.

10. On the contrary, learned counsel for respondents-*Injured* supports the impugned Award and maintains that the compensation granted is just and proper.

11. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Injured-*Sanjay Sharma* in his cross-examination has stated that he had divulged the registration number of bus in question to his nephew-*Mukul Sharma*, after he had regained his consciousness. However at another place in the cross-examination, this witness-*Sanjay*

Sharma has volunteered that his nephew-*Mukul Sharma* has told him about the registration number of the bus in question. Even *Mukul Sharma* in his evidence has stated that registration number of the bus in question was supplied to him by Injured-*Sanjay Sharma*.

12. Upon the cumulative reading of the entire evidence on record, I find one stray line in cross-examination of Injured-*Sanjay Sharma* is not sufficient to demolish the entire case, as the evidence of Injured-*Sanjay Sharma* and witness-*Mukul Sharma* is consistent on the aspect of injured-*Sanjay Sharma* informing his nephew-*Mukul Sharma* about the registration number of the bus in question. Relevantly, Injured-*Ramesh Sharma* in his cross-examination has stated that on regaining consciousness he had informed the witness-*Mukul Sharma* about the registration number of the bus in question. On this aspect, there is no cross-examination of the Injured or witness-*Mukul Sharma*. Therefore, on this ground, the evidence of witness-*Mukul Sharma* cannot be disbelieved. Otherwise also, I find that the Tribunal has analysed in detail on the ambiguity in respect of the registration number of bus in question. On the negligence aspect, the Tribunal has correctly proceeded on the basis of evidence recorded. One thing which has clearly emerged from the evidence on record is that it was known after this accident that bus which had caused the accident, was of Hathras Depot.

13. Pertinently, it has come in the evidence of driver of the bus in question that on the day of the accident, he had driven the bus from Hathras at 4:30 a.m. towards Delhi. Appellant had not disclosed before the Tribunal nor in appeal that there was more than one bus of Hathras Depot plying on the route from Hathras to Delhi early in the morning on

the day of the accident. Appellant has not brought on record as to when the bus in question had reached Delhi on the day of the accident.

14. In the considered opinion of this Court, on the aforesaid crucial aspect, nothing has stopped appellant in divulging the above referred information before this Court in appeal. The Tribunal has rightly concluded that the bus in question could have reached the place of accident at about 7:30 a.m. Judicial notice can be taken of the fact that in morning hours, the traffic on the highway is light. In the face of evidence on record, I find that the Tribunal has rightly concluded that the accident in question had taken place due to negligent driving by driver of the bus in question. Thus, it is held that finding returned by the Tribunal on the negligence aspect suffers from no infirmity and is hereby maintained. On the quantum aspect, I find that the compensation granted by the Tribunal is just and reasonable.

15. In light of the aforesaid, finding no substance in these four appeals and the applications, they are dismissed. Statutory deposit, if any, be refunded to the Insurer.

(SUNIL GAUR)
JUDGE

SEPTEMBER 12, 2018

v