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

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Date of Decision: 23rd May, 2018

+ MAC.APP. 818/2017

DIG (ADM) ITBP & ANR Appellants

Through: Mr. Jaswinder Singh, Advocate

versus

MALA BANSAL & ORS Respondents

Through: Mr. Nikhil and Mr. Akhilesh,
Advocates

+ MAC.APP. 93/2018

MALA BANSAL & ORS Appellants

Through: Mr. Nikhil and Mr. Akhilesh,
Advocates

versus

DIG (ADM) ITB & ANR Respondents

Through: Mr. Jaswinder Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants in MAC. APP. 818/2017 have challenged the award of the claims Tribunal whereby compensation of Rs.2,35,000/- has been awarded to respondent No.5, Vishnu Swaroop, in MAC APP. 818/2017 towards the injuries suffered by him and compensation of Rs.28,00,000/- has been awarded to respondents No. 1 to 4 in MAC APP. 818/2017 with respect to the death of Late Chaman Prakash Bansal in the accident dated 25th April, 2016.

2. On 25th April, 2016, Chaman Prakash Bansal was going on his scooty and Vishnu Swaroop (respondent No.5) was sitting as a pillion rider when they were hit by a bus bearing No. DL-1PC-3028 near ITBP Gate No.2, Mehrauli Badarpur Road, New Delhi which resulted in injuries to Vishnu Swaroop and fatal injuries to Chaman Prakash Bansal.
3. Two Claim Petitions were filed, one in respect of injuries suffered by Vishnu Swaroop and second in respect of death of Chaman Prakash Bansal. The appellant in MAC APP. 818/2017 contested the claim on the ground that there was no negligence on the part of the bus.
4. The claimant(s) examined the injured, Vishnu Swaroop in the witness box who deposed that the scooty was hit by the bus from behind and the accident occurred due to rash and negligent driving of the bus driver. No evidence was lead by the appellant to rebut the evidence lead by the claimants. The Claims Tribunal held that the accident occurred due to rash and negligent driving of the bus driver.
5. Learned counsel for the appellant in MAC APP. 818/2017 has produced the record of Court of Enquiry proceedings, according to which there were no negligence on the part of the bus driver. According to the Court of Enquiry proceedings, the scooty was hit by the middle portion of the bus. The photographs in the Court of Enquiry proceedings do not show any damage on the front portion of the bus. The photographs also do not show any damage to the scooty.
6. This Court is of the view that the findings of the Court of Enquiry are not binding on the claimants who had not participated in the Court of Enquiry proceedings. The Court of Enquiry did not examine the injured eye witness and did not consider his version. However, photographs in the

Court of Enquiry proceedings are taken into consideration. This Court is of the view that there was contributory negligence on the part of the deceased to the extent of 33%. However, as far as the injured, Vishnu Swaroop is concerned, his case is of composite negligence.

7. The compensation of Rs.2,35,000/- along with the interest at the rate of 9% per annum awarded to respondent No.5, Vishnu Swaroop is upheld. Vide order dated 05th February,2018, this Court has already disbursed Rs.2,65,426/-(Rs.2,35,000/- + interest) to respondent No.5.

8. Respondents No.1 to 4 in MAC APP. 818/2017 have filed cross-objections for enhancement of the compensation amount on the ground that the income of the deceased be taken as Rs.25,000/- per month instead of Rs.20,000/- per month and 15% be added towards future prospects.

9. Learned counsel for the appellant in MAC APP. 818/2017 submits that the non-pecuniary compensation awarded to the claimant(s) in respect of the death of Chaman Prakash Bansal is liable to be reduced in terms of the principles laid down in *National Insurance Co. Limited vs. Pranay Sethi and Ors.* 2017 SCC Online SC 1270.

10. There is merit in the contentions urged by the learned counsel for both the parties. Taking the income of deceased as Rs.25,000/- per month, adding 15% towards future prospects, deducting 1/4th towards the personal expenses and applying the multiplier of 11, the loss of dependency is computed as Rs.28,46,250/-. Rs.40,000/- is awarded towards loss of consortium, Rs.15,000/- is awarded towards loss of estate, Rs.15,000/- is awarded towards funeral expenses. Adding Rs.4,19,500/- towards medical expenses on treatment, the total compensation is computed as Rs.33,35,750/-. After deducting Rs.11,00,797.5 (33% of Rs.33,35,750/-) toward contributory

negligence, claimants are entitled to a compensation of Rs.22,34,952.5, rounded off to Rs.22,35,000/- along with interest at the rate of 9% from the date of institution of the claim petition i.e. 27th August, 2016.

11. The appellant in MAC APP. 818/2017 has deposited Rs.20,00,000/- in terms of the order dated 24th November, 2017 and Rs.8,00,000/- in terms of the order dated 05th February, 2018, with the Registrar General of this Court out of which Rs.2,65,426/- have been disbursed to respondent No.5 on 05th February, 2018, and the balance amount of Rs.25,69,746/- is lying with the Registrar General of this Court.

12. Learned Counsel for the claimants submits that the balance amount of Rs.3,34,746/- (Rs.25,69,746/- - Rs.22,35,000/-) would cover the interest on the compensation amount of Rs.22,35,000/- determined by this Court. In that view of the matter, the amount deposited by the appellants in MAC APP. 818/2017 would satisfy the award now passed by this Court.

13. The Registrar General of this Court is directed to disburse Rs.25,69,746/- to respondents No.1 to 4 in MAC APP. 818/2017 by instructing UCO Bank, Delhi High Court Branch as under:

- (i) Keep Rs.10,00,000/- in 50 FDRs of Rs.20,000/- each, in the name of respondent No.1, Mala Bansal, for the period 1 month to 50 months respectively, with cumulative interest;
- (ii) Keep Rs.4 lakh in 40 FDRs of Rs.10,000/- each, in the name of respondent No.2, Amisha Bansal, for the period 1 month to 40 months respectively, with cumulative interest;
- (iii) Keep Rs.4 lakh in 40 FDRs of Rs.10,000/- each, in the name of respondent No.3, Kanishk Bansal, for the period 1 month to 40 months respectively, with cumulative interest;

- (iv) Keep Rs.4 lakh in 40 FDRs of Rs.10,000/- each, in the name of respondent No.4, Kushagra Bansal, for the period 1 month to 40 months respectively, with cumulative interest;
14. The balance amount, after keeping Rs.22 lakh in FDRs, be released to respondents No.1 by transferring the same to her savings bank account with State Bank of India, Badarpur Branch mentioned in para-3 of the order dated 01st May, 2018.
15. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to the claimants.
16. The maturity amounts of the aforesaid FDRs along with interest shall be transferred to the individual savings bank account of the claimants mentioned in para-3 of the order dated 01st May, 2018.
17. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.
18. The claimants are at liberty to approach this Court for release of further amount in case of any financial exigency.
19. List for reporting of compliance on 13th August, 2018.
20. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

MAY 23, 2018
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J.R.MIDHA, J.