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

% **Date of Decision: 17th April, 2018**

\+ MAC.APP. 385/2017 and C.M. Appl. 15407/2017

UTTAR PRADESH STATE
ROAD TRANSPORT CORPORATION ..... Appellant
Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

versus

GEETA & ORS ..... Respondents
Through: Mr. Shekhar Aggarwal, Mr. Rahul Mohod and Mr. Suresh Kumar, Advocates for respondents No.1 to 5

\+ MAC.APP. 850/2017

GEETA & ORS ..... Appellants
Through: Mr. Shekhar Aggarwal, Mr. Rahul Mohod and Mr. Suresh Kumar, Advocates

versus

U P ROADWAYS (UPSRTC) & ANR ..... Respondents
Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant/UPSRTC in MAC. APP. 385/2017 has challenged the award of the Claims Tribunal whereby compensation of Rs.16,90,000/- has been awarded to the claimants.

2. The accident dated 04th June, 2015 resulted in the death of Ramesh Kumar. The deceased was aged about 35 years and 11 months at the time of the accident and was survived by a widow and three minor children. The Claims Tribunal took the income of the deceased as Rs.10,000/- per month, deducted 1/4th towards personal expenses and applied the multiplier of 16 to compute the loss of dependency as Rs.14,40,000/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.25,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded was Rs.16,90,000/-.

3. Learned counsel for the UPSRTC urged at the time of hearing that the deceased was contributory negligent and, therefore, compensation is liable to be reduced on that account. It is further submitted that the income of the deceased has not been duly proved. Learned counsel further submits that the deceased was 35 years 11 months old at the time of the accident and therefore, the appropriate multiplier would be 15 instead of 16. It is further submitted that the non-pecuniary compensation be reduced in terms of the principles laid down in ***National Insurance Co. Ltd. v. Pranay Sethi***, 2017 SCC OnLine SC 1270.

4. Learned counsel for the claimants urged at the time of the hearing that the negligence of the bus driver has been proved by PW-2, who appeared in the witness box and deposed that the offending bus came on the wrong side and hit the Tata 407, which resulted in the accident in question. With respect to the quantum of compensation, it

is submitted that the deceased was driver with Tata 407 and the income was taken on the statement of PW-2, who deposed that he was paying Rs.10,000/- per month to the deceased. It is further submitted that the minimum wages at the relevant date were Rs.10,998/-. It is further submitted that the Claim Tribunal has not added the future prospects on the income of the deceased.

5. With respect to the issue of negligence, the site plan Ex.PW-1/10 shows that the bus came on the wrong side of the road and hit the Tata 407 which fell in a ditch after the accident. The appellant examined the driver of the bus as R1W-1, who did not dispute the site plan, Ex.PW-1/10. That apart, it was not put to PW-2 that the accident did not occur at the place shown in the site plan. In that view of the matter, there is no infirmity in the finding of negligence of the bus driver.

6. With respect to the quantum of compensation, the non-pecuniary compensation of Rs.2,50,000/- is liable to be reduced to Rs.70,000/- in terms of the principles laid down in ***Pranay Sethi*** (supra). However, the Claims Tribunal has not awarded the future prospects, 40% is added towards the future prospects. As per the Second Schedule to the Motor Vehicle Act, as modified by Supreme Court in ***Sarla Verma v. Delhi Transport Corporation*** *(2009) 6 SCC 121:(AIR 2009 SC 3104:2009 AIR SCW 4992)*, the multiplier above the age of 35 years would be 15. The multiplier is, therefore, reduced from 16 to 15.

7. Taking the income of the deceased as Rs.10,000/- per month, adding 40% towards future prospects, taking 1/4th towards the

personal expenses and applying the multiplier of 15, the loss of dependency is computed as Rs.18,90,000/-. Adding Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, the total compensation is computed as Rs.19,60,000/-.

8. MAC. APP. 385/2017 is dismissed. MAC. APP. 850/2017 is allowed and the compensation amount is enhanced from Rs.16,90,000/- to Rs.19,60,000/- along with interest @ 9% per annum from the date of institution of the claim petition i.e. 13th July, 2015.

9. The enhanced amount in MAC. APP. 850/2017 be deposited with the Registrar General of this Court within four weeks.

10. List for disbursement of the compensation amount on 17th July,2018

11. Copy of this judgement be given *dasti* under the signatures of the court master.

J.R. MIDHA, J.

APRIL 17th , 2018
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