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

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Decided on: 22.10.2019

+ **MAC.APP. 744/2019 & CM APPL. 37485/2019**

U P STATE ROAD TRANSPORT CORPORATION Appellant

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

versus

RENU DEVI & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 37352/2019 (delay of 17 days in re-filing)

1. This application seeks condonation of delay of 17 days in filing the appeal.
2. For the reasons mentioned in the application, the delay is condoned.
3. The application stands disposed-off.

MAC.APP. 744/2019 & CM APPL. 37485/2019

4. This appeal impugns the award of compensation dated 16.04.2019 passed by the learned MACT in MACP No. 656/2016 on the ground that there being a head-on collision between the appellant's vehicle and the vehicle of the deceased, there would be contributory negligence of the latter which should have been factored into the Award. According to the claim

petition, the Eicher Canter Truck was being driven by Ajay Kumar, who was working for its owner Shiv Sharan Gupta. They were travelling from Sikandrabad to Ambala. When they reached near Dadri - Sikandrabad G.T. Road at the point of Kante Nale Ki Pulia, the appellant's bus bearing no. UP 81 AF 2467 suddenly came from the wrong side of the road at a very high speed in a rash and negligent manner without blowing its horn and in contravention of traffic rules and regulations; it crashed into the Eicher Canter Truck, leading to fatality of its driver.

5. The accident is stated to have been witnessed by the helper PW-1 Mr. Rajesh Sharma. His evidence by way of affidavit and his cross-examination remains unshaken. He had deposed that the deceased was driving his vehicle at a speed of approximately 30 km/hr, while the offending vehicle suddenly came from the wrong side and hit their vehicle from the front right side which was being driven at a high speed. This deposition corroborates with the site plan filed by the police, which shows that vehicle of the deceased was going in a straight line from Dadri towards Sikandrabad, whereas the offending vehicle going in opposite direction suddenly turned towards its right side and its accident happened just before the stream bridge of Kot¹. It is not in dispute that the FIR was filed recording facts as discussed hereinabove and that criminal proceedings have since ensued.

6. For the motor accidents claim for compensation to succeed, what is to be seen is the preponderance of possibility. The manner of the accident is clearly reflected in the site plan. The deceased was fatally injured because

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the offending vehicle crashed into his vehicle from the front right side. Damage was caused to the frontal portion of both the vehicles. The helper is stated to have miraculously escaped being injured, that is possibly because the helper was on the far end of the cabin and the impact of the crash was not that strong so as to have caused him any injury.

7. The impugned order has dealt with the issue as under:

10. **ISSUE No. 1**

*Whether Sh. Ajay Kumar S/o Inder Dass sustained fatal injuries in a motor vehicle accident dated 24.03.2014 caused due to rash or negligent driving of vehicle no. UP 81 AF 2467, being driven by respondent no. 1 and owned by respondent no 2?
...OPP*

The onus to prove this issue was upon the petitioners and in order to discharge the said onus, the petitioners have examined PW-1 Rajesh Sharma, who has filed his evidence by way of affidavit (Ex. PW-1/A), wherein it has been stated that on 24.03.2014, he was working as a Helper alongwith Ajay Kumar on Richer Canter bearing no. DL 1 LP 8296 and were carrying articles from Ambala to Farrukabad and at about 2:30 AM, when they reached near Dadari Sikandarabad, GT Road at the point of Kante Nale Ki Pulia, all of a sudden, a UP Roadways bus bearing UP 81 AF 2467 came from wrong side, being driven by its driver in rash and negligent manner at a high speed and caused accident, which resulted in the death of Ajay Kumar. PW-1 further deposed that Ajay Kumar died at the spot and his dead body was sent to District Mortuary, NOIDA for postmortem and a case in this regard was registered vide FIR No. 146/14 u/s 279/304A IPC at PS : Kotwali Dadri, District : Gautam Budh Nagar. PW-1 also deposed that driver of the offending vehicle bearing no. UP 81AF 2468 was arrested from the hospital and that the abovesaid accident was caused by respondent no. 1, while

driving the vehicle no. UP 81AF 2468 owned by UP State Road Transport Corporation without observing traffic rules, and without caring about the safety of other road users.”

8. The offending bus was seized from the spot of the accident and the manner of its involvement stands established from the aforesaid discussion and documents. Therefore, the contention of the learned counsel for the appellant on this ground is rejected.

9. The learned counsel for the appellant contends that deduction towards ‘personal expenses’ ought to have been $1/4^{\text{th}}$ instead of $1/5^{\text{th}}$ because the father of the deceased would not be considered as a dependant. The father of the deceased was 65 years of age. The claim of the dependants has gone unrebutted in the assertion of dependency of a 65 years old father; his dependency would have to be factored in. His separate earning has also not been established by the appellant. Therefore, the aforesaid contention is untenable and rejected.

10. The Court would note that the claimants have been granted only Rs. 40,000/- towards ‘loss of consortium’ and Rs. 30,000/- each towards ‘loss of love and affection. However, in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546, each of the seven claimants would be entitled to compensations toward ‘loss of consortium’ and ‘loss of love and affection’ @ Rs. 40,000/- and Rs. 50,000/- respectively. The same is awarded to them.

11. Accordingly, the total payable amount by the insurer would be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs.8,086/-(minimum wage) x 12 (months) x 15 (multiplier) x 80/100 (1/5 th deduction towards personal expenses) x 140/100 (loss of future prospects)]	Rs.16,30,138/-
2.	Loss of love and affection Rs. 50,000 x 7 (claimants)	Rs.3,50,000/-
3.	Loss of consortium Rs. 40,000 x 7 (claimants)	Rs.2,80,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs.22,90,138/-

12. In view of the above, the total amount payable would be Rs.22,90,138/-.

13. Let the same be deposited before the learned Tribunal alongwith interest @ 9% per annum from the date of filing of the claim petition till its realization within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

14. Statutory amount shall be adjusted towards payment of the aforesaid amount.

15. The appeal is disposed-off in the terms of the above.

NAJMI WAZIRI, J

OCTOBER 22, 2019

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