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

+ **MAC.APP. 509/2018 and CM APPL. 22433/2018**

% **Judgment delivered on: 15.04.2019**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: Mr.Ratneshwar Das and
Ms.Barnali Deka Das, Advocates.

versus

PRAMILA DEVI & ANR.

..... Respondents

Through: Mr.V.K.Vashishta, Advocate
for R-1 and R-2.

**CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA**

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant appeal, the appellant-the owner of the bus bearing registration No.UP 50 AT 1092 in short 'the bus', assails the judgment-award dated 24.02.2018 passed by MACT-01 (South-East), whereunder, a total compensation of Rs.15,42,000/- with interest at the rate of 9% per annum has come to be awarded to the respondents, on account of the motor accident involving 'the bus' and Tata Ace

bearing registration No.DL 1 LS 2524 in short 'Tata Ace', driven by Abhishek-the deceased. Appellant assails the impugned judgment, on two counts. One, as regards the contributory negligence of the deceased in driving Tata Ace. Secondly, as regards the quantum of compensation. In view of such limited challenge, the advertence to the other factual aspects for maintaining the claim petition before the Tribunal, is not called for.

2. Undisputedly, there was head on collision of the bus and Tata Ace. In the written statement filed, the appellant, relevant to the aspect of contributory negligence, averred as follows:

"Preliminary Submissions :

a. It is submitted without prejudice that the present case is a clear case of contributory negligence wherein the complainant's Mini Truck was being driven by the deceased in a reckless manner at a very high speed. It further dashed against the bus of the respondents which was coming from the opposite side.

... ..

c. It is submitted that the actual facts are that on the date of the unfortunate incident that is on 5th of July, 2015, the vehicle was being driven by the driver of the respondent No.1 and was travelling from Azamgarh to Delhi. The driver was driving the vehicle bearing registration number UP 50 AT 1092 with utmost care towards the safety of its passengers and other vehicles on road. The driver has a valid driving licence and has

been driving the bus for several years with
an untainted record of driving."

3. The foregoing pleadings of the appellant before the Tribunal, would leave no doubt that at the time of occurrence of the accident, both the bus and the Tata Ace, were running on the road, of course, driven by the driver of the appellant and the deceased respectively, inasmuch as, there is no dispute as to the drivers of the respective vehicles. During the course of hearing before the Tribunal and in the instant appeal, it has, however, been contended that at the time of occurrence of the accident, the bus was stationery and the deceased rammed his vehicle into the bus, which was lying parked, and, was stationery. It appears that such an argument, has its origin in the deposition of the appellant's driver, who appeared as R1W1. To that effect, learned counsel for the appellant has drawn attention of this court to such deposition by way of affidavit Ex.R1W1/A, the relevant part whereof, reads as under:

" 4 (a).... ..

... ..

... ..

f) The deponent states that the mini truck was moving in a dangerous and reckless manner at a very high speed. The deponent states that the Mini Truck came from the opposite side and dashed against the subject bus.

... .."

Interestingly, this driver R1W1, during cross, also volunteered to depose that his bus was parked with 48 passengers on one side of the road and the driver of the other vehicle came from wrong side and hit the stationery bus resulting in the accident. Such deposition of R1W1, it requires no elaboration, was certainly beyond pleadings. In fact, quite contrary to the pleadings. The Tribunal took note of it and rejected such deposition and held that the motor accident, in which the deceased had sustained the fatal injuries, was the resultant effect of rash and negligence driving of the bus. In reaching such conclusions, the Tribunal has also taken note of the fact that in the FIR, and, the charge sheet, that came to be filed on the culmination of the investigations by the police, the driver of the bus was found to be driving the bus rashly and negligently. In the given facts and circumstances therefore, merely, the two vehicles collided head on, in the absence of establishment of an act or omission attributable to the deceased, none of which has come to be pointed out during the course of hearing, the plea raised on behalf of the appellant for any negligence attributable to the deceased, is wholly unfounded and misconceived. Contention so raised is therefore rejected. Though, learned counsel for the appellant also contended that the deceased was, possibly, holding a fake DL inasmuch as it was issued by the transport authority at Nagaland, whereas, he himself was resident of Bihar, and, therefore, a presumption of contributory negligence be drawn. Such submission is equally unfounded. It appears to have been made for the sake of it. It is unmerited, firstly, for the reason, nothing cogent came to be pointed out that the DL held by the

deceased was fake. Suffice to say, the DL having been issued by a transport authority, its correctness cannot be doubted only on the premise that the holder was a resident of another distant State or otherwise. Secondly, nothing comes to be pointed out that the occurrence of the accident was by any means attributable to the deceased. Contention raised to the contrary is therefore rejected.

4. As regards the assessment of compensation, the learned counsel for the appellant, made two fold contentions. One, the deduction towards personal expenses of the deceased at 50% was on the lower side inasmuch as according to the learned counsel, but, for the mother-the respondent No.1, the other claimant was the brother and he could not be said to be dependent on the income of the deceased. The other contention raised was as regards the compensation of Rs.15,000/- awarded under the head of funeral expenses. In the submissions of the learned counsel, the Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and Ors***’ 2017 SCC OnLine SC 1270 has fixed the compensation of Rs.15,000/- as the upper limit under the head of funeral expenses. In her submission therefore, the award of the maximum compensation of Rs.15,000/- under the said head was unjustified. Both these submissions are wholly meritless. During the course of hearing, it comes to be pointed out that the deceased was aged about 25 years and unmarried, and, that, his mother-the respondent No.1, was a widow. In the given conspectus, deduction of 50% of the income towards the personal expenses of the deceased, by itself, was no way a lesser deduction.

The other contention, this court does not consider it necessary to even advert to inasmuch as the ratio of ***Pranay Sethi's*** case (supra) is not, what is understood by the appellant and its counsel.

5. For the foregoing reasons, the appeal is wholly meritless, and, is dismissed.

A. K. CHAWLA, J

APRIL 15, 2019

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