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

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Decided on: 06.09.2019

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MAC.APP. 859/2017 & CM No. 39825/2019

UTTARAKHAND ROADWAYS CORPORATION Appellant

Through: Mr. Pradeep Misra, Mr. Daleep
Dhyani and Mr. Manoj Kr. Sharma,
Advocates.

versus

MOHD SHAMSHAD ALI & ORS Respondents

Through:

Mr. Avinash Kapoor and Mr. Iqar
Ali Khan, Advocates for R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant has impugned the award of compensation dated 15.05.2017 passed by the learned Tribunal in MACT No. 3235/16 on the ground that the learned Tribunal has erroneously held the owner and driver liable for paying compensation, when the involvement of the alleged offending vehicle in the motor-vehicular accident is itself in question.

2. The impugned order has dealt with this issue as under:

“13. Eyewitness to accident i.e. PW-2 Shri Hashim has deposed in his affidavit of evidence Ex. PW-2/A that on 13.03.2015, he alongwith Abid were going on motorcycle bearing registration No. UP-15AX-1666 from Hapur to Delhi alongwith deceased who was driving his separate motorcycle bearing registration No. DL-4SND-1800. At about 06.30 PM, when they reached at Nizampur Tirahe, offending Uttrakhand

Roadways Bus bearing registration No. UK-07PA-1500, being driven by respondent No. 1 in a rash and negligent manner, came from the side of Muradabad and hit motorcycle of deceased from behind due to which deceased suffered fatal injuries. He has deposed that respondent No. 1 ran away from the spot with offending vehicle towards Ghaziabad. PW-2 has categorically deposed that accident took place due to rash and negligent driving of respondent No. 1. Respondent No. 1/ Dalveer Singh got himself examined as RIWI and deposed that on 13.03.2015, he was driving Bus bearing registration No. UK-07PA-1500 from Rurdrapur to Delhi with normal speed and when the bus reached near Ghaziabad, suddenly police officials stopped the bus and said that above-said bus is involved in an accident and seized the bus. He has deposed that he has been falsely implicated and he was not rash and negligent in driving above-said bus. However, during his cross-examination, respondent No. 1 has admitted that offending bus was seized by the police officials of PS Hapur. He also admitted that FIR No. 128/15 dated 13.03.2015 was registered against him. He has also admitted that a criminal case is also pending against him before the Chief Judicial Magistrate, Hapur, UP. In the entire testimony of respondent No. 1, it has not come on record that respondent No. 1 ever filed any complaint before any authority for his false implication. Conduct of respondent No. 1 of not filing any complaint against his false implication and his own admissions during his cross-examination, compels this Court to draw an adverse inference against him and his testimony cannot be considered. On the other hand, nothing came in the cross-examination of eyewitness i.e. PW-2 which may create doubt on his testimony regarding manner of accident. Furthermore, after due investigation, police found respondent No. 1 accused of rash and negligent driving and charge-sheeted him for commission of offence punishable under Section 279/304-A/427 IPC.”

3. The identity and the involvement of the offending vehicle being established, Court finds no reason to interfere with the award on this ground.

4. It is however noted that the impugned order is deficient in terms of granting of compensation towards 'loss of future prospects' in terms of dicta of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**, (2017) 16 SCC 680. The deceased was 26 years old and self-employed at the time of accident. Therefore, there shall be an addition of 40% towards "loss of future prospects" in the compensation awarded towards 'loss of dependency' which has been granted as Rs. 14,10,864/-. Thus, the 'loss of dependency' will be calculated as under:

$$\text{Rs. } 10,374/- \times 66.6/100 \times 12 \times 17 \times 140/100 = \text{Rs. } 19,73,234/-$$

5. Each of the four claimants shall also be entitled to compensation towards 'loss of consortium' and 'loss of love and affection' @ Rs. 40,000/- and Rs. 50,000/- respectively in terms of dicta of the Supreme Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.**, 2018 SCC OnLine SC 1546. They shall also be entitled to compensation towards 'loss of estate' and 'loss of funeral expenses' @ Rs. 15,000/- each in terms of **Pranay Sethi (supra)**. Hence, the total payable amount will be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 10,374/- (minimum wage)x66.6/100 (1/3 deduction towards personal expenses)x12 (months)x 17(multiplier)x140/100 (loss of future prospects)]	Rs.19,73,234/-
2.	Loss of love and affection	Rs. 2,00,000/-

	Rs. 50,000 x 4 (claimants)	
3.	Loss of consortium Rs.40,000x4 (claimants)	Rs. 1,60,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 23,63,234/-

6. Accordingly, the total payable amount would be Rs. 23,63,234/- alongwith interest @ 9% per annum from the date of filing of the claim petition till its realization. The remaining amounts shall be paid as per the award. Let the enhanced amount of Rs. 7,17,370/- alongwith interest accrued thereon be paid to the claimants within three weeks of receipt of copy of this order.

7. This case has been pending since 2017, against the award of compensation dated 15.05.2017. The case has been listed seven times over and the respondents have been represented six times. In the circumstances, statutory amount of Rs. 25,000/- be released alongwith interest accrued thereon to the beneficiaries of the award as costs towards this litigation.

8. The appeal is disposed-off in the above terms. The pending applications, if any, also stand disposed-off.

9. A copy of this order be given *dasti* to the learned counsel for both the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 06, 2019

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