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

% **Date of Decision : 08.04.2019**

+ MAC.APP. 919/2017 AND CM APPLs. 37862/2017 & 52234/2018

UTTRAKHAND TRANSPORT CORPORATION..... Appellant
Through Mr. Shadab Khan, Adv.

versus

NEELAM GUSAIN & ORS Respondents
Through Mr. S.N. Parashar, Adv.

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+ MAC.APP. 444/2019

NEELAM GUSAIN & ORS Appellant
Through Mr. S.N. Parashar, Adv.

versus

SATPAL SINGH & ANR Respondents
Through Mr. Shadab Khan, Adv.

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

J U D G M E N T

A.K.CHAWLA, J. (ORAL)

1. MAC APP. 919/2017 is preferred by Uttarakhand Transport Corporation in short 'UTC', assailing the judgment-award dated 18.07.2017 passed by MACT, Shahdara, where-under, an award of Rs.16,60,864/- with

interest @ 10% p.a. has come to be passed in favour of the claimant-respondent Nos. 1 to 4, in short 'the claimants'. The claimants on their part have filed cross-objections seeking enhancement of the compensation by way of MAC. APPL. 444/2019.

2. Concisely, the relevant facts are that the application seeking compensation was made by the claimants on the premise that Deepak Gusain-since deceased, was travelling in the bus bearing registration no. UK 07 TA 1142 in short 'the offending vehicle', from Delhi to Rudrprayag, and, on account of rash and negligent driving, the offending vehicle fell down a deep khud (gorge) in the hills, on 07.05.2014 at about 6.05 a.m. near Saknidhar on Badrinath Road, within the jurisdiction of PS Devprayag, Uttarakhand. According to the claimants, the deceased, who was travelling in the bus as a passenger in the offending, sustained fatal injuries and died on the spot, as a resultant effect thereof. It resulted into filing of the claim application before the Tribunal. The appellant in the written statement *inter alia* took the plea that the deceased was not travelling in the offending vehicle. Whether the deceased was actually travelling in the offending vehicle, and, died on account of the subject accident, has been a serious issue for consideration before the Tribunal in addition to the subject of assessment of compensation. On the passing of the impugned award, while UTC disputes its liability to pay any compensation, claimants by way of cross-objections, which are registered as MAC. APP.444/2019, seek enhancement of compensation.

3. Whether, the deceased was travelling in the offending vehicle and died on account of injuries sustained in the subject accident, has been the

moot question for consideration before the Tribunal.

4. In the submissions of the ld. counsel for the appellant, the police of PS Rudrprayag had prepared lists of injured and the dead, shortly after the occurrence of the accident. On being queried, he however submits that, no such list was either proved on record before the Tribunal nor any evidence has come to be led. Mr. Parashar, ld. counsel for the claimants on his part submits that as per the challan filed by the police on the conclusion of the investigation, 13 persons had died and 29 persons had sustained injuries. To this, on being queried further, Mr. Parashar, ld. counsel for the claimants equally feigns ignorance as to whether in the challan filed, the name of the deceased appears, in any context. Before the Tribunal, the respondents had examined one Mr. Dilip Kumar as PW2, who deposed for being an eyewitness to the entire incident, inasmuch as, according to him, he was also travelling in the same bus. On a perusal of deposition of this PW2, doubt occurs as to the veracity of his deposition, for the simple reason that in an accident of the nature given, he is not shown to have sustained any kind of injury. He himself, as per his deposition by way of affidavit Ex.PW2/A, is, none else, but, the cousin of the deceased. Relying upon his such deposition only, the Tribunal has proceeded to conclude that the deceased was travelling in the offending vehicle and the observations to that effect appear in para 14 of the impugned judgment, as follows :

“14. The deceased was travelling in the offending bus. The post-mortem report of deceased shows that it was conducted on 07.05.2014 at the District Hospital, Baurari, New Tehri, Uttrakhand. The postmortem would not have conducted in the said hospital in case he has not expired in accident. The respondent nno.2 has not filed the list to show that name of the

deceased does not find reflection in the list of deceased persons supplied by the police. In the absence of any contrary evidence from respondent no.2, it is clear that deceased was also one of the passengers in the bus.

15. PW-2 is an eye witness. He has witnessed the accident. His testimony clearly shows that respondent no.1 was driving the offending vehicle in a high speed and in a rash and negligent manner as a result bus fell down in the khud. Many passengers have expired. The deceased has also expired due to injuries sustained in the accident. There is nothing on the record that PW-2 is a planted witness. The respondents have not examined the investigating officer to show that PW-2 has not witnessed the accident. There is nothing on the record to view the testimony of PW-2 with the aid of spectacles. It can be deduced from the testimony of PW-2 that respondent no.1 was driving the offending vehicle in a high speed and in a rash and negligent manner. The issue is decided accordingly.”

5. This Court finds it difficult to sustain the finding that has so come to be returned by the Tribunal. Though, the Tribunal, takes note of the plea raised on behalf of the appellant that the name of the deceased did not appear in the list of the deceased prepared by the police, it proceeds to presume that the deceased died on account of the injuries sustained in the accident, as, his postmortem was conducted on the same day of the occurrence of the incident i.e. 07.05.2014. The approach so adopted by the Tribunal, is wholly erroneous. Be that as it may, lest, a serious suspicion result into miscarriage of justice, this Court, in the given facts and circumstances, considers it just and proper that an opportunity should be afforded to the parties to prove their respective pleas, by cogent evidence. UTC on its part having taken a plea that the deceased was not travelling in the offending vehicle, and, thus, it had no liability to pay the compensation,

but, then, showing a laid back attitude to prove such plea, does raise eyebrows, as to the bonafide conduct of its official(s)/officer(s), in failing to take the requisite steps in that direction.

6. As regards the quantum of compensation, the Tribunal has awarded the compensation, as under :

“21. The petitioners are entitled for the following compensation under the following heads : -

<i>S. No.</i>	<i>Name of heads</i>	<i>Amount</i>
<i>1.</i>	<i>Loss of dependency/contribution to the family</i>	<i>Rs.14,10,864/-</i>
<i>2.</i>	<i>Loss of consortium</i>	<i>Rs.1,00,000/-</i>
<i>3.</i>	<i>Loss of love and affection</i>	<i>Rs.1,00,000/-</i>
<i>4.</i>	<i>Loss of estate</i>	<i>Rs.25,000/-</i>
<i>5.</i>	<i>Funeral expenses</i>	<i>Rs.25,000/-</i>
	<i>TOTAL</i>	<i>Rs.16,60,864/-</i>

7. As for the compensation under the head of Loss of Dependency/Contribution to the Family, the claimants have equally filed their cross-objections by way of MAC APPL. 444/2019. In other words, both the parties claim to be aggrieved of the compensation awarded, under such head. Compensation awarded under the other heads is equally in conflict with the ratio of the judgment in ***National Insurance Company Limited vs. Pranay Sethi and Ors***’, 2017 SCC OnLine SC 1270 case and on much higher side.

8. For the foregoing reasons, the impugned judgment-award is set aside

and the matter is remanded back to the Tribunal to render its findings afresh, on all the issues, having afforded reasonable opportunities to the parties to lead their respective evidence, in addition to what all was already adduced. For the purpose, the parties shall appear before the Tribunal on **02.05.2019**. The award amount, stated to be lying deposit with the Tribunal shall continue to remain in deposit with the Tribunal, till final adjudication afresh. The statutory amount deposited by the appellant-UTC shall be released back with interest, if any. While parting on the subject, it is also directed that the copy of this judgment be sent to the Chairperson/Administrator of the appellant, for his perusal and necessary action(s), as it may invite, at his end.

A. K. CHAWLA, J

APRIL 08, 2019

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