

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-153 of 2021 (O&M)
Date of Decision: 22.02.2021.**

Uttarakhand Transport Corporation

...Appellant

Versus

Mohabbat Ali & Ors.

....Respondents

CORAM: HON'BLE MR JUSTICE ARUN MONGA

**Present : Mr. Amit Jaiswal, Advocate
For the appellant.
(Presence marked through video conference).**

ARUN MONGA, J. (ORAL)

CM-1849-CII of 2021

For the reasons mentioned in the application, same is allowed and delay of 338 days in filing the appeal stands condoned.

FAO-153 of 2021

1. Uttarakhand Transport Corporation is in appeal to impugn an award dated 19.12.2019 passed by learned Motor Accident Claims Tribunal, Yamuna Nagar. The appellant and respondent No.6 being the owner and driver of the offending bus, respectively have been jointly and severally fastened with liability to pay compensation of Rs.9,31,500/- to respondent No.5 and Rs.70,000/- to respondent No.1, along with 7.5% interest from the date of filing of petition till realization.

2. Succinct factual narrative first, as noted in the award under appeal. On 05.03.2017, PW Abdul Kadir riding on his motor cycle along with, his mother Farida (deceased) and his Mausi (mother's sister) Rubiya, both riding pillion, were on their way to Mullana. Near village Sabalpur on

Jagadhari-Chhappar road, a bus bearing registration no. UK07PA-3116 came from rear and hit the motor cycle. Resultantly, Abdul Kadir, his mother Farida and mausi Rubiya fell on the road and suffered multiple injuries. One passerby namely Matloob, a relative of Abdul Kadir, was also on way to Mullana on his motor cycle and saw the occurrence. The accident was caused by the alleged rash and negligent driving of the bus by respondent No. 1 Vinod Singh. After the accident, driver of the bus (Vinod Singh) fled/drove away from the spot in the offending bus. FIR was registered by Matloob son of Baseer. Injured were shifted to Civil Hospital, Jagadhari, from where later Farida was shifted to PGIMER, Chandigarh and injured Rubiya was shifted to Government Hospital, Yamuna Nagar. Later, Farida succumbed to accidental injuries. Petition was filed in MACT against the appellant and respondent No. 6 seeking compensation of Rs. 50,00,000/- for the death of Farida. Appellant and respondent No. 6 filed their replies. After considering the pleadings and evidence led in the case, the learned Tribunal passed the award under appeal.

3. The appellant has impugned the award on the ground that the Tribunal failed to appreciate the fact that the accident had been caused due to negligence of Abdul Kadir by rash and negligent driving of his motor cycle. Admittedly, it was a case of triple riding on two-wheeler. In that view of the matter, it is urged that the Tribunal has erred in holding that respondent No. 6 caused the accident by rash and negligent driving of the bus and thus wrongly fastened liability upon the appellant. Apart therefrom, learned counsel for appellant argues that the addition of 25% to the income of the deceased towards future prospects has also been made wrongly as it has not been established that she was having any fixed income.

4. Having heard learned counsel for the appellant and on perusal of the award impugned herein, I am of the view that no interference is warranted. Reasons thereof are stated hereinafter.

5. Concededly, an FIR was registered against respondent No.6 i.e. driver of the offending bus for causing the accident due to his rash and negligent driving. Farida suffered injuries in the accident and later succumbed to those injuries. The Tribunal relied on the testimony of Abdul Kadir(PW2) and Matloob (PW3) who categorically deposed that the accident was caused due to rash and negligent driving of respondent No.6 Vinod.

6. No infirmity, inconsistency or improbability in the testimony of PWs Abdul Kadir and Matloob has been pointed out by the learned counsel for the appellant. Mere triple riding on the two wheeler of Abdul Kadir, though a violation of traffic rule, in my opinion, does not necessarily mean that in this particular case, the accident took place due to triple riding and rashness and negligence of Abdul Kadir. Knowing that triple riding on two wheeler is a violation of traffic rules, the said fact has been admittedly and truthfully disclosed at the first instance in the FIR itself and same is duly supported by both PWs. To my mind, this adds to their credibility.

7. The stand in the written statement of bus driver, as is borne out from the award, is that motor cycle of Abdul Kadir had smashed into the divider of the road, owing to which he and the two pillion riders fell on the road; he (bus driver) on humanitarian grounds, with the help of passengers in the bus, had picked them up and called the ambulance. In memo of appeal, it is asserted that as per testimony of RW-1 (bus driver Vinod Kumar respondent No. 6), no accident took place with his bus; he was falsely

involved and that he was summoned with bus to the police of PS Chhappar and the bus was impounded on 21.03.2017.

8. Except the self serving statement of driver of the offending vehicle, no other evidence has been adduced by the appellant and respondent No. 6 to substantiate their plea that the accident was not caused due to rashness and negligence of driver of offending vehicle.

9. In the premise, I am of the opinion that the learned Tribunal rightly held that the accident was caused by rash and negligent driving by bus driver. There is no dispute to the fact that the deceased victim was 40 years at the time of accident.

10. In the absence of any evidence to prove the income of the deceased, the learned Tribunal took the minimum wages paid to an unskilled worker in the year 2017 i.e. Rs.8280/- per month. After deducting 50% towards her personal and living expenses, the annual income of the deceased was taken as Rs.49,680/-(4140x12). The Tribunal added 25% towards future prospects and applied the multiplier of 15 relying upon the case of **National Insurance Company Limited Vs. Pranay Sethi¹ and Smt. Sarla Verma and others Vs. Delhi Transport Corporation & Ors²**.

11. The plea of appellant that future prospects have wrongly been added in the annual income is totally misconceived.

12. In my opinion, learned Tribunal rightly came to that conclusion by giving following reasons in the award :-

“As per the submission of counsel for the respondents, the deceased was neither self employed nor employed on any fix salary, therefore, she would not be entitled to the future

¹ Law Finder Doc.ID#918174

² 2009(3) RCR(Civil) 77

prospects but as per the submissions of counsel for the petitioners, she would be entitled to get future prospects at the rate of 25% as per the case law reported as National Insurance Company Ltd. Vs. Pranay Sethi, Law Finder Doc.ID #918174. In this authority, the Constitution Bench of the Hon'ble Apex Court of India made no distinction with regard to deceased being self employed or on a fixed salary. Obviously, the deceased being 40 years of age at the time of her death, as so mentioned in PMR Ex.P3, would attract the 25% addition under the head of future prospects. I am of the view that deceased would certainly increase her income had she been alive after 40 years of age. Therefore, even if he was not working on any fix salary, she being hail and hearty would have certainly earned equivalent to that of the wages of unskilled labourer. The minimum wages of an unskilled labourer would have been certainly enhanced by the government with the passage of time and changes in society, escalation of price, the change in price index and the human attitude to follow a particular pattern of life etc. Therefore, while agreeing to the submissions of counsel for petitioners, I am of the view that 25% addition under the head of future prospects is liable to be added in the annual income of the deceased. Accordingly, the annual income of the deceased would be Rs.49680+Rs.12,420/- =Rs.62100/- ”

13. No fault can, therefore, be found with the approach adopted by the Tribunal while making addition of 25% towards future prospects and fastening the liability upon the appellant as no evidence was led to prove that the vehicle in question was insured at the time of accident.

14. The appeal is accordingly dismissed in *limine*.

February 22, 2021
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No