



2024:DHC:10154



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

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Date of Decision: 3rd December, 2024

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CM(M) 1383/2022

UPSRTC

.....Petitioner

Through: Mr. Aly Mirza, Advocate.

versus

1. SUJIT KUMAR @ P. SUJITH
S/O SH. V. PARAMESWARANRespondent No. 1

2. KUNWAR PAL
S/O SH. MANSA RAMRespondent No. 2
Through: Mr. S.N. Parashar, Advocate.

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MAC.APP. 410/2022

UPSRTC

.....Appellant

Through: Mr. Aly Mirza, Advocate.

versus

1. LEELA KRISHNAN
W/O LATE SH. RADHA KRISHNANRespondent No. 1

2. ARYA KRISHNAN
D/O LATE SH. RADHA KRISHNAN ...Respondent No. 2

3. AISHWARYA KRISHNAN
D/O LATE SH. RADHA KRISHNANRespondent No. 3

4. AADHYA KRISHNAN
D/O LATE SH. RADHA KRISHNAN ...Respondent No. 4



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5. RAJAMMA PILLAI
W/O LATE SH. NARAYANARespondent No. 5
ALL RESIDENTS OF:
A 169/F2, SECOND FLOOR,
SHYAM APARTMENT, DILSHAD COLONY,
EAST DELHI 110095

6. KUNWAR LAL
S/O SH. MANSA RAM ...Respondent No. 6

Through: Mr. S.N. Parashar, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. The *Petition bearing CM(M) 1383/2022 under Article 227 of the Constitution of India, 1950* has been filed on behalf of the Petitioner, to challenge the impugned Award dated 02.08.2022 whereby Rs.34,000/- along with the interest @8% p.a. has been granted to the Respondents/Claimants on account of injuries suffered by Mr. Sujit Kumar @ P. Sujith, in a road accident on 20.07.2018.
2. Another Appeal bearing MAC.APP. 410/2022 under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*), has been preferred on behalf of the Insurance Company against the impugned Award dated 02.08.2022 *vide* which the compensation in the sum of Rs.55,09,000/- along with the interest @8% p.a. has been granted on account of demise of Sh. Radha Krishnan, aged about 50 years in the same accident.
3. The *grounds of challenge* of the impugned Award, are as under: -



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(i) that firstly, it was the head on collision between the scooty and the offending bus; it is a case of *contributory negligence of 50%* on the part of the deceased; and

(ii) that the salary of the deceased, Sh. Radha Krishnan, has been taken as Rs.38,000/- per month on the basis of *Vouchers* even though no documentary evidence to corroborate the same, has been produced and no Certificate of the deceased working as a Chef (cook), has been produced by the claimants.

4. *Learned counsel on behalf of the Claimants* of Mr. Radha Krishnan in MAC.APP. 410/2022, has argued that as per the testimony of the eye witness/injured, Mr. Sujit Kumar @ P. Sujith, after hitting the Scooty, the bus dragged it for about 20-30 meters, which itself speaks of the speed with which the offending vehicle was being driven. The evidence of the eye-witness is cogent and the same has been rightly accepted by the learned Tribunal.

5. Insofar as, the salary of the deceased is concerned, it is submitted that not only in the testimony of PW-1, Smt. Leela Krishnan, the wife of the deceased has deposed and proved the Vouchers of the payment of salary to the deceased, but even PW-3, Mr. Shibu Joy, with whom the deceased was working, has corroborated that the deceased was employed with him as 'Chef' and he was being paid salary of Rs.38,000/- per month in cash.

6. It is submitted that there is no merit in the Appeals, which may be dismissed.

7. Submissions heard.



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8. *Briefly stated*, on 20.07.2018 at about 10:45 P.M P. Sujith (injured) and Radha Krishnan (deceased) were going on Aactiva Scooty bearing Registration No. DL7SB M7617 from Vaishali to Anand Vihar. When they reached in front of Ghazipur Subzi Mandi, a UPSRTC Bus of Pilibhit Depot bearing registration No.UP77 AN2997, which was being driven by Shri Kunwar Pal in a rash and negligent manner at a fast speed, hit the scooty from the front side and the Scooty came under the front wheel of the offending bus. Both the riders of the scooty suffered serious injuries and were taken to MAX Hospital. During the treatment Shri Radha Krishnan died, while Shri Sujit had suffered serious injuries. FIR No.304.2018 under Section 279/338 of the Indian Penal Code, 1860 ('IPC' hereinafter) was registered and after completion of investigations, Chargesheet was filed.

9. A Detailed Accident Report (DAR) was filed on the basis of Chargesheet, but the Claimants also filed their Claim Petition under Section 166/140 of the M.V. Act. On consideration of evidence, the learned Tribunal granted compensation in the sum of Rs. 34,000/- to injured P. Sujit and Rs.55,09,000/- to the legal heirs of Shri Radha Krishnan (Claimants) along with interest @ 8% per annum.

Contributory Negligence:

10. The *first ground of challenge* on behalf of Appellant/ UPSRTC is that there was *contributory negligence* on the part of the Scooty driven by the deceased, Shri Radha Krishnan and the compensation amount must be accordingly reduced.

11. To appreciate this contention, it is pertinent to refer to the testimony



of the injured PW2/P. Sujit who had deposed about the manner of the accident, as narrated above. He explained that the Scooty was being driven by Radha Krishnan at normal speed, on the correct side of the road. It was the UP Roadways bus which was being driven at a high speed in a rash and negligent manner, which came from the opposite side and after changing its lane, it hit the Scooty with great force resulting in the accident and consequent injuries to the riders of the Scooty.

12. The witness was cross-examined at length wherein he explained that he had seen the offending bus from a distance of 50 metres before the accident. He further stated that the Scooty was going on the right side of the road while the bus was coming from the opposite direction. However, the bus suddenly turned towards the Scooty and hit with such an impact that it came under the wheel of the bus.

13. In the cross-examination, PW2 P. Sujit had explained that they were driving in the lane on their side of the road, but because the other lane of the road was closed for repairs, the bus was plying on their side and was coming from the opposite direction. Further, he denied that it was raining at the time of the accident.

14. The testimony of PW2 P. Sujit needs to be appreciated in the light of the testimony of R1W1 driver Shri Kunwar Pal, who deposed that it was raining heavily at that time and there were potholes because of the rains and there was no way that the bus would have been driven at the high speed.

15. It thus, emerges from the evidence on record that the accident occurred at 10:30 P.M on 20.07.2018, when it was dark and rainy season.



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Whether it was raining at that particular time when the accident occurred, or not, it is established that there was heavy rains and there may also have been the potholes on the road. Even if the testimony of R1W1 Shri Kunwar Pal is accepted that there were potholes, but it evidently did not deter him from driving the bus at a high speed which is evident from the fact that the Scooty came under the front wheel of the bus; had the speed been slow as has been claimed by R1W1, there is no way that the Scooty would have got crushed under the offending bus. Furthermore, it was the bus which was being driven on the wrong side of the road and the driver of the bus should have been mindful of the traffic which was coming in its right lane.

16. Considering the totality of circumstances, it has to be concluded that the accident occurred due to the sole negligence of the driver of the offending bus, as has been rightly concluded by the learned Tribunal. *There is no ground for interference on this aspect.*

In Appeal No.410/2022: Salary of deceased Shri Radha Krishnan:

17. The *second ground of challenge* raised in Appeal No.410/2022 in respect of demise of Shri Radha Krishnan, is that the salary of the deceased had been taken as Rs.38,000/- on the basis of Vouchers even though there is no documentary evidence adduced to corroborate the same.

18. To prove the income of the deceased, the claimants have examined PW3/Shri Shibu Joy who stated that he was running a Hotel since February, 2018 till January 2019 in the name and style of *Kerala Delight at Vaishali, Ghaziabad*, the Registration Certificate of which is Ex.PW3/2 and the computerized copy of GST Certificate is Mark P3/A. The Menu Card of the



Hotel has also been placed on record. He deposed that the deceased was working with him as a *Chef/Cook* and was getting a consolidated salary of Rs.38,000/- per month, for which Vouchers were issued for the months of March, 2018 to July, 2018 which are Ex.PW3/3 collectively. He further deposed that the last salary for the month of July, 2018 was received by the wife of the deceased vide Voucher Ex.PW3/4. He affirmed that he had issued the Certificate dated 15.09.2018 Ex.PW1/19 regarding the employment and salary of the deceased. This witness was cross-examined on behalf of the Respondents, but nothing contradictory could be brought forth to disbelieve his testimony.

19. It cannot be overlooked or ignored that many a sectors are unorganized sectors, wherein the salaries are disbursed in cash for which there may not be any proof. In the present case, the Vouchers have been duly produced to corroborate that the deceased was being paid consolidated salary of Rs.38,000/- per month. Considering that he was working as a Chef in a Restaurant, the testimony of PW3, cannot be rejected as unbelievable.

20. While the respondents have chosen to question the testimony of PW3, but not an iota of evidence to the contrary had been adduced. *There is no ground of interference in regard to the salary of the deceased.*

Conclusion:

21. To conclude, the learned Tribunal has correctly found the accident to have been caused by the driver of the offending vehicle due to its rash and negligent driving by its Driver. Further, the compensation granted to the Claimants on account of demise of Shri Radha Krishnan, has been



calculated correctly in MACP No.201/2019. There is no merit in the two Appeals, which are hereby dismissed.

22. The compensation amount be released in terms of the impugned Award dated 02.08.2022.

23. The two Appeals are accordingly disposed of along with the pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**DECEMBER 3, 2024
RS/VA**