



2024:DHC:10149



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 24th December, 2024*+ **MAC.APP. 688/2024 & CM APPL. 76405/2024****U P STATE ROAD TRANSPORT CORPORATION**

Through its Regional Manager,
Ghaziabad Region, Kaushambi,
Ghaziabad, Uttar Pradesh

.....Appellant

Through: Mr. Shadab Khan, Advocate.

versus

1. **ASHA**

W/o Late Shri Hari Pal

.....Respondent No. 1

2. **MOHIT SINGH SHEKHAWAT**

S/o Late Shri Hari Pal

.....Respondent No. 2

3. **KOMAL SINGH**

D/o Late Shri Hari Pal

.....Respondent No. 3

4. **YOGITA**

D/o Late Shri Hari Pal

.....Respondent No. 4

5. **LAXMI DEVI**

W/o Shri Jagoop Singh

.....Respondent No. 5

6. **JAGROOP SINGH**

S/o Shri Late Gulab Singh

.....Respondent No. 6

All residents of: -

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H. No. 133, Old Seemapuri,
Delhi-110095

6. **RAM BHOOL (DRIVER)**

S/o Shri Ramanand,
R/o Wajidpur, Jansath,
Muzaffarnagar, U.P.

.....Proforma Respondent

7. **STATE GOVT. UPSRTC**

Through Secretary,
Kasganj, Lucknow, U.P.

.....Proforma Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 76406/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The Application is disposed of.

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3. *The present Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed on behalf of the Appellant against the Award dated 23.09.2024 vide which a compensation in the sum of Rs. 36,32,940/- along with interest @ 8% per annum, has been granted to the Respondent Nos. 1 to 6/Claimants on account of demise of Shri Hari Pal in a road accident on 12.05.2019.*

4. The grounds on which the impugned Award has been challenged are:
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(i) that it is the case of head on collision, as is also evident from

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the site plan and, therefore, it is a case of contributory negligence and the compensation amount granted to the Claimants is liable to be reduced;

(ii) that the *Loss of Consortium* has been granted to the Claimants by enhancing the same by 20% which was to be enhanced only by 10% in view of the decision in National Insurance Company vs. Pranay Sethi & Ors., 2017 (16) SCC 680; and

(iii) that the rate of interest has been granted @ 8% per annum which is on the higher side, for which reliance on the decision in Bijoy Kumar Dugar vs. Bidya Dhar Dutta and Others, (2006) 3 SCC 242.

5. Submissions heard and record perused.

6. Briefly stated, on 12.05.2019, the UP Roadways Bus bearing No. UP-11T-5527 was being driven in the opposite direction by Shri Ram Bhool, Driver, on the route Delhi to Rishikesh. At about 04:30 P.M., when the Bus reached near Village Tigai, Khatoli, it collided head on with the *EECO Car* bearing No. DL-5CE-6832 which was coming from the correct direction. As a result of the same Shri Hari Pal, died on the spot.

7. FIR No. 238/2019 was registered under Sections 279/338/304A/427 IPC 1860 of the *Indian Penal Code, 1860* at Police Station Khatoli, Uttar Pradesh.

8. The Claim Petition u/s. 140/166 Motor Vehicle Act, 1988 had been filed seeking compensation and *vide* the Impugned Award, the Learned Tribunal Awarded a sum of Rs. 36,32,940/- along with interest @ 8% per annum.



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Contributory Negligence :-

9. The *first ground of challenge* by the Appellant is that the Driver of EECO Car, was equally responsible in causing the head on collision.

10. To prove the manner of accident, *PW-2/Dinesh Kumar*, eyewitness was examined who deposed that on 12.05.2019 at about 04.00 p.m. his brother Hari Pal and other friends were travelling in *EECO car no.DL-5CE-6832* as per traffic rules and one Nitin was driving his own vehicle. When they reached near village Tigai Reliance Petrol Pump, *the offending vehicle-UP Roadways Bus No.UP-11T-5527*, which was being driven by its Driver, Shri Ram Bhool at a high speed in a rash and negligent manner without taking due precautions and blowing the horn, came from the opposite direction, after changing its lane and hit the EECO Car with great force. Due to the accident, deceased Hari Pal and his friends Rakesh Kumar and Sarjeet died on the spot while other occupants namely Lakhan, Sachin, Gopal and Mukesh received grievous injuries.

11. During cross-examination he had further explained that he was driving his vehicle towards left side of the road and the vehicle of his brother was also towards left side of road. The eyewitness had been cross-examined *in extenso* by the Appellant, but no material contradiction could be brought forth.

12. The testimony of *PW-2* has been fully corroborated by the Site Plan prepared by the Investigating Officer while conducting the investigations in *FIR No. 238/2019*, wherein it is clearly depicted that the offending UP Roadways Bus had suddenly changed its lane and gone into the lane of the traffic coming from the opposite direction and thereby caused the head on



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collision.

13. The Respondent/Shri Ram Bhool, Driver of the offending UP Roadways Bus, had appeared as *RIWI* and deposed that while he was driving the said offending UP Roadways Bus, no accident took place. However, he admitted in his cross-examination that he was arrested and granted bail in the *FIR No. 238/2019*. He also admitted that the offending UP Roadways Bus was seized by the local Police and subsequently released on *superdari*. He tried to raise a defence that the offending UP Roadways Bus at the time of accident was parked in the Depot and he had gone back to his house. However, he admitted that he had not filed any Application or Complaint against his alleged false implication.

14. Pertinently, the most relevant document to prove that the offending UP Roadways Bus was not involved and was not on the road at the time of accident, would be the Depot Record to show that it was in the Depot. But pertinently, no Depot Record has been produced in proof thereof.

15. The evidence of the eyewitness is fully corroborated by the criminal investigations. The argument on behalf of the Appellant that it was a head on collision case and, therefore, it is a case of contributory negligence, is not tenable for every head on collision case, cannot per se be termed as a case of contributory negligence. The surrounding circumstances have to be considered to ascertain if it is a case of contributory negligence. In the present case, it has clearly come on record from the testimony of the the eyewitness and from the investigations conducted by the Police that the offending UP Roadways Bus had deflected to the opposite lane, without any explanation and thereby caused the head on collision.



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16. Under these circumstances, no negligence whatsoever can be attributed to the driver of the EECO Car.

17. The Chargesheet has also admittedly been filed against Shri Ram Bhool, Driver of the offending UP Roadways Bus. In the case of National Insurance Co.,vs Pushpa Rana 2009 ACJ 287 Delhi, it has been held that filing of Chargesheet is sufficient proof of the negligence and involvement of the Offending Vehicle.. The Apex Court has opined in the judgment of Mangla Ram vs. The Oriental Insurance Company Ltd., AIR 2018 SC 1900 that filing of Chargesheet against the driver of the offending vehicle *prima facie* points towards the complicity in driving the vehicle negligently and rashly. Similar observations have been made in the case of United India Insurance Co. Ltd. v. Deepak Goel and Ors., 2014 (2) TAC 846 Del, Amanti Devi and Ors. v. Maheshwar Rai, MAC Appeal no. 831/2015 decided on 19.11.2022)

18. The learned Claim Tribunal has rightly observed that the negligence in causing the accident was solely of Shri Ram Bhool, the Driver of the offending UP Roadways Bus. *Accordingly, there is no reason to interfere with the findings of the learned Claim Tribunal.*

Quantum of Compensation: -

Non-Pecuniary Heads: -

19. The *second ground of challenge* to the impugned Award by the Appellant is that the Loss of Consortium has been given to each of the Claimants by the learned Claim Tribunal by enhancing it by 20%.

20. Learned counsel for the Appellant further submits that since three years had not elapsed from 2017, 10% enhancement towards the Loss of



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Consortium could not have been given.

21. However, this argument of the learned counsel for the Appellant is completely fallacious for the simple reason that Pranay Sethi (supra) has merely explained the formula for calculating the Loss of Consortium and it is not a new law that was laid down with prospective effect. It was held that the amount of Rs. 40,000/- towards Loss of Consortium is liable to 10% increase every 3 years.

22. Pertinently, the accident in the present case had occurred on 12.05.2019, while the compensation has been granted on 19.09.2024 *vide* the impugned Award, i.e., after a period of four years. Since from the date of accident, more than three years had elapsed, the learned Claim Tribunal has calculated the Loss of Consortium by giving benefit of additional 20% instead of 10% increase after every three year; thereby granting the Loss of Consortium as Rs. 48,000/- x 6 = Rs. 2,88,000/-, to each of the Claimants. There is only a marginal additional compensation of 10% i.e. Rs.4,000/- per person given towards Loss of Consortium; considering the overall compensation of Rs. 36,32,940/- along with interest @ 8% per annum, this Court is not inclined to interfere with the amount granted by the learned Claim Tribunal towards Loss of Consortium.

Rate of Interest: -

23. The *third ground of challenge* to the impugned Award by the Appellant is that interest @ 8% per annum so granted is on the higher side.

24. However, looking at the prevailing market rate and these are the compensation petitions; there is no ground to interfere with the findings of the learned Claim Tribunal.



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Conclusion : -

25. In view of above, it is observed that there is no infirmity in the Impugned Award dated 23.09.2024 and it warrants no inference.

26. There is no merit in the present Appeal, which is hereby dismissed, along with pending Application(s), if any.

27. The Appellant is granted four weeks to deposit the entire compensation amount, if any along with upto date interest before the learned Claim Tribunal, to be disbursed to the Claimants in terms of the Award dated 23.09.2024.

28. The statutory amount, if deposited, be returned to the Appellant, in accordance with the Rules.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 24, 2024
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