

* **HIGH COURT OF DELHI : NEW DELHI**

MAC App. No.464/2007 & MAC App.466/2007

% Judgment reserved on: 17th July, 2008

Judgment delivered on: 31st July, 2008

1.MAC App. No.464/2007

Uttar Pradesh State Road
Transport Corporation
Navyug Market
Gaziabad (UP)

... Appellant.

Through: Mr. Rakesh Sachdeva, Adv.
Vs.

1. Baby Sakshi Yadav
Daughter of Late Parmender Yadav
Through her guardian and next friend
Hamnedra Yadav R/o. H.No. 34, Krishan Kunj
Laxmi Nagar, Delhi

2. Shri Hemandera Yadav
S/o. Sri. Har Swaroop Yadav
R/o. H.No. 34, Krishan Kunj
Laxmi Nagar, Delhi

3. Sanju Yadav
W/o. Sh. Parveen Yadav
D/o. Late Shri Har Swaroop Yadav,
R/o. H.No. 1/5149, Gali No.5
Balbir Nagar, Shahadra Delhi.

4. Seema Yadav
W/o. Sh. Anil Yadav
D/o. Late Shri Har Swaroop Yadav
R/o. H.No. 837 Old Palam Gurgaon Road,
Opposite Fun & Food,
Village Kapasera, Delhi

... Respondents

Through: Mr. J.S. Kanwar, Adv. for
R-1 to 4.

2.MAC App.466/2007

Uttar Pradesh State Road
Transport CorporationAppellant

Through: Mr. Rakesh Sachdeva, Adv.

Versus

1. Har Swaroop Yadav
Dead Through LRs:

1A. Shri Hemandera Yadav
S/o. Sri Har swaroop Yadav
R/o. H.No. 34, Krishan Kunj
Laxmi Nagar, Delhi

1B. Sanju Yadav
W/o. Sh. Parveen Yadav
D/o. Late Shri Har Swaroop Yadav,
R/o. H.No. 1/5149, Gali No.5,
Balbir Nagar, Shahadra Delhi

1C. Seema Yadav
W/o. Sh. Anil Yadav
D/o. Late Shri Har Swaroop Yadav
R/o. H.No. 837, Old Palam Gurgaon Road,
Opposite Fun & Food,
Village Kapasera, DelhiRespondents.

Through: Mr. J.S. Kanwar, Adv. for
R-1 to 4.

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B. GUPTA, J.

By this common judgment, two appeals arising out of one accident are being disposed of.

2. The appellant has filed both the appeals under Section 173 challenging the impugned order dated 9th April, 2007 passed by Sh. A.S.Jayachandra, Judge, MACT, Karkardooma Court, Delhi.

3. The brief facts common to both the cases are that on 13th May, 2003, one Parmender Yadav, his wife Rita Yadav and father of Parmender Yadav, Sh. Harswaroop Yadav and other family members were coming in a Maruti Van bearing No. DL1C-2981 from their village at Bulandshehar, U.P. and were going towards Delhi.

4. Around 9.40 a.m., when this Maruti Van reached village Bisauli, a U.P. roadways bus bearing No.UP 78-N-372 driven by its driver, Aditya Prakash in a rash and negligent manner, hit the Maruti Van.

5. In the said accident, Parmender, aged 27 years and his wife Rita Yadav, aged 21 years expired. A criminal case was registered against the driver.

6. Vide impugned judgment, the learned Tribunal awarded a sum of Rs.5,04,600/- to the LR's of the deceased Rita Yadav and Rs.5,33,400/- were awarded to the LR's of the deceased Parmender Yadav along with 7.5% interest p.a., from the date of the petition till the date of award (excepting for the periods not specifically allowed).

7. It is contended by learned counsel for the appellant that the accident in this case has taken place due to the fault of the driver of the Maruti Van and it is a head-on collusion and at the most this case falls under the category of composite negligence.

8. Regarding non appearance of the bus driver it is contended that the bus driver died during the pendency of the trial.

9. It is further argued that claimants in their petition have claimed that deceased Rita Yadav was a house wife but during the course of evidence they have taken the plea that she was working in a Coaching Centre and was a graduate. This contradictory plea does not inspire any confidence and the Tribunal could not have awarded a huge sum of compensation to the claimants.

10. The other contention is that evidence of PW1 cannot be relied upon since he being the father-in-law of the deceased was an interested witness and no independent witness has been produced. Further, the interest, if any, should have been awarded from the date when the claimants had closed their evidence, and not from the date of filing of the claim petition and the interest awarded is excessive since the present applicable rate of interest is 6% p.a.

11. In the case of death of Parmender Yadav, besides the above contentions, it is also contended that the Tribunal has wrongly awarded loss of dependency taking the excessive monthly income of the deceased

as Rs.3,600/- p.m. particularly when there were no proof of income of the deceased.

12. Learned counsel for the appellant in support of his contentions cited various judgments namely:-

Mrs. Neera Tangri and Ors. v. Pritam Dass Khurana and Ors. 1998(1) T.A.C. 440 (P&H), Bijoy Kumar Dugar v. Bidya Dhar Dutta and Ors. (2006) 3 SCC 242, Tatineni Meena v. Shaik Mansoor Ali and Ors. 2007 (1) T.A.C. 546 (A.P.), Shivaji Waman Eodase and Ors. v. Chandrapati Ishwarsingh Dahiya and Ors. 2006 (3) T.A.C. 11 (Bom.), Gujrat State Road Transport Corportion v. Hargovinddas R. Modi and Ors. 2007 ACJ 1198, United India Insurance Co. Ltd. v. Babulal and Anr. 2007 ACJ 999, United India Insurance Co. Ltd. v. Annapurna Shandilya and Ors. 2007 ACJ 1168, Oriental Fire & General Insurance Co. Ltd. v. Santosh and Ors. 2007 ACJ 865.

13. On the other hand, it has been contended by learned counsel for the respondents that there is no infirmity or illegality in the impugned orders passed by the Tribunal. The bus driver has not appeared in this case in the witness box and the Tribunal has rightly drawn inference against him. Under these circumstances, there is no merit in these appeals and both these appeals are liable to be dismissed.

14. Factum of the accident in this case has not been disputed by the appellant.

15. The main contention of learned counsel for the appellant is that the accident took place due to contributory negligence on the part of Maruti Van driver.

16. Aditya Prakash, the bus driver after filing his written statement did not appear in the trial court and absented and as such he was proceeded Ex-Parte.

17. However, in his written statement, he took the defence that he had not caused any accident knowingly

or deliberately. He was driving the bus in a slow and controlled speed and as per rules by blowing the horn on his right side when the bus driven by him reached at the spot, then Maruti Van No.DL-1C-2981 came in a very rash speed by overtaking from the front side and dashed in to the bus and even after making best efforts by him, the bus could not stop suddenly. Thus, no fault of negligence is apparent on his part.

18. Admittedly, the bus driver has not appeared in the witness box to prove his defence nor the death certificate of the bus driver has been placed or proved on record. Moreover, this fact has not even been pleaded in the appeal. As such adverse inference has to be drawn against him.

19. With regard to the negligence of the bus driver, PW 1, Harswaroop Yadav, who was a passenger in the Maruti Van had appeared in the witness box and has stated that when the Maruti Van reached near Village Bisauli, U.P. which was coming from Gaziabad side, at

that time one U.P.S.R.T.C. bus bearing No. UP-78-N-0372 was coming in a rash and negligence manner and it hit the Maruti Van and the driver fled away. In the cross-examination, he had denied that his son was driving Maruti Van at a high speed or tried to overtake some vehicle and dashed against the bus.

20. There is nothing on record to show that PW 1 had any enmity with the bus driver so as to falsely implicate in this case. If it is a case of contributory negligence, then the onus is also upon the bus driver to prove his defence. However, the bus driver has failed to discharge that onus.

21. So, there is no reason to discard the testimony of PW 1, Harswaroop Yadav upon this issue. Thus, I do not find any ground to upset the findings given by the Tribunal on this point.

22. As far as quantum of compensation awarded in this case is concerned, the Apex Court in plethora of cases has held that while assessing the income of the

deceased in motor accident cases, the tribunals should bear in mind that the same should be assessed on the basis of the cogent and the reliable evidence produced and duly proved on record.

23. In this regard the thumb rule is that where there is no cogent evidence on record to prove the monthly income at the time of accident, then the minimum wages notified under the Minimum Wages Act prevalent at the time of accident can be taken into consideration.

24. In the present case, the deceased Rita Yadav was a student of B.Ed and to prove this fact, document Ex. PW 1/G was produced. In the absence of income proof, the trial court has taken minimum wages for a Graduate as prescribed under the Minimum Wages Act. The Tribunal has rightly done so and further the multiplier of 17 years was adopted in this case keeping in view the age of the deceased being 21 years. As

such, no fault can be found with the findings of the Tribunal on this count.

25. As far as deceased Parmender Yadav is concerned, he was aged 27 years and was a diploma holder in the trade of an Electrician, though he was stated to be running a cyber cafe and earning Rs.20,000/- p.m.

26. Since, no document in support of the income was produced by the claimants, the Tribunal applied the minimum wages for a graduate/diploma holder as prescribed under the Minimum Wages Act. In the absence of any income proof, the Tribunal rightly assessed the income of the deceased Parmender, under the Minimum Wages Act and no fault can be found with the reasoning given by the learned Tribunal.

27. Various decisions cited by the Ld. Counsel for the Appellant, are not applicable to the facts of the present case.

28. Thus, I do not find any infirmity or illegality in the impugned judgments passed by the Tribunal.

29. The compensation awarded by the learned Tribunal in both the cases is just, fair and equitable.

30. Accordingly, both these appeals filed by the Appellant are hereby dismissed.

31. No order as to costs.

32. Trial court record be sent back.

**V.B.GUPTA
(JUDGE)**

July 31, 2008
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