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

Date of decision: 31.10.2023

\+ **MAC.APP. 228/2019 & CM APPL. 6244/2019**

U P STATE ROAD TRANSPORT CORPORATION ..... Appellant
Through: Mr.Shadab Khan, Adv.

versus

CHAMPA DEVI & ORS ..... Respondents
Through: Mr.O.P.Gupta, Adv. for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 30.08.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, East District, Karkardooma Courts, Delhi (hereinafter referred to as the 'Tribunal') in Suit no.537 of 2016 titled ***Champa Devi & Ors. v. Dushyant Kumar & Anr.***, as modified by the order dated 05.11.2018 passed by the learned Tribunal on the review application filed by the appellant herein.

2. Before the learned Tribunal, it was the case of the claimants herein that on 28.01.2016, the deceased /Sh.Joginder Singh was crossing the road near Kala Pathar Tiraha, Indirapuram, Ghaziabad, Uttar Pradesh when he was hit by a UP Roadways bus bearing registered No.UP-25-AT-5064 (hereinafter referred to as 'offending vehicle'). It was the case of

the claimants that the offending vehicle was being driven in a rash and negligent manner by the respondent no.4 herein.

Challenge on the Issue of Negligence:

3. The appellant challenges the Impugned Award contending that the learned Tribunal has erred in its finding that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner.

4. The learned counsel for the appellant submits that the accident had taken place when the offending vehicle had started moving along with the other vehicles, on the traffic signal turning green. At that time, the deceased suddenly came in front of the bus while trying to cross the road. He submits that, therefore, the accident had taken place due to the fault and negligence of the deceased and not because of the offending vehicle being driven in a rash and negligent manner by the respondent no.4.

5. He further submits that without prejudice to the above, at least some portion of contributory negligence should have been attributed to the deceased.

6. He submits that the evidence of Sh.Irfan Ali (PW-1) cannot be relied upon, as he was not an eye-witness to the accident. He has been set up by the claimants at a later stage. He submits that even in the charge sheet filed by the police, he was named only as a probable witness to the accident and not as an eye-witness. He submits that there was a delay of 7 days in lodging the FIR and this also casts a doubt on the assertion of the claimants that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner.

7. On the other hand, the learned counsel for the respondent nos.1 to 3 /claimants submits that the learned Tribunal has rightly relied upon the statement of Sh.Irfan Ali (PW-1). He submits that Sh.Irfan Ali was also examined in the criminal trial and has categorically deposed about the manner of the accident. He submits that, in fact, the appellant did not even suggest to the said witness that the accident had taken place with the deceased trying to cross the road when the signals for the movement of the vehicles had turned green. He submits that the learned Tribunal has also inferred the manner of the accident from the nature of injuries suffered by the deceased inasmuch as if the offending vehicle had just started moving, the deceased would not have suffered fatal injuries on being hit by the offending vehicle.

8. I have considered the submissions made by the learned counsels for the parties.

9. In the present case, Sh.Irfan Ali, PW-1 has deposed that the deceased was trying to cross the road when the signal for the pedestrians to cross the road was green. He further deposed that he saw the offending vehicle run over the deceased. He denied the suggestion that he was not present at the time of the accident or that he had not seen the accident. The appellant could not, in any manner, cast a doubt on his testimony as being an eye-witness to the accident. It is to be noted that Sh.Irfan Ali has come out as an independent witness, not related to the claimants or the deceased. He had been summoned before the learned Tribunal to depose. Merely because the FIR is registered with a delay of 7 days or that the witness is named only as a probable witness to the accident by the police, is not sufficient to disregard the testimony of

PW-1, Sh.Irfan Ali. The delay in the registration of the FIR when the Claimants have lost a loved one in the accident, cannot be fatal to the Claim Petition. Equally, why the police would name PW3 only as a potential witness in the Charge Sheet, cannot be explained by the Claimants nor can be sufficient to cast a doubt on their claim.

10. The learned Tribunal apart from rightly relying upon the statement of Sh.Irfan Ali, has further observed that if the case of the appellant herein is to be believed, the severity of the injury suffered by the deceased in the accident would not have occurred, and, in fact, the respondent no.4 would have been able to avoid the accident. I agree with the above observation of the learned Tribunal.

11. It is to be remembered that the test that is to be applied while adjudicating upon a Claim Petition filed under Motor Vehicles Act, 1988 is one on the touchstone of preponderance of probabilities. In the present case, the respondent nos.1 to 3/claimants had been able to satisfy this test.

12. I, therefore, find no infirmity in the finding of the learned Tribunal that the accident had taken place due to the offending vehicle being driven in a rash and negligent manner. The challenge of the appellant to the Impugned Award on this ground is, accordingly, rejected.

Challenge to the Assessment of the Income of the Deceased:

13. The next challenge of the appellant to the Impugned Award is on the determination by the learned Tribunal of the income of the deceased for awarding the loss of dependency.

14. The learned counsel for the appellant submits that the learned Tribunal has erred in placing reliance on the salary slips of the deceased

produced by PW-4 – Sh.Anil Kumar, for purposes of determining the income of the deceased. He submits that these salary slips were neither stamped nor signed by any responsible/authorised officer of the employer-M/s Indian Express Pvt. Ltd. He submits that, therefore, there was no proof of income of the deceased.

15. He further submits that even if the salary slips are to be taken into account, they show that the deceased was also drawing transport allowance; the same should have been deducted while determining his income. In support, he places reliance on the judgment of this Court in ***Neena Devi & Ors. v. Ashok Yadav & Ors***. 2014 SCC OnLine Del 2925.

16. On the other hand, the learned counsel for the respondent nos.1 to 3/claimants submits that in the present case, Sh.Anil Kumar (Legal) (PW-2) had appeared before the learned Tribunal and had stated that the deceased was working as a Junior Machine Man with the Indian Express Pvt. Ltd. since 03.10.1983 on a monthly salary of Rs.44,357/- per month. He had also produced before the learned Tribunal the Appointment Letter, the Salary Slips for the period from October 2015 to January 2016, the TDS certificates (Form 16) for the years 2014-15 and 2015-16, and a copy of the attendance register for the period from October 2015 to January 2016. He submits that the claimants had also produced the Income Tax Returns of the deceased for the Financial Years 2014-15 and 2015-16. He submits that there was enough evidence before the learned Tribunal to determine the income of the deceased, and the same has been rightly determined.

17. As far as the transport allowance is concerned, he submits that the same

was not in the form of reimbursement of the actual expenses incurred by the deceased and, therefore, is not to be excluded while determining his income.

18. I have considered the submissions made by the learned counsels for the parties.

19. As rightly submitted by the learned counsel for the respondents, the claimants had produced enough material before the learned Tribunal to show that the deceased was working as a Junior Machine Man with the Indian Express Pvt. Ltd.. The salary of the deceased at the time of the accident was proved by way of not only the salary slips which were produced before the learned Tribunal, but also by the TDS certificates and Income Tax Returns.

20. It is to be noted that the learned Tribunal is not to carry out a trial in a Claim Petition but is only to make an inquiry, so as to determine the just compensation that is payable to the victims of a motor vehicular accident.

21. In my view, the learned Tribunal has, therefore, rightly relied upon the salary slips of the deceased for the period from October 2015 to January 2016, for determining his income.

22. As far as the deduction of the transport allowance is concerned, this Court in ***National Insurance Company v. Manoj Prasad & Ors.,*** Neutral Citation No.2023:DHC:5086, has held that the income of the deceased is not only to be determined on the pay package that the employee carries home at the end of the month, but such income would also include other perks which are beneficial to the members of the entire family. The Court held that where the transport allowance is not

being paid as a reimbursement of the actual expenses, the same is to be included for the purposes of determining the income of the deceased. I may quote from the judgment as under:

> *"13. I have considered the submissions made by the learned counsels for the parties. The pay slips produced on record before the learned Tribunal shows that the Claimant was being paid conveyance allowance of Rs.800/- per month and medical allowance of Rs. 1250/- per month. It is not shown by the Insurance Company that these allowances required the Claimant to actually spend any amount on such heads. These were clearly the benefits that the Claimant took home from the employer irrespective of any expenditure incurred by him on these heads. These were not incidental to the employment, but emoluments received by the Claimant for his employment and for his service.*
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> *14. In* ***Sunil Sharma & Ors.*** *(Supra), the Supreme Court, placing reliance on the earlier judgment in* ***National Insurance Co. Ltd. v. Indira Srivastava & Ors.,*** *AIR 2008 SC 845, has held that having regard to the change in societal conditions, the Court must consider the question of determination of the income not only having regard to the pay package the employee carries home at the end of the month, but also other perks which are beneficial to the members of the entire family. The Court held that taking into account the said principle, payments made on account of house rent allowance, medical allowance, etc., are to be added to the income of the deceased/injured. The same view has been expressed by this Court in its judgment in* ***Kamlesh Kumari & Ors.*** *(Supra).*
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> *15. In* ***Kalpanaraj and Ors.*** *(Supra), the issue of deducting the amounts received by an employee as travelling allowance etc., was not in issue. In fact, the Supreme Court held that in that case, the High Court had erred in making deductions under various heads and taking into account only the net income instead of ascertaining the gross income of the deceased therein. The said judgment, therefore, is not relevant to the issue in hand.*

> *16. In **Asha Devi & Ors.** (Supra), though the Court held that the amount received by the employee towards conveyance allowance deserves to be deducted, it is not evident from the judgment whether the amount received in that case was as a reimbursement or as a monthly perk. The Judgment in **Sunil Sharma & Ors.** (Supra) was also not drawn to the notice of the High Court.*
> *17. In view of the above, I find no merit in the challenge of the Insurance Company on this account."*

23. I, therefore, find no merit in the challenge laid by the appellant to the Impugned Award on the determination of the income of the deceased.

Challenge on the Deduction made Towards Personal Expenses:

24. The next challenge of the appellant to the Impugned Award is on the deduction from the income of the deceased towards personal expenses.

25. The learned counsel for the appellant, placing reliance on the statement of the respondent no.1, who had appeared as PW-3 before the learned Tribunal, submits that out of the three claimants, the claimant no.2, that is, the son of the deceased- Sh.Ankur Malhotra was aged around 29 years and was an earning member. He submits that the daughter of the deceased, Ms.Kanika Malhotra, was also 25 years old and, therefore, both of them cannot be considered as dependents on the deceased. He submits that, therefore, there being only one dependent, that is, the wife of the deceased, a deduction of half of the income should have been made from the income of the deceased towards his personal expenses.

26. I do not find any merit in the said challenge of the appellant to the Impugned Award.

27. Though the daughter of the deceased was aged about 25 years, it has not come on record whether she was married or not. No such

suggestion was also put by the learned counsel for the appellant to the witness in the cross-examination. The learned counsel for the respondents submits that, in fact, the daughter was unmarried at the time of the accident.

28. The learned Tribunal has, in my opinion, also rightly held that with the meager earning of Rs.15,000/- per month, it cannot be said that the son of the deceased, that is, Sh. Ankur Malhotra was not financially dependent on the deceased.

29. Even if one is to exclude the son of the deceased as a dependent, still it would be two persons dependent on the deceased and, therefore, the deduction in terms of the judgment of the Supreme Court in ***Sarla Verma (smt) & Anr. v. Delhi Transport Corporation & Anr.*** (2009) 6 SCC 121 towards personal expenses would be 1/3rd, as has been done by the learned Tribunal.

30. The challenge of the appellant on this account is therefore, rejected.

Challenge to the Multiplier:

31. The next challenge of the appellant to the Impugned Award is that the learned Tribunal has failed to appreciate that PW-2, Sh.Anil Kumar, Officer (Legal) in his statement had stated that the age of retirement in the employer company of the deceased is 58 years. He submits that the deceased was admittedly aged 57 years 10 months and 20 days on the date of the accident. The learned counsel for the appellant submits that, therefore, the multiplier that has to be applied should be on the pension, if at all, that would be received by the deceased post his retirement. He submits that in the present case, as there was no proof that the deceased would have earned any pension post his retirement, the multiplicand

should have been the minimum wages of a skilled worker as notified by the Government of NCT of Delhi, as was applicable on the date of the accident. In support, he places reliance on the judgment of the High Court of Madras in ***The Branch Manager, Oriental Insurance Co. Ltd. v. Valliamamal & Ors.***, 2010 (1) TN MAC 415.

32. On the other hand, the learned counsel for the respondents submits that as the deceased was still working, his salary has been rightly taken into account by the learned Tribunal for determining the loss of dependency. He submits that the deceased would have carried on working but for the unfortunate death in the accident and, therefore, there is no reason for reducing the compensation on this account.

33. I have considered the submissions made by the learned counsels for the parties.

34. As held in ***Sarla Verma*** (supra), the loss of dependency is to be determined *inter alia* on the basis of the income of the deceased. In ***National Insurance Company Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, the same was further explained to state that the established income means the income minus the tax components. The deceased was, as on the date of the accident, working with the Indian Express Pvt. Ltd. and was drawing a salary as has been duly proved. A stray statement by the witness that the general age of retirement of the employees in the Employer Company is 58 years, in my opinion, cannot be used to reduce the compensation payable to the claimants based on the salary that the deceased was drawing as on the date of the accident.

35. Even otherwise, there is no reason to believe that the deceased would

not have worked and earned a livelihood beyond the age of retirement, if not for the same employer, in some other establishment.

36. In ***Sarla Verma,*** as clarified in the later judgment in ***Pranay Sethi*** (supra), for the age bracket of 55 to 60 years, a multiplier of 9 is to be applied uniformly. In ***N.Jayasree & Ors. v. Cholamandalam MS General Insurance Company Ltd.,*** 2021 SCC OnLine SC 967, the Supreme Court has disapproved of the High Court adopting spilt multipliers for pre and post retirement period. The Supreme Court has held and observed as under:

> *"**28**. From the above discussion, it is clear that at the time of calculation of the income, the Court has to consider the actual income of the deceased and addition should be made to take into account future prospects. Further, while the evidence in a given case may indicate a different percentage of increase, standardization of the addition for future prospects should be made to avoid different yardsticks being applied or different methods of calculation being adopted. In Pranay Sethi, the Constitution Bench has directed addition of 15% of the salary in case the deceased was between the age of 50 to 60 years as a thumb rule, where a deceased had a permanent job. In view of the above, the High Court was not justified in applying spilt multiplier in the instant case."*

37. In view of the above, the judgment of the Supreme Court in ***N.Jayasree*** (supra), the judgment of the High Court of Madras in ***Valliammal*** (supra) cannot be considered to be good law.

38. I, therefore, find no merit in the above challenge of the appellant on this account. The same is, accordingly, rejected.

Challenge to the Rate of Interest:

39. The next challenge of the appellant to the Impugned Award is on the

rate of interest being awarded at 9% per annum in favour of the claimants.

40. The learned counsel for the appellant submits that in the years 2016-17, the prevailing rate of interest was between 6.50 per cent and 6.90 per cent. He submits that, therefore, the rate of interest awarded by the learned Tribunal in the Impugned Award deserves to be reduced.

41. I do not find any merit in the said challenge.

42. Though the rate of interest should generally be commensurate with the prevailing rate of interest as notified by the Reserve Bank of India, some amount of discretion has to be vested with the learned Tribunal in awarding the same.

43. In the present case, the accident had taken place on 28.01.2016. The initial Award was passed on 30.08.2017, which was later modified by the order dated 05.11.2018. In my opinion, the award of interest at the rate of 9% per annum cannot therefore, be said to be so unreasonable so as to warrant an interference from this Court.

44. I, therefore, do not find any merit in the above challenge of the appellant to the Impugned Award. The same is, accordingly, rejected.

Conclusion:

45. I find no merit in the present appeal. The same is, accordingly, dismissed. The pending application shall stand disposed of.

46. There shall be no order as to costs.

47. The awarded amount along with interest accrued thereon already stands deposited by the appellant with the learned Tribunal, in terms of the order dated 11.02.2019 of this Court. The same shall be released in favour of the claimants, that is, the respondent nos.1 to 3 in terms of the

schedule of disbursal stipulated by the learned Tribunal in the Impugned Award.

48. The statutory amount deposited by the appellant shall be released along with interest accrued thereon, in favour of the appellant.

NAVIN CHAWLA, J

OCTOBER 31, 2023
RN/AS