

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

+ **MAC. A. No.15 OF 2006**

% Reserved on: 5th August, 2011
Pronounced on: 9th September, 2011

RAJASTHAN STATE ROAD
TRANSPORT CORPORATION

. . . APPELLANT

Through: Ms. Ritu Bharadwaj,
Advocate.

VERSUS

USHA RANI

. . .RESPONDENT

Through: Nemo.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Arguments in this appeal were heard on 5th August, 2011. Only counsel for the appellant was present, who made her submissions. As nobody appeared on behalf of the respondent, while reserving the judgment, one week time was granted to both the parties to file their written submissions. Though this Court has waited for almost one month, no written submission on behalf of the respondent has been filed. However, written

- submission on behalf of the appellant has been filed. Thus, without waiting any further, it is deemed proper to proceed with the judgment on the basis of written and oral submissions of the appellant, pleadings in the appeal and trial court record.
2. The respondent No.1, Usha Rani is the mother of, Vipin Kumar (hereinafter referred to as 'the deceased'), who died in a road accident on 5th December, 2000. The deceased was coming from Balaji to Delhi on the fateful day in TATA Sumo, bearing No.DLP5C-3316. This TATA Sumo met with an accident when it was hit by a bus bearing No. RA-05-P-0590, which belongs to the appellant, viz., Rajasthan State Transport Corporation. In this accident, the deceased received serious injury. Even other persons sitting in Sumo received injuries on their persons. All of them were moved to a hospital. However, the deceased died as a result of injuries suffered by him.
 3. Mother of the deceased, i.e., respondent No.1 filed claim for compensation of ₹10 lacs along with interest at bank rates till the realization of the amount in the Motor Accident Claims Tribunal (hereinafter referred to as 'MACT'). As per the averments in the said petition, at about 9.45 a.m. when Tata Sumo reached at NH-11 near Sehta Mahuhaya, a bus bearing No.RA-05-P-0590 being driven by the respondent No.3, Rajvir Singh at a very high speed and in a rash and negligent manner

came from behind and forcibly hit TATA Sumo of the deceased turned turtle. All the persons sitting in TATA Suma received injuries on their persons. All of them were moved to Mahuya Hospital Rajasthan. The deceased received serious injuries and he was referred to Savai Man Singh Hospital, Jaipur where he died.

4. The allegation of the respondent No.1 was that accident occurred due to rash and negligent driving of bus by Rajvir Singh, who was driving the said bus. The appellant was impleaded as the respondent No.2. Under the control and supervision of respondent No.2., the bus was driven by Rajvir Singh. The Oriental Insurance Company was impleaded as the respondent No.3. However, the name of Oriental Insurance Company was dated on 3rd June, 2003 from array of respondents, as no claim was received against this Insurance company. The appellant herein contested the petition stating that the driver of the bus was holding a valid driving license and he was driving the bus with proper care and caution. As per the defence, the accident took place due to rash and negligent driving by the deceased himself, who was driving the TATA Sumo without caring for the traffic rules. He applied unwarranted brakes without giving any signals to the vehicle that was following. Thus, the entire negligence was attributed

to the deceased and on this ground, the appellant denied any liability. Rajvir Singh admitted the written submission filed by the appellant. Based on the pleadings of the parties, the following issues were raised:

- “1. Whether Sh. Vipin Kumar died in an accident involving vehicle No.RJ-05-P-0590 caused due to rash and negligent driving on the part of respondent No.1?
 2. Whether the accident was caused due to the contributed negligence on the part of driver of TATA Sumo No. DL5C-B-3316 and respondent No.1?
 3. Whether the petitioner is entitled to claim compensation? If so, to what extent and from which of the respondents?
 4. Relief.”
5. In order to prove her case, the claimant, Usha Rani examined two eyewitnesses, viz., Sunil Kumar (PW-2), who was also travelling in the said TATA Sumo at the time of accident as well as Sachin Kumar (PW-3), who was the brother of the deceased and was also travelling in TATA Sumo. Both of them deposed to the fact that the deceased was travelling in the vehicle with due care and caution following traffic rules. At about 9.45 AM when they reached at NH-11 near Sehtadiya Mahuya, the offending bus being driven by Rajvir Singh came from behind at a very high speed and in a rash and negligent manner and forcibly hit the TATA Sumo, due to which TATA Sumo turned turtle. All the passengers sitting in TAT Sumo received injuries

on their persons. They were removed to Mohuya Hospital, Rajasthan where they were medically examined. The deceased received serious injuries and he was referred to Savai Man Singh Hospital, Jaipur where he died. A criminal case was registered in respect of offences under Section 279, 337, 304-A, Indian Penal Code at Police Station, Mohuya vide F.I.R. No.360/2000. He further deposed that the accident took place due to rash and negligent driving of Rajasthan bus No.RJ-P-0590.

6. In rebuttal, the driver of the bus Rajvir Singh appeared as RW-1. His version was that he was going from Jaipur to Bharatpur. When he reached near Mahuya near Rohkaria village, one TATA Sumo DL-5C-3316 suddenly over took his bus and suddenly applied brakes. The bus was full of passengers. He also applied brakes. Due to sudden brakes applied by TATA Sumo, he could not control his bus and it struck against TATA Sumo. The TATA Sumo went on the wrong side and it struck against a tree. The driver of the TATA Sumo was under the influence of liquor at that time. He was not driving the TATA Sumo carefully. The accident occurred due to rash and negligent driving of TATA Sumo. He had given hand signal to the driver of TATA Sumo. Police did not lodge any report. In cross-examination by the learned counsel for the claimant, RW-1

denied that TATA Sumo was going ahead of his bus. The driver of TATA Sumo told him and other people present on the spot that he was under the influence of liquor, so he applied brakes suddenly. He took the passengers of TATA Sumo in that TATA Sumo to the hospital. He further admitted that the police case was registered against him.

7. Learned MACT, after analyzing the aforesaid evidence, recorded its finding that the testimony of the RW-1 was not trustworthy, as it was contrary to the site plan, which was prepared at the time of accident and it showed that the bus in question was behind TATA Sumo and hit TATA Sumo from behind. After hitting, TATA Sumo went in front of Theka Agnreji Sharab, situated on the left side of road, turned turtle after accident and went on his right side of the road at point 'C'. It did not show that TATA Sumo struck against a tree after it was hit by the bus in question from behind. RW-1 had deposed that the deceased was in drunken condition at the time of accident, but no such plea recorded in written submission. On the contrary, the testimony of PW-2 & RW3 remained unchanged which was corroborated by the certified copy of F.I.R. This F.I.R. was registered against the driver of the bus on the complaint lodged by Monoj Kumar, who was travelling in the same TATA Sumo. Chargesheet (Ex. P-3) was

submitted against R-! after investigation of the case by S.H.O., P.S. Mahuya, District – Dosa, Rajasthan, the postmortem report (Ex. P. – 2) further supported the case of the claimant as in the said report, cause of death was mentioned as “shock brought about as a result of antemortem injuries sufficient to cause death in the ordinary course of nature’.

8. On this basis, issue Nos. 1 & 2 were decided in favour of the claimant and against the driver, Rajveer Singh.
9. Under issue No.3, the quantum of compensation was discussed by the learned MACT. The claimant had appeared as PW-1 and deposed that her son was running business under the name and style of M/s. Styale Gift Palace and was earning more than ₹4,000/- per month. He used to give her ₹4,000/- per month for household expenses and was maintaining the family. However, no proof of business or income was produced by the claimant. In the absence of this record, the MACT took into consideration Minimum Wages rates as applicable in Delhi to an unskilled worker, which on the relevant date, was ₹2,524/- per month. On this basis, yearly income was worked out at ₹30,288/-. The MACT took future prospects into consideration and added 50% to the aforesaid thereby treating the income of the deceased at ₹3786/- per month or ₹45,432/- per annum. One third, out of this, was deducted towards his personal

expenses and remaining amount of ₹30,288 was treated as annual loss of income caused to the claimant. The deceased was 22 years of age at the time of accident. Learned MACT applied multiplier of 17 and calculated compensation at ₹5,14,896/- (₹30,288 x 17). Another sum of ₹20,000/- was added to its award, on account of suffering mental pain, agony, love and affection. ₹2,000/- was given as funeral expenses and ₹2,500/- towards loss of estate.

10. Thus, total amount awarded to the claimant was ₹5,39,396/- along with interest @ 7% from the date of filing of petition till realization.
11. Since the finding of the MACT was that the accident took place on account of rash and negligent driving of the offending vehicle driven by Rajveer Singh, it is held that both the appellant and Rajveer Singh are jointly and severally liable to pay the compensation to the claimant. Out of the awarded amount, 30% along with proportionate interest was directed to be released to the petitioner and remaining amount was to be kept in the F.D.R. for a period of five years in her name in a bank of her choice.
12. This appeal is preferred against the aforesaid award dated 27th October, 2004 of the learned MACT. In this appeal, orders were passed on 1st September, 2006 directing the appellant to

deposit 50% of the awarded amount within eight weeks along with interest amount in this Court and subject to the said deposit, operation of the impugned award was stayed. The claimant (who is impleaded as respondent No.1 in this appeal) could not be served in the ordinary course. Application for substituted service was filed by the appellant, which was allowed on 20th December, 2007 directing the respondent No.1 to be served by publication in 'Statesman' (Delhi Edition). The citation was duly published, still there was no appearance on behalf of the claimant, respondent No.1. In these circumstances, this appeal was admitted on 28th May, 2008. Trial Court Record was summoned. The matter was also referred to the Continuous Lok Adalat. The said Lok Adalat issued notice to the respondents. This time, before Lok Adalat, respondent No.1 was appeared through Mr. Yashpal, Advocate. However, the matter could not be settled in the Lok Adalat and therefore, it was directed to be listed on its turn in the Regular List. This is how the matter was heard on 5th August, 2011, as pointed out in the beginning.

13. It may be stated at the outset that the appellant has not disputed the findings arrived at by the learned MACT on issue Nos.1 & 2 except to a limited extent noted at the appropriate stage. The entire thrust of the arguments of the appellant was

only on the quantum proceedings awarded by the MACT. It was argued that Multiplier 17 is wrongly applied by the MACT. The MACT has failed to appreciate that the claim of the claimant before it, was under Sections 140 and 166 of the Motor Accident Claim Act (hereinafter referred to as 'the Act') whereas using the formula provided in Schedule - II is in those cases when the claim petition is filed under Section 163A of the Act and not in the other cases. It was further submitted by the learned counsel for the appellant that the age of the deceased was wrongly stated as 22 years. In fact, he was 30 years of age and therefore, Multiplier of 15 was applicable instead of Multiplier 17. It was also argued that the MACT ought to have appreciated that the deceased was earning ₹4,000/- per month and out of this earning, he might be paying the rent for shop and other incidental expenditures. Therefore, the MACT committed an error in holding that he was paying ₹3,500/- to his mother. According to the appellant, since the MACT itself stated that the maximum income of the deceased was ₹30,288 per annum after deducting 1/3rd thereof, the contribution of the deceased to the claimant should have been ₹20,000/- per annum by applying Multiplier of 15 thereupon, the compensation should have been worked at ₹3 lacs.

14. Learned counsel had also taken a faint plea that the MACT failed to appreciate that the deceased was not a professional driver and was ferrying passengers in TATA Sumo by someone else. Further, the claim of the claimant was not supported by any independent witness. It was argued that it was a case of contributory negligence.
15. At the end, it was submitted that liability, if any, was that of Insurance company which had insured TATA Sumo, as on the part of the deceased, but the said Insurance company was not impleaded as respondent by the claimant and therefore, claim of the claimant should have been rejected on this ground.
16. I do not find any merit in any of these submissions. No such case that the deceased was driving as a professional driver and ferrying passenger in TAT Sumo, was set up by the appellant in the Court below, it is not permissible for the appellant to set up a totally new case more particularly when in support of such case, no evidence is laid. Further, it is misconceived on the part of the appellant to allege that independent witness was not produced. No doubt, brother of the deceased appeared as PW-3. However, he was also travelling in the same TATA Sumo along with the deceased and therefore, he was an eye-witness. Merely because he happened to be a brother of the deceased, would not mean that he cannot be a competent

witness. The appellant alleges that the appellant has not been able to show that his testimony is not trustworthy. It is also forgotten by the appellant that another person, viz., Shri Sunil Kumar had appeared as PW-1, who was also an eye-witness and not related to the deceased.

17. Another question arises as to whether there was any contributory negligence on the part of the deceased. Again, this is a ground which is taken for the first time in this appeal. When this argument is taken, it implies that the appellant accepts that the bus driver was negligent and at the same time, it is claimed that the deceased who was driving TATA Sumo was also negligent. However, in the Court below, the appellant was harping that only the deceased was negligent and insofar as the bus driver is concerned, he was driving vehicle with due care and caution. This plea of the appellant has not been accepted, and rightly so. When it is found that the accident took place squarely and exclusively due to negligence of the bus driver, it does not behove the appellant now to plead the case of contributory negligence which appears to be an argument in desperation.

18. I do not find any infirmity in the finding of the MACT insofar as issue Nos. 1 & 2 are concerned, more particularly when the learned counsel for the appellant has not even questioned the

reasons given by the MACT in support of its findings based not only on the testimony of PW-2 and PW-3, but also on the basis of documentary evidence in the form of site plan, F.I.R., Challan submitted by the S.H.O. Since accident took place due to negligence of the bus driver, who was driving under the supervision and control of the appellant, the MACT has rightly fastened the liability on the appellant as well as bus driver. Question of impleading the insurer of the TATA Sumo, in these circumstances, would not arise. With this, we advert to the quantum of compensation.

19. First aspect which needs discussion relates to the age of the deceased. The contention of the appellant that the deceased was 30 years of age is based on the MLC report (Ex. P.-12) where the age of the deceased is mentioned as 30 years. However, the claimant specifically deposed that the deceased was 22 years of age at the time of accident. Likewise, in the death certificate, the age of the deceased is mentioned as 22 years. In the postmortem report (Ex. P.-2), the age of the deceased is, likewise, shown as 22 years. In these circumstances, the MACT has rightly taken age of deceased as 22 years. It appears that in M.L.C. inadvertent mistake occurred in mentioning the age of the deceased as 30 years.

20. Insofar as income of the deceased is concerned, the argument of the appellant that annual income of the deceased is taken as ₹30,288/- and adjusting $\frac{1}{3}^{\text{rd}}$ thereof the contribution of the claimant would be ₹20,000/- does not cut the ice. What is glossed over in the process is that the MACT has taken into consideration future prospects and increased the annual income by 50% on that basis. This aspect is not questioned, but conveniently skipped over. No argument is advanced as to why this future prospect should not have been taken into consideration. In the absence of any argument or challenge to the approach of the MACT taking into consideration future prospect, the said part of the MACT's order is not to be interfered with. The MACT, thus, rightly held that the annual income of the deceased was to be taken as ₹45,432/- and after adjusting $\frac{1}{3}^{\text{rd}}$ thereof, the contribution of the deceased to the claimant was ₹30,288/- per annum.
21. With this, I come to the Multiplier. As per the appellant Multiplier of 15 is to be taken. However, this submission is on the supposition that the deceased was 30 years of age. When the age of the deceased is found to be 22 years, as per the decision of the Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation**, 2009 ACJ 1298, Multiplier of 16 is to be adopted. To this extent, order of the MACT

applying Multiplier of 17 needs interference. On that basis, compensation payable to the claimants would be 30,288 x 16, which comes to a total amount of ₹4,84,608/-.

22. The order of the Tribunal is modified to this extent. Therefore, this appeal is partly allowed as aforesaid. However, as nobody has appeared on behalf of the respondent, no cost is awarded against the appellant. The appellant had deposited 50% amount along with interest which shall be released in favour of the respondent No.1/claimant. Balance amount shall be paid by the appellant to the claimant/respondent No.1 within four weeks, failing which it will carry interest @ 7% from the date of this award.

(A.K. SIKRI)
JUDGE

SEPTEMBER 09, 2011

pmc