

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

Date of decision: 16th May, 2012

+ **MAC.APP. 353/2010**

MAMTA Appellant
Through Mr. S.P. Gairola, Advocate
versus

SATPAL & ORS Respondents
Through Ms. Mansi Gupta, Advocate for
the Respondent MCD

+ **MAC.APP. 607/2010**

MUNICIPAL CORPORATION OF DELHI Appellant
Through Ms. Manjira Das Gupta,
Advocate
versus

MAMTA Respondent
Through Mr. S.P. Gairola, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM. APPL No.16457/2010 (delay) in MAC APP. No.607/2010

There is a delay of 64 days in filing the Appeal. The ground set up is that the Appellant could not obtain the copy of the award for filing the Appeal. For the reasons stated in the application, the delay is condoned.

The application stands disposed of.

MAC.APP. 353/2010 and MAC.APP. 607/2010

1. These two Appeals (MAC APP.353/2010 and MAC APP.607/2010) arise out of a judgment dated 25.02.2010 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) in MACT Case No.399/2007 whereby while awarding a compensation of ₹94,500/- including an interim compensation of ₹50,000/-, the Second Respondent MCD was directed to pay the monthly compensation @ ₹1750/- till the death of the Appellant or her re-marriage, whichever is earlier.
2. Both the parties are aggrieved by the judgment. Appellant Mamta's (hereinafter referred to as the Claimant) plea is that the compensation should have been granted on lumpsum basis with addition towards future prospects whereas MCD's (the Second Respondent) plea is that the Claimant failed to establish negligence on the part of the driver Satpal (the First Respondent) of the offending vehicle i.e. truck No.DL-IG-7472. Thus, the Second Respondent was not liable to pay any compensation at all. It is stated that in any case, the deceased was not wearing a helmet at the time of the accident, thus, he should be held to have contributed to the accident.
3. Thus, the Court has to deal with the issue of negligence as also the award of just compensation.

NEGLIGENCE:-

4. In the Claim Petition, the Claimants averred that on 13.04.2007 at about 9:30 A.M. the deceased was riding on the pillion seat of motor cycle No.DL-8S-AF-9239 and the offending truck No.DL-1G-7472 driven by its driver Satpal (under the employment of MCD) in a very rash and negligent manner and in violation of the traffic rules, hit the deceased's motorcycle. These averments were denied by the driver Satpal. The MCD failed to file the written statement and its defence was struck off.
5. During evidence, the Claimant examined Ajit Kumar who deposed about the manner of the accident. He deposed that on 13.04.2007 at 9:30 AM while riding a motorcycle driven by him, they reached at Shah Alam Bandh Road before Jahangirpuri *Mor*(turn), when the truck No.DL-1G-7472 driven by its driver Satpal in a rash and negligent manner struck against the motorcycle with great force. During cross-examination, the suggestion was given to this witness that he was trying to overtake the truck and in the meanwhile a TSR came from the opposite direction and the motor cycle collided against the TSR. Satpal (the first Respondent), who was driver of the offending truck did not depose about the hitting of the two wheeler by the TSR in his Affidavit Ex.R1W1. In view of the contradictory stand taken and any suggestion not being given to PW-2 in his testimony on this aspect, it would be difficult to rely on the driver's testimony. Moreover, the

number of TSR has not been mentioned in the suggestion given to PW-2. PW-2's testimony is supported by registration of FIR No.212/2007 in Police Station Adarsh Nagar and filing of a criminal case against the First Respondent.

6. It is well settled that in a Petition under Section 166 of the Motor Vehicles Act, negligence is required to be proved on the touchstone of preponderance of probability which has been done in this case. (*Bimla Devi and Ors. v. Himachal Road Transport Corporation and Ors.*, (2009) 13 SC 530, and *Parmeshwari Devi v. Amir Chand and Ors.*, (2011) 11 SCC 635).
7. As far as the plea of contributory negligence on account of the deceased not wearing a helmet is concerned, even if it is assumed that the deceased was not wearing a helmet, he cannot be said to have contributed to the accident. Reference is made to a Division Bench judgment of M.P. High Court in *Miss. Vidya Soni & Anr. v. Pushpesh Dwivedi & Ors.*, AIR 2008 MP 319 wherein it was held that if a motorcyclist did not wear a helmet at the time of the accident, he cannot be said to have contributed to the accident.
8. In the circumstances, the deceased cannot be held guilty of contributory negligence.

QUANTUM OF COMPENSATION:-

9. In this case, the Claims Tribunal awarded a compensation to be paid on monthly basis on the basis of an earlier judgment of this Court in *United India Insurance Company Limited v. Reeta Devi*, decided on 04.11.2008 by V.B. Gupta, J.
10. The view taken in *Reeta Devi (supra)* was disapproved by the Supreme Court in Special Leave Petition (Civil) No.15796/2009 on dated 22.02.2010 whereby the order of granting monthly compensation was set aside and it was held that lumpsum compensation should be awarded in the motor accident cases.
11. The Claimant had claimed the deceased's income to be ₹5,000/- per month by doing a private service in United Pest Control. No proof of income or employment with United Pest Control was proved on record. Rather, a suggestion was given to the Claimant that the certificate obtained from United Pest Control was forged and fabricated. In the circumstances, the compensation can be awarded only on the basis of minimum wages of an unskilled worker on the date of the accident. The same were ₹3470/- per month. In the absence of any evidence as to the future prospects, the Claimant was not entitled to any addition. Since the Appellant was the only dependent on the deceased, there would be deduction of one-half towards the personal and living expenses of the deceased. The loss of dependency thus comes to ₹3,33,120/- ($3470/- \times \frac{1}{2} \times 12 \times 16$).
12. I would further make an award of ₹25,000/- towards loss of

love and affection and ₹10,000/- each towards loss of consortium, loss to estate and funeral expenses.

13. The overall compensation comes to ₹3,88,120/- (including the interim compensation of ₹50,000/- already paid).
14. The compensation awarded shall carry interest @ 7.5% per annum from the date of filing of the petition till the date its deposit in the name of the Appellant in UCO Bank, Delhi High Court Branch, New Delhi.
15. The Second Respondent MCD is directed to deposit the enhanced compensation along with interest in the abovesaid Bank within six weeks.
16. In view of the above discussion MAC APP.353/2010 is allowed and MAC APP.607/2010 filed by MCD is dismissed.
17. The statutory amount of ₹25,000/- shall be refunded to the MCD after depositing the compensation awarded by this Court.

(G.P. MITTAL)
JUDGE

MAY 16, 2012

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