

Mrs. R. D. Reddy, Advocate for appellant
Mr. Shrikant S. Shinde, Advocate for respondents 1 to 8

CORAM : V. K. JADHAV, J.

DATE : 28th March, 2016

PER COURT :

1. Heard finally by consent of the parties at the stage of admission.

2. Being aggrieved by the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Latur dated 13.06.2008 in MACP No. 247/2005, original respondent No.1/MSRTC has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows:

i. On 17.07.2005, deceased Mokinda had gone to his sister's village alongwith one Manik Rathod on his motorcycle. On the same day, they started their return journey on the same motorcycle. At about 3.00 p.m., within limits of village Kendrewadi, the deceased happened to meet his relatives by name Ramrao Pawar and his wife. Thus, deceased Mokinda parked his motorcycle by the side of the road and started chitchatting with them. At that time, one ST Bus came

from Ambajogai side and gave dash to the stationary motorcycle. In consequence of which, deceased Mokinda had sustained injuries and died on the spot.

ii. The claimants/legal representatives of deceased Mokinda preferred claim petition bearing MACP NO.247/2005 before the Motor Accident Claims Tribunal, Latur for grant of compensation under various heads. The Tribunal, by the impugned judgment and award dated 13.06.2008, partly allowed the claim petition and thereby held that the claimants are entitled for compensation of Rs.6,05,000/- together with future interest @ 7.5% per annum from the date of petition till realization of the amount of compensation and the original opponent Nos. 1 and 2 (appellant MSRTC and Driver) are jointly and severally held liable to pay the amount of compensation. Being aggrieved by the same, appellant MSRTC/original opponent No.1 has preferred this appeal.

4. Learned counsel appearing for the appellant MSRTC submits that the respondents claimants have failed to prove the involvement of the ST Bus bearing registration No. MH-20-D-3824 in the accident. The learned counsel submits that the claimants have not

examined any eye witness to the accident. The learned counsel further submits that the said ST Bus was not found on the spot nor it was seized from the spot by the police. The learned counsel submits that the MSRTC has examined the driver of the ST Bus before the Tribunal and there is nothing in his cross examination to disbelieve him. The learned counsel submits that even then, the Tribunal held that the ST Bus bearing registration No. MH-20-D-3824 was involved in the accident and the driver of the ST Bus was responsible for the said accident. The learned counsel further submits that the Tribunal has awarded exorbitant amount of compensation even though there is no proof of income of the deceased placed on record before the Tribunal.

5. The learned counsel for the respondents/ claimants submits that in the seizure panchanama of the ST Bus, the driver of the ST Bus has given admission about involvement of the ST Bus in the accident and since the said seizure panchanama is admitted by the appellant MSRTC before the Tribunal, involvement of the ST Bus in the accident is proved beyond doubt. The learned counsel further submits that the Tribunal has also observed about the red colour,

which is the colour of paint used on the ST Bus, appearing on the motorcycle involved in the accident.

6. The learned counsel for the respondents claimants further submits that even though the claimants have proved the agricultural income as well as income from milk business of the deceased Mokinda, the Tribunal has considered income of deceased Mokinda at Rs.4,000/- per month only and awarded just and reasonable compensation by granting lump-sum amount for loss of supervision so far as agricultural income is concerned. The learned counsel submits that there is no substance in the appeal and the appeal is thus liable to be dismissed.

7. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

Points	Findings
1) Whether the death of Mokinda was : caused out of the use of S.T. Bus No.MH-20-D-3824?	In the affirmative.
2) Whether driver of ST Bus No. MH-20-D- 3824 was rash and negligent in driving the bus at the time of accident ?	In the affirmative

- 3) Whether the Tribunal has correctly : In the
assessed the compensation ? affirmative
- 4) Whether the impugned judgment and : In the
award calls for interference? negative
- 5) What order ? : As per final
order.

8. The accident had taken place on 17.07.2005 at 3.00 p.m. On the same day, complaint came to be lodged with the concerned police station against unknown driver of the ST Bus. It appears that on the same day, it was informed to the police that there was an involvement of the ST Bus in the said accident. On careful perusal of the contents of seizure panchanama Exh.69, it appears that the said seizure panchanama was drawn on 19.07.2005 and accordingly, the police seized ST Bus bearing registration No.MH-20-D-3824. The said seizer panchanama, as it appears from the record, is admitted by the Corporation before the Tribunal. In the said seizure panchanama Exh.69, original respondent No.2- ST Bus driver Yadav Hirway has admitted the involvement of the ST Bus in the accident. Even the ST Bus driver has also deposed that on that day, he was driving the said ST Bus on

Dharur to Ambajogai route and at about 2.45 p.m. he left Ambajogai for Dharur. He further deposed that ST Buss which was driven by him when reached within the limits of village Kendrewadi, he noticed three persons in inured condition with a motorcycle lying nearby road. Even in the spot panchanama Exh.41, it is specifically mentioned that red colour of the ST Bus appearing on the part of the motorcycle due to dash given by the ST Bus to the stationary motorcycle.

9. Thus, there is sufficient evidence on record to show involvement of the ST Bus bearing registration No. MH-20-D-3824 in the accident. Since the motorcycle was stationary at the time of accident and deceased Mokinda alongwith his companion was chitchatting with some persons by the side of the road, needless to say that the driver of the ST Bus was rash and negligent in driving the vehicle at the time of accident. Furthermore, the driver who is serving in MSRTC has denied the accident for no reasons. It was expected from him to carry the injured persons in his bus to the Hospital. I do not find any fault in the finding recorded by the Tribunal and accordingly answered point Nos. 1 and 2 in the affirmative.

10. So far as quantum of compensation is concerned, the Tribunal has considered the evidence of PW-2 with regard to income of the deceased Mokinda. The Tribunal has declined to rely on the evidence of PW-3 and accordingly held that the deceased was not working as labour contractor and earning substantive amount to the tune of Rs.1,76,000/- per year as alleged. Even the Tribunal has also not accepted the income of deceased Mokinda at Rs. One lakh per year from the agricultural land. However, it appears that the Tribunal has considered the income of the deceased by way of supply of Milk. The learned Chairman of the Tribunal has considered the documents filed by the claimants with reference to collection and supply of Milk to Jaybhavani Cooperative Society for the years 2004-2005. Considering that, as an average 1000 liters of milk was supplied by the deceased to the said Society from January, 2004 onwards and even considering the supply of reduced quantity of milk in summer season, the Tribunal has considered the supply of milk as an average 500 to 700 letters per month and consequently, the Tribunal has assessed income of deceased Mokinda at Rs.4000/- per month by deducting expenses for maintenance of cattle and

transport etc. Even though the Tribunal has arrived at conclusion that the income of deceased Mokinda was Rs.8000/- per month from his milk business, considered the net profit from that business at Rs.4000/- per month by deducting maintenance of cattle and transport etc. Thus, after deducting 1/3rd amount for personal expenses of deceased, monthly income of deceased is considered Rs.3000/- per month which corresponds to Rs.36,000/- per annum.

11. So far as income from agricultural land is concerned, the Tribunal has considered that the corpus of the land remained as it is and accordingly awarded lumpsum Rs.50,000/- as loss of experienced supervision on account of untimely death of deceased Mokinda. It appears that the Tribunal has awarded just and reasonable compensation to the claimants. Accordingly I answered point No.3 in the affirmative.

12. In view of the above, I do not find any reason to interfere with the impugned judgment and award Accordingly I answered point No.4 in the negative and pass following order:

O R D E R

i. Appeal is hereby dismissed with costs.

ii. In response to the order passed by this Court, the appellant MSRTC has deposited certain amount before this Court. The respondents claimants are permitted to withdraw the same in terms of the apportionment made by the learned Tribunal.

(V. K. JADHAV, J.)

JPC