



2. Maharashtra State Road Transport Corporation ('MSRTC' for short) takes exception to the judgment and award dated 10<sup>th</sup> August 2023 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short) in MACP No.723 of 2018 granting compensation of Rs.16,33,000/- to the Claimants along with interest @ 7% per annum from the date of the Application till realization of the amount.

3. There is no dispute made by the parties with regard to the occurrence of accident on 28<sup>th</sup> April 2018 involving the bus of MSRTC and motor-cycle rode by the deceased himself. The spot of the accident is on a bridge. There is evidence on record to indicate that, the bridge is wide enough for passing two big vehicle simultaneously. The Claimants have not examined any eye witness to the accident and has placed reliance on the police paper which includes spot panchnama at Exhibit-17. On the other hand, MSRTC examined Conductor of the bus so also Investigator to claim that the accident has occurred due to negligence of the deceased. The learned Tribunal rejected the evidence led by the MSRTC and held that the accident has

occurred due to the sole negligence of the driver of the bus. On the point of income, the Tribunal has accepted the income of the deceased @ Rs.10,000/- per month and calculated the compensation.

4. The learned counsel appearing for MSRTC submits that, the Tribunal has committed error in not considering the spot panchnama, which demonstrate about the occurrence of the accident in the middle of the road. It is his submission that, having regard to the fact that, the accident can be said to have been occurred solely for the negligence on the part of the rider of the motor-cycle. It is his submission that, the Tribunal has also committed error in accepting the income of the deceased @ Rs.10,000/- when no evidence was led in this regard.

5. The learned counsel for the Claimant supported the impugned judgment and award to the extent of the negligence of the driver of the bus in the occurrence of the accident. He submits that, the Tribunal has recorded reasons in Paragraph Nos.10 to 18 of the judgment which according to him indicate that, the MSRTC has failed to prove the negligence of the

deceased in the causing of the accident. On the point of income he placed reliance on judgment of the Hon'ble Supreme Court in case of *Maheshwari Devi and Others v/s. Ramchandran & Ors*<sup>1</sup>. contending that the notional income of the deceased ought to have been taken @ Rs.15,000/- per month. He claimed that, in view of the judgment of the Hon'ble Supreme Court in the case of *Pappu Deo Yadav vs Naresh Kumar*<sup>2</sup> without filing cross-examination or Appeal against the impugned judgment and award, the Claimants can seek enhancement of the compensation.

6. With regard to the negligence, the Claimants have relied upon the police paper which includes the spot panchnama. Since, the reliance is placed on this documents, now it is not open for the Claimant or Tribunal not to place reliance on the spot panchnama at Exhibit-17.

7. Perusal of the spot panchnama indicates that, the accident has occurred in the middle of the road. Having regard to the width of the bus, it cannot be said that, the bus went to

---

1 2023 ACJ 1210

2 AIR 2020 SUPREME COURT 4424

the wrong side of the road and which has resulted in the occurrence of the accident. It has come on record that, the deceased was riding motor-cycle with bagged of flowers thereon. In the light of the said fact, coupled with the spot panchnama it can be said that the deceased has contributed in the occurrence of the accident. In the facts of the case, the negligence of the deceased is accepted to the extent of 40%.

8. Insofar as the income of the deceased considered by the Tribunal is concerned, the Hon'ble Supreme Court in case of *Maheshwari Devi (Supra)* has accepted the notional income @ Rs.15,000/- per month. Herein this case there is evidence on record to indicate that apart from taking education the deceased was working in the field. This Court finds no hesitation in accepting the income of the deceased @ Rs.15,000/-. However, as the future prospects are not considered, by inclusion thereof, part calculation of compensation is done. The calculation of compensation therefore is modified as under:-

| Particulars                                                    | Amount          |
|----------------------------------------------------------------|-----------------|
| Yearly Income Rs.15,000 x 12                                   | Rs.1,80,000.00  |
| Notional Income<br>(40% future Prospects)<br>Rs.1,80,000 + 40% | Rs.2,52,000.00  |
| ½ Personal Expenses                                            | Rs.1,26,000.00  |
| Compensation-Annual Income X 18 (As<br>per Sarla Varma)        | Rs.22,68,000.00 |
| Less : 40% Negligence                                          | Rs.13,60,000.00 |
| Funeral Expenses                                               | Rs.15,000.00    |
| Loss of Estate                                                 | Rs.15,000.00    |
| Consortium                                                     | Rs.80,000.00    |
| Total Compensation                                             | Rs.14,70,800.00 |

9. Since, the deceased has contributed to the extent of 40%, the 40% amount from the above calculations needs to be deducted. The Claimants therefore to be entitled to receive sum of Rs.14,81,800/-, along with interest @ 7.5% per annum.

10. In view of above, I pass following order :

**ORDER**

(i) The Appeal is allowed. The impugned judgment and award dated 10<sup>th</sup> August 2023 passed by Motor Accident Claims Tribunal,

Mumbai ('MACT' for short) in MACP No.723 of 2018 is modified.

(ii) The original Claimants are entitled for enhanced compensation of Rs.14,81,800/- @ 7.5% interest per annum from the date of filing Claim Petition till realization of the the amount.

(iii) In case of MSRTC having paid entire compensation as directed by Tribunal, it shall be open for Corporation to recover additional compensation paid in view of present order.

(iv) The Original Claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(v) The Claimant shall be entitled to recover additional Court Fees, if paid, as per Rules.

(vi) Record and Proceedings be sent back to the Tribunal.

11. All pending Applications are disposed of.

**(R.M. JOSHI, J.)**