

**SUPREME COURT OF INDIA**

Bangalore Metropolitan Transport

Vs.

Padma

C.A.No.1251 of 2009

(Dr. Arijit Pasayat and M.K.Sharma JJ)

25.02.2009

**JUDGEMENT**

**Dr.Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division bench of the Karnataka High Court dismissing the appeal filed under Section 173 of the *Motor Vehicles Act, 1988* (in short the `Act'). The Award made by the Motor Accidents Claims Tribunal, Bangalore (in short the `MACT') was questioned in the appeal. MACT by its Award dated 16.2.2002 had awarded a sum of Rs.11,04,032/- as compensation.

3. Background facts giving rise to the appeal as projected by the claimants for compensation are as follows:

On 14.12.1998 at 8.40 p.m. one T.S.C Shekar, the husband of claimant No.1 and father of claimant No.2 and son of claimant No. 3 were hit by the BMTC Bus bearing registration No.KA-01-F-300 driven in a rash and negligent manner by its driver while he was at the BMTC bus stand at Bangalore. Due to such hit, he fell down suffering injuries and succumbed to the same. Claim in this regard was laid under Section 166 of the Act seeking compensation on the plea that the deceased was a permanent employee in the State Government working as a Superintendent on a salary of Rs.12,239/- with other benefits of service and was aged 53 years. Due to his sudden demise, they lost dependency as also consortium to the first claimant and love and affection to the second and third claimants. The claim was resisted by the BMTC contending that the vehicle in question was not involved in the accident and also contending that the deceased was in an intoxicated state by consumption of alcohol as a consequence of which he imbalanced himself and fell without involvement of the bus. By such a fall, he suffered injuries and succumbed to the same. In short, the BMTC disputed involvement of the bus as a primary cause for the accident in question and thus sought to absolve itself of the noxious liability to pay compensation.

Considering the evidence adduced the MACT fixed the loss of dependency of Rs.10,77,032/- to which certain amounts were added towards conventional heads to arrive at the amount of Rs.11,04,032/-. The stand of the appellant was that the negligent act of the deceased himself had resulted in the accident and there was no negligence on the part of the driver of the bus. Before the High Court it was submitted that the deceased was in an intoxicated state and, therefore, because of his negligence the accident occurred. The High Court noticed that there was no averment in the written statement and no evidence was led in that regard. The High Court also did not find any substance in the plea that the multiplier of 12 as adopted was in the higher side. Accordingly, the appeal was dismissed.

4. In support of the appeal the stands taken before the High Court were reiterated.

5. No one appeared on behalf of respondent in spite of service of respondent.

6. So far as the stand that the accident occurred because the deceased was in an intoxicated state is concerned, the High Court has rightly noted that in the absence of any pleading and evidence to substantiate the stand there was no scope for accepting the plea.

7. Coming to the question as to whether the multiplier is on the higher side, it appears that the deceased was aged about 53 years on the date of accident. That being so the appropriate multiplier would be 8. On that basis loss of dependency comes to Rs.7,83,296/-. Since there is no challenge to the amount awarded under conventional heads, the amount awarded by the Tribunal and affirmed by the High Court i.e. Rs.70,000/- is maintained. The compensation is fixed at Rs.8,53,296/-. The amount shall carry interest at the rate of 6&percent; p.a. from the date of the claim. While issuing notice on 10th July, 2008 a sum of Rs.7,00,000/- was directed to be deposited which it is stated has been deposited. The balance amount in terms of the present judgment shall be deposited within six weeks to the concerned MACT. The mode of withdrawal include the amount to be kept in fixed deposit shall be fixed by the Tribunal.

8. The Appeal is disposed of.