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

Date of Decision: 17th March, 2016

+ **MAC.APP. 413/2007**

D.T.C.

..... Appellant

Through: Ms. Arati Mahajan Shedha & Mr.
Manoj Kumar, Advs.

versus

ANIL MEHTA

..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Anil Mehta, employed as a sorter in the Post and Telegraph Department in the Government of India, then earning ₹4180/- per month as salary, was traveling as a passenger in bus bearing registration no.DL-1P-9209 (the bus) of Delhi Transport Corporation (DTC) on 26.03.1997, fell off at about 07:45 AM in the area of Shahid Bhagat Singh Marg, Delhi and suffered injuries resulting in disability to the extent of 57% in relation to the right upper limb besides loss of sight to the extent of 30% in the right eye. He filed a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the

tribunal) on 23.12.1997 it being registered as suit no.519/2006. In the said claim petition, DTC (the appellant) was impleaded as the second respondent in addition to Raghubir Singh (the driver of the bus) as the first respondent. It was alleged that the accident had occurred when the driver of the bus had started it suddenly even while the claimant was in the process of alighting, thereby tripping him and he coming under the wheels of the bus amongst other injuries suffered his right arm and right foot being crushed.

2. During inquiry before the tribunal, the claimant Anil Mehta examined himself as PW1 on 26.03.2001. He also relied on the copies of the record of the corresponding criminal case which had been registered by the police. The driver of the bus appeared in evidence (as RW1) in addition to one Raj Kumar (an official of DTC) being examined (as RW2) to bring on record certain entries in the complaint book of the bus. While the petition was still being inquired into, Anil Mehta died on 18.06.2006. On this event occurring, his legal heirs, including his widow Sunita Mehta moved an application under Order 22 Rule-3 of the Code of Civil Procedure, 1908 (CPC) on 27.11.2006. The said application was allowed and the legal heirs were substituted and allowed to prosecute the claim case further.

3. It may be added at this stage that though it was initially claimed by the legal heirs that the death had occurred due to the injuries suffered in the accident, this plea was not pressed further and as noted in the proceedings recorded on 15.12.2006 of the tribunal, the case as originally presented only was prosecuted. This is further reiterated in para 10 of the judgment that was eventually passed by the tribunal on 08.03.2007 granting compensation in the total sum of ₹2,02,800/- with interest at the rate of nine percent (9%)

per annum which would include ₹1,72,800/- as compensation towards disability (assessed to the extent of 40%) besides ₹10,000/- each on account of medical expenses, special diet and conveyance.

4. Noticeably, the driver of the bus and DTC (appellant) had taken the stand that accident had occurred on account of negligence on the part of the claimant himself. The driver in his evidence, *inter-alia*, stated that he was still in the process of taking the bus to the nearest bus station. But while the bus was turning left, the claimant had suddenly come up from his seat and jumped out of the vehicle even while he (driver) had asked him to desist from doing so. The tribunal, however, rejected the evidence to such effect led by the appellant and its driver and accepted the version of the claimant that the accident had occurred since the driver of the bus had put the vehicle into motion suddenly even while he was in the process of alighting.

5. The appeal at hand was preferred questioning the correctness and propriety of the view taken by the tribunal on the question of negligence. It has been urged that accident had occurred wholly due to negligence of the claimant himself and, therefore, a claim under Section 166 of the MV Act could not have been maintained. In the alternative, DTC argues that both drivers deserve to be held equally responsible and, therefore, on account of contributory negligence, the liability should be reduced to fifty percent (50%). At the same time, the appellant submits that the award of ₹1,72,800/- on account of disability was wholly uncalled for, in as much as it was admitted by the claimant during inquiry that there had been no loss of employment or income.

6. No one has been appearing on behalf of the legal heirs of the claimant over at least two dates of hearing. The situation remains the same today. There is no reason why hearing on this old appeal should be deferred yet again.

7. Having heard the learned counsel for the appellant and having gone through the record of the tribunal, this court finds no merits in the contention of the appellant on the subject of negligence. The claimant had clearly proved through his evidence that he was in the process of getting down from the bus when it was suddenly put in motion by the driver. It does appear that during his cross-examination he conceded that the bus was taking a turn near Madras Hotel and that it was yet to reach the bus stand but then he added that he was flung off the bus when brakes were applied suddenly. The claim of the driver that the passenger had suddenly come up to start alighting from the bus even while it was in motion rather puts the onus squarely on him. It is common knowledge that in DTC buses, exit door is next to the seat of the driver. He, thus, had a vantage position from which he could see the passenger eager to get down. If it were so, there was no occasion for him to continue moving the bus. It was his responsibility to ensure the welfare of the passengers. The bus should have been stopped immediately and the passenger cautioned. Instead, as the evidence of claimant proved that the bus moved with a jerk tripping him out from the footboard.

8. In the facts and circumstances, no case for negligence to be fixed at the door of the passenger alone has been made out.

9. There is, however, merit in the contention that the loss of income on account of disability could not have been computed in the manner done. The claimant in his evidence had clearly admitted that he had continued to be in the same government job where he was employed at the time of the accident. Rather his income had increased over the period. The accident having occurred on 26.03.1997 and he having appeared on 26.03.2001 in evidence, there was no case made out for any loss in rise in the service or in emoluments earned. Since death is not claimed to be connected to the injuries suffered, the compensation cannot also be computed on the methods adopted for calculating loss of dependency.

10. But, it cannot be said that there was no loss of income on account of injuries suffered. In his evidence, the claimant stated that he had to remain on leave for absence for a period of seven months. He clarified that he had to undergo a second surgical procedure and remained hospitalized from 13.05.1997 to 02.06.1997. Clearly, for the post operative procedure also he would have had to remain absent from duty, in as much as he had suffered degloving injuries on the right arm and gangrene had developed in the injuries in the right foot besides loss of sight to the extent of 30% in the right eye.

11. In above view, the loss of leave account to the extent of seven months deserves to be compensated. Since his salary was ₹4180/- per month, loss on this account is calculated as $(4,180 \times 7)$ ₹29,260/-, rounded off to ₹30,000/-

12. It is noted that the claimant had submitted before the tribunal that he had increased expenditure towards treatment in the sum of ₹1,22,000/-. He, however, was unable to muster complete evidence on this score and the documents submitted showed total expenditure of ₹14,000/- only. Yet, the tribunal granted only ₹10,000/- toward medical treatment. Having regard to the serious injuries suffered, it is inconceivable that medical expenses would have been so low as ₹10,000/- only. In the considered view of this court, compensation under this head deserves to be increased to ₹30,000/-, which would be in addition to ₹10,000/- each under the heads of special diet and conveyance. Thus, the total compensation payable in the case is calculated as ₹80,000/-. It shall carry interest at the rate of nine percent (9%) per annum from the date of filing of the petition till realization as levied by the tribunal.

13. By order dated 18.07.2007, the operation of the impugned award was stayed. The said order was modified by the subsequent order dated 12.05.2009, whereby it was directed that after deposit of the entire awarded amount with interest, the registry shall release statutory amount of ₹25,000/- to the claimant. Reference to statutory amount of ₹25,000/- has to be read as the amount that would have been deposited by the appellant in terms of first proviso of Section 173(1) of the MV Act.

14. On 08.12.2009, it was noted by the learned single judge dealing with the matter at that stage that the appellant had deposited an amount of ₹3,64,490/- with the tribunal on 22.08.2009. It was directed that the tribunal shall release ₹64,490/- to Sunita Mehta, widow of deceased claimant and

retain the balance ₹3,00,000/- in her name for a period of three years with right to receive monthly interest therefrom.

15. The tribunal is directed to calculate the amount payable to the claimant (Sunita Mehta) in terms of the award modified as above, suitably adjusting the amount(s) already released to her including under Section 140 MV Act and pay the balance, if any, to her from the amount retained in fixed deposit in terms of the aforequoted earlier directions, refunding the balance with proportionate interest to the appellant.

16. Needless to add, the amount refundable to the appellant shall include the statutory deposit made by it under the first proviso of Section 173 (1) of the MV Act. The tribunal, after calculating the amount payable to the claimant and refunding the excess to the appellant (DTC) shall certify the due satisfaction of the award and advise the registry suitably in above regard.

17. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 17, 2016
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