$~R-54 & 55 *(common order)*

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

Decided on: 03rd August, 2017

\+ MAC.APP. 537/2008

SHASHI CHANDAN ..... Appellant

Through: Mr. O.P. Mannie, Advocate

versus

RAMESH CHANDER & ANR ..... Respondents

Through: Mr. (appearance not given), Adv.

\+ MAC.APP. 428/2008

M.C.D. ..... Appellant

Through: Mr. (appearance not given), Adv.

versus

SHASHI CHANDAN & ANR. ..... Respondents

Through: Mr. O.P. Mannie, Advocate

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

JUDGMENT (ORAL)

1. Shashi Chandan, (appellant in MAC APP.537/2008) was driving motor vehicle described as Mahindra Champion bearing registration No.DL-1LF-7200 (the tempo) on 06.03.2007 with one

Devi Lal, helper, sitting next to him. When the tempo had reached Pusa Road near Pillar No.85 in front of petrol pump, Karol Bagh at about 4:30 p.m. there was a collision involving truck, bearing registration No.DL-1GB-3901 (the truck), of Municipal Corporation of Delhi (MCD) (appellant in MAC APP.428/2008), it being driven by its employee Ramesh Chander, respondent in these appeals. As a result of the said accident, Shashi Chandan suffered injuries which included amputation of his right hand from near wrist joint, his condition having been assessed as permanent disability to the extent of sixty four per cent (64%) as per the disability certificate (Ex.PW-4/1) (in relation to the right upper limb) of the medical board of Safdarjung Hospital, New Delhi. He filed accident claim case (Suit No.335A/07) on 10.10.2007 seeking compensation on the allegations that the driver of the truck had been negligent.

2. The plea was accepted by the Tribunal and, by judgment dated 04.03.2008, compensation in the sum of Rs.4,00,000/- was awarded in favour of the appellant, this under various heads of damages, including medical treatment, conveyance charges, special diet, diminishing marriage prospects, loss of income, pain and agony and loss of amenities of life.

3. The MCD, on which the liability was fastened (appellant in MAC APP.428/2008), submitted by appeal that the negligence had not been properly proved and that the assessment of damages on account of disability was based on a multiplier which was excessive. The

claimant, on the other hand, has also filed MAC APP.537/2008 seeking enhancement of compensation.

4. The appeal of the claimant is pressed only to seek addition of Rs.3,32,100/- as had been assessed as the expenditure required to be incurred for artificial limb to be arranged.

5. Having heard the submissions of the counsel for the claimant and having gone through the record of the Tribunal, this Court finds no substance in the contentions of the MCD. Noticeably, in answer to the notice on the claim petition, MCD had submitted written statement denying any negligence on the part of the truck driver. There was no claim at any stage that the vehicle was not even involved in the commission.

6. During the inquiry, the claimant appeared as his own witness (PW-4) deposing on the strength of affidavit (Ex.PW-4/A) narrating the sequence of events leading to the collision. It is clear from his testimony including the deposition in answer to the questions put to him during cross-examination that he was moving on the proper side to Paharganj towards Rama Road via Pusa Road at a speed of 20-25 kms. per hour. It is the truck which had come from the side of petrol pump so as to merge into the traffic on the main rod at a high speed of 30-40 kms. per hour. This part of his testimony remained unchallenged.

7. Ramesh Chander, respondent, admittedly the driver of the truck, also appeared as a witness (R1W1) and, by his affidavit (Ex.R1W1/A), tried to give a new twist to the story by stating that the

accident had been caused by some other vehicle and the truck had not even been involved in the collision. This obviously cannot be believed as there was no foundation laid in the pleadings to such effect. In these facts and circumstances, non-examination of helper moving with the claimant in his vehicle would be of no consequence.

8. The tribunal had assessed the functional disability to be to the extent of fifty per cent (50%) and assumed the income of the claimant at Rs.3894/- per month, on the basis of minimum wages payable to a skilled worker and applied the multiplier of 13.

9. The contention of the MCD in its appeal that the multiplier of 13 was wrongly applied is correct, but the fact is that the multiplier adopted by the tribunal rather being excessive is on the lower side. Having regard to the ruling in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121,* keeping in view the age of 23 years, the calculations should have been made on the multiplier of 18.

10. Thus, the loss of income due to functional disability is re-computed as (3894/- x 50/100 x 12 x 18) Rs.4,20,552/-, rounded off to Rs.4,21,000/-. This would mean the award needs to be enhanced at Rs.1,21,000/- under the said head of damages.

11. The Tribunal's record shows that the claimant having lost the right hand, due to amputation, had obtained assessment of expenditure for acquiring artificial limb. The said assessment (Ex.PW-4/17) issued by Endolite Prosthetic & Orthotic Centre was submitted in evidence with no efforts made to lead evidence in rebuttal. There is nothing in

the tribunal's record to show as to why this aspect was not taken care of when the compensation was awarded. Therefore, the amount of Rs.3,32,100/- is added towards artificial limb.

12. In above view, the compensation deserves to be increased by (1,21,000/- + 3,32,100/-) Rs.4,53,100/-. The total compensation thus increased to (Rs.4,00,000/- + 4,53,100/-) Rs.8,53,100/- rounded off to Rs.8,54,000/-. Needless to add, it shall carry interest as levied by the tribunal.

13. It was noted in the proceedings recorded on 20.01.2009 (in MAC APP.428/2008) that the amount awarded by the tribunal had already been paid to the claimant. The MCD (or its successor Corporation) is directed to deposit the enhanced portion of the award with corresponding interest with the tribunal within thirty (30) days, whereupon it shall be released to the claimant in the form of interest bearing fixed deposit receipt in a nationalized bank, initially for a period of seven years with right to draw monthly interest. As and when the appellant (claimant) seeks to utilize the said amount for acquiring artificial limb, he would move appropriate application before the tribunal for necessary directions.

14. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 03, 2017
vk