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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1781 of 2018

R.Senthilkumar ... Appellant/Petitioner

-vs-

1. Loganathan
2. A.Jagadeesh
3. ICICI Lombard,
No.144, Nungambakkam High Road,
Sottabai Street, Chennai.
4. Managing Director,
Metropolitan Transport Corporation,
Chennai.

5. M.Ellappan ... Respondents /Respondents

(The Respondents 1, 2 & 5 are set remained Ex-parte before the tribunal and the claim against the 4th respondent is dismissed, hence notice may be dispensed with for them in this Appeal)

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 23.11.2012 made in MCOP.No.4697 of 2009 on the file of the Motor Accidents Claims Tribunal, (V Small Causes Court), Chennai.

For Appellant : Mr.M.Lokesh
for Mr.Ma.P.Thangavel

For 3rd Respondent : Mrs.R.Srividhya

J U D G M E N T

[Judgment of the Court made by R.SUBRAMANIAN,J.]

This appeal is at the instance of the claimant, who had suffered injuries in the motor accident that occurred on 14.10.2008. The claimant, who was travelling in the passenger



bus belonging to the Metropolitan Transport Corporation from Vadapalani to Avadi sustained injuries in the accident.

2. According to the claimant, the Eicher Van, bearing Registration No.TN-22-AS-7742 owned by the 2nd respondent driven in a rash and negligent manner by the 1st respondent driver dashed against the bus and in the said impact, the right hand of the claimant got crushed resulting in amputation of the same above the elbow. Claiming that the said injury has caused serious disability of earning power, the claimant sought for compensation of Rs.30,00,000/-.

3. The 3rd respondent, who is the insurer of Eicher Van, resisted the claim contending that the accident took place because of the negligence on the part of the claimant and the claimant was keeping his hand outside the window of the bus. The quantum of compensation claimed was also disputed. It was also claimed that it is the negligence on the part of the driver of the bus belonging to the Metropolitan Corporation which caused the accident.

4. The Corporation, the 4th respondent in the Original Petition in MCOP No.4697 of 2009 resisted the claim contending that it was the Eicher Van (Mini lorry) bearing Reg. No.TN-22-AS-7742, it was driven in a rash and negligent manner which caused the accident. The claim of the Corporation is that the driver of the bus had in fact stopped the vehicle at the time of impact.

5. The Tribunal on appreciation of the evidence on record taking into account Ex.P2, sketch, as well as the fact that an FIR was lodged against the Eicher Van driver held that the accident occurred due to the rash and negligent driving of the Eicher Van bearing Reg. No.TN-22-AS-7742. The Tribunal also found that from the sketch Ex.P2 and Motor Vehicle Report of the bus marked as Ex.P4 that the claimant himself has contributed to the accident by keeping his hand protruding outside the bus. Therefore, the Tribunal came to the conclusion that it was the carelessness of the claimant that contributed to the accident to some extent. Considering the overall circumstances, the Tribunal fixed the quantum of contributory negligence at 20% on the claimant, while the driver of the Van was held responsible for 80%. The Tribunal also concluded that the driver of the bus was in no way responsible for the accident and hence dismissed the Claim Petition against the Corporation as well as the driver of the bus, who were arrayed as respondents 4 and 5 in the Original Petition.



6. On the quantum of compensation, the Tribunal concluded that the claimant had suffered a disability of 70% and the Tribunal took the notional income of the deceased at 7,500/- per month and his age was taken as 23 years, the Tribunal applied the multiplier of 17. Thus, the Tribunal arrived at the total pecuniary loss at Rs.15,32,000/- (Rs.7,500 X 12X17) and since the disability is fixed at 70%, the Tribunal worked out the pecuniary loss for the disability as Rs.10,71,000/-. The Tribunal also awarded Rs.10,000/- towards transport to hospital, Rs.15,000/- towards extra nourishment, Rs.1,000/- towards damages of clothes, Rs.50,000/- towards loss of amenities, Rs.50,000/- towards marital status, Rs.50,000/- towards future medical expenses and Rs.1,00,000/- towards pain and suffering, in all the Tribunal arrived at figure of Rs.13,42,000 as a just compensation. Inasmuch as it has held that the claimant himself had contributed to the accident and his contribution was to the tune of 20%, the Tribunal awarded 80% of the said sum of Rs.13,42,000/- equivalent to Rs.10,73,600/- as compensation. Claiming that the award is insufficient, the claimant has come forward with the above appeal.

7. We have heard Mr.M.Lokesh, learned counsel appearing for Mr.Ma.P.Thangavel, for the appellant and Mrs.R.Srividhya, learned counsel appearing for the 3rd respondent Insurance company.

8. Since the appeal is at the instance of the claimant, the only question that is to be determined is as to the sufficiency of the compensation. Mr.Lokesh, learned counsel appearing for the claimant appellant would vehemently contend that the Tribunal was not right in taking the monthly income at Rs.7,500/-. According to him, the accident having occurred during the year 2008, the Tribunal should have taken at least Rs.12,000/- per month, considering the fact that the injured was pursuing his final year MBA at the time of the accident. The learned counsel would further contend that in view of the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2017 (2) TNMAC 609 (SC), the Tribunal should have taken into account the future prospects also.

9. Per contra, Mrs.R.Srividhya, learned counsel appearing for the respondent Insurance Company would contend that the overall compensation awarded by the Tribunal is just and reasonable and does not call for any interference. The learned



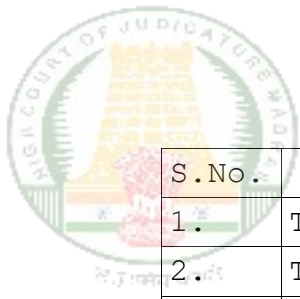
counsel appearing for the respondent would also point that that there was a delay of 1763 days in filing the appeal, therefore, in the event the compensation is enhanced the same should be without interest for the said period.

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10. We have given our anxious consideration to the rival contentions. It is not in dispute that the appellant was the aged of 24 years at the time of accident and he was pursuing of his education and was doing Masters in Business Administration. Therefore, we are of the considered opinion that notional monthly income adopted should be not less than Rs.12,000/-. To this should be added an amount towards future prospects, which as per the larger Bench decision of the Hon'ble Supreme Court is to be fixed at 40%. Therefore, the monthly notional income of the claimant is fixed at Rs.16,800/- and considering his age i.e. 24 years, the multiplier of 18 is to be adopted. Therefore, the total pecuniary loss would be Rs.36,28,800/- (Rs.16,800/-X12X18). The Tribunal has determined the disability at 70% on which there is no dispute. Therefore, the claimant's pecuniary loss would be 70% of Rs.36,28,800/- which is equivalent to Rs.25,40,160/-. We have already confirmed the finding of the Tribunal that the claimant has contributed to the accident and his contribution has been fixed at 20%.

11. The claimant has suffered a permanent disability of 70%. The compensation for permanent disability should be at Rs.2,000/- per percentage. Hence, the claimant is granted a sum of Rs.1,40,000/- towards permanent disability. The Tribunal has awarded a sum of Rs.2,76,000/- on the other heads namely transport to hospital, extra nourishment, damages to clothes, loss of amenities, loss of marital status, future medical expenses and pain and suffering. The Tribunal though as referred to an estimate produced by the claimant for an artificial limb has not granted any amount towards artificial limb. We are of the considered opinion that considering the age of the claimant and the fact that the he is unmarried, the Tribunal should have granted certain amount for artificial limb, which we fix at Rs.2,50,000/- and the amount awarded for loss of amenities and loss of marital status are also on the lower side. We are of the considered opinion that the amount awarded for loss of amenities would be at Rs.75,000/- and loss of marital status would be Rs.1,00,000/-.

12. In view of the above the award of the Tribunal requires modification and the same is modified as follows:



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S.No.	Heads	Amount
1.	Towards Pecuniary Loss	Rs. 25,40,160/-
2.	Towards permanent disability	Rs. 1,40,000/-
3.	For Artificial Limb	Rs. 2,50,000/-
4.	Transport to hospital	Rs. 10,000/-
5.	Extra nourishment	Rs. 16,000/-
6.	Loss of Amenities	Rs. 75,000/-
7.	Loss of Marital status	Rs. 1,00,000/-
8.	Future Medical Expenses	Rs. 50,000/-
9.	Pain and Suffering	Rs. 1,00,000/-
	TOTAL	Rs. 32,81,160/-

13. Since we have confirmed the finding of the Tribunal that the claimant had contributed to an extent of 20% to the accident, the claimant would be entitled to 80% of the above amount as compensation, which works out to Rs.26,24,928/-, the same is rounded off to Rs.26,25,000/-. The claimant would also be entitled to interest at 7.5% on the enhanced amount, however, while calculating interest on the enhanced amount the period of delay in filing the appeal of 1763 days will be excluded. Appeal is allowed. There shall be no order as to costs. The Insurance Company is granted 6 weeks time to deposit the enhanced compensation to the credit of MCOP No.4697 of 2009. On such deposit, the Claimant will be entitled to withdraw the award amount.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
(V Small Causes Court), Chennai.

+1cc to Mrs.R.Sreevidhya, Advocate Sr.58109
+1cc to Mr.Ma.P.Thangavel, Advocate Sr.57401

CMA.No.1781 of 2018

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srg 22/01/2019