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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.1305 of 2011

S.Sakthivel

... Appellant

Versus

1.K.Kulandaivel

2.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai-2

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 01.03.2011 made in MACT.OP.No.3210 of 2006 on the file of the Motor Accident Claims Tribunal (In the Court of V Small Causes), Chennai

For Appellant : M/s.A.Subadra
for M/s.S.Malar

For Respondents

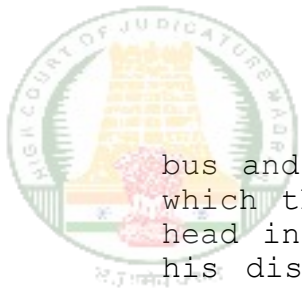
For R2 : Mr.M.J.Vijayaraghavan
R1 : Exparte

J U D G M E N T

This appeal has been laid as against the judgment and decree dated 01.03.2011 made in MACT.OP.No.3210 of 2006 on the file of the Motor Accident Claims Tribunal, Court of V Small Causes, Chennai, thereby awarded the compensation to the tune of Rs.6,15,000/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimants is that on 18.04.2004 when the petitioner was travelling in a State Express Transport Bus as a passenger, the driver of the lorry owned by the first respondent herein drove his lorry in a rash and negligent manner from the opposite direction and hit the right hand side of the



bus and as such he sustained injuries on his right hand, due to which the entire right hand was amputated and he also sustained head injury and multiple injuries all over the body. Therefore, his disability was assessed by doctor as 80% and he could not even go for any of his avocation. He is a painter and aged about 20 years. He was earning Rs.200/- per day at the time of accident and due to injury, he could not even go for any work. Therefore, he filed claim petition seeking compensation at Rs.10,00,000/-.

4. Resisting the same, the second respondent filed counter stating that the entire claim of the petitioner is false, baseless and untenable. As such, the second respondent is not at all liable to pay any compensation for the injury sustained by the petitioner on his own. The petitioner projected his right hand outside the bus and as such when the first respondent's driver drove his lorry from the opposite direction and hit the right hand. Therefore, he sustained injury and as such the second respondent is not at all liable to pay compensation as claimed by the petitioner and sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.11. On the side of the respondents, neither oral nor documentary evidence was let in. On the basis of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.6,15,000/-. Aggrieved by the same, the claimant preferred this appeal for enhancement of the award amount.

6. The learned counsel for the appellant would submit that at the time of accident, the petitioner was aged about only 20 years. He was working as painter and was drawing salary of Rs.200/- per day. Though the Tribunal concluded that the accident took place only because of rash and negligence of the first respondent's vehicle's driver, awarded very less compensation and thereby applied multiplier method of 16 instead of 18. Further, the Tribunal failed to consider the future prospects of the petitioner since he has lost his entire right hand and as such rightly had taken 100% permanent disability as far as his functional disability. Even then, did not consider future prospects. He was 20 years at the time of accident and as such he is entitled for future prospects at 40%. The Tribunal also failed to award any compensation under the head of attenders charges and amenities, since the petitioner was admitted as inpatient from 18.04.2004 to 17.05.2004. He lost his right hand and as such without help of the attender, he could not do anything during his treatment. During his entire life, he lost his right hand and as such he should be awarded some



amenities.

7. Per contra, the learned counsel for the second respondent would submit that while petitioner was sitting in the window seat and he projected his right hand outside the bus. Therefore when the driver of the first respondent drove his lorry with full care. Even then, it hit the right hand which was projected by the petitioner outside the bus and as such he sustained injury. Therefore, the second respondent is not only to be held liable to pay compensation but also on the negligence of the petitioner, the accident took place. Therefore, the Tribunal ought to have fixed 50% contributory negligence on the part of the petitioner. In support of his contention, he also relied upon the judgment in the case of Humera Bhanu And Ors. vs Cholan Roadways Corporation reported in 1995 ACJ 325.

8. Heard M/s.A.Subadra, learned counsel appearing for the appellant and Mr.M.J.Vijayaraghavan, learned counsel appearing for the second respondent.

9. On 18.04.2004, when the petitioner along with other passengers travelled in a bus belongs to State Express Transport Corporation, in between Ayyur Agaram to Chintamani, the lorry owned by the first respondent was driven by its driver in a rash and negligent manner hit the bus and scratched the petitioner's right hand and he sustained compound fracture of right forearm upper third, due to which, his right hand was amputated. The doctor who assessed the disability of the petitioner issued disability certificate to 80%. The petitioner was a painter in his profession and he was earning Rs.200/- per day. Due to amputation of his right hand, his livelihood had gone and he cannot work as a painter as he lost his right arm above the elbow. The functional disability of the petitioner has to be assessed and fixed at 100% as the right hand of the petitioner is totally functionless, due to the disability sustained by him.

10. The learned counsel for the second respondent relied upon the judgment in the case of Humera Bhanu And Ors. vs Cholan Roadways Corporation reported in 1995 ACJ 325, wherein it is held as follows:

12. We have already set out the facts in detail. The accident took place on 14.2.1984. The deceased was riding on the motor cycle and his daughter was riding on the pillion. The motor cycle was going in a normal speed on the left margin of the metal road. In between the motor cycle and the left margin of the road there was a gap of two feet. It means the motor cycle cannot go further towards left. While so, the respondent Corporation's bus which was coming behind the motor



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cycle attempted to overtake the motor cycle and in that process the body of the bus came into contact with the right handle bar of the motor cycle and as a result thereof the rider of the motor cycle lost his control and fell on his right side and was run over by the bus. The pillion rider fell on her left side and she sustained injuries. The fact remains that the bus attempted to overtake the motor cycle. The motor cycle was proceeding on the left margin of the road and the motor cycle cannot go further left as there was only 2 feet gap. The bus, which attempted to overtake the motor cycle, ought to have taken care and caution while doing so. The fact that the body of the bus came into contact with the right handle bar of the motor cycle would itself go to show that the driver of the bus was rash and negligent in driving the bus. The circumstances leading to the accident would go to show that the principle of *res ipsa loquitur* (the thing speaks for itself) would apply. PW 1 was examined as a witness. She narrated the incident. There was no contra evidence on the side of the respondent Corporation to show that there was no negligence on the part of its bus driver. The appellants herein also filed several documents to show the nature of the accident that took place. The circumstances leading to the accident and the evidence produced by the appellants herein would go to show that the accident took place solely on account of the rash and negligent driving of the bus by the respondent Corporation's driver. The deceased was having his minor daughter on the pillion and hence he would not have driven the vehicle in a rash and negligent manner. There is no evidence on record to show that the motor cycle was driven by the deceased in a rash and negligent manner. The Tribunal failed to appreciate the facts arising in this case on this aspect in proper perspective. Therefore, we set aside the finding of the tribunal that the deceased also contributed negligence on his part in the accident. Accordingly, we hold that there is no negligence on the part of the deceased in riding the motor cycle and respondent Corporation's bus driver alone was responsible for the accident as he drove the bus in a rash and negligent manner.

The above judgment is pertaining to accident which took place while overtaking two wheeler by the bus, the bus hit the two wheeler and accident took place. Therefore, the above judgment is not at all applicable to the case on hand.



11. On perusal of cross examination of the petitioner, who was examined as PW1, there is no whisper about the projection of his right hand outside the bus, due to which he lost his hand. In fact, one more person who was travelling in the bus and also sustained same injury. Therefore, the driver of the first respondent drove the lorry in a rash and negligent manner and hit the bus and as such the petitioner and another sustained injuries on their right hand. Therefore, the Tribunal rightly fixed the entire liability on the respondents. Insofar as the multiplier is concerned, the petitioner was aged about 20 years at the time of accident and as such the compensation has to be calculated by adopting the multiplier at 18. Admittedly, the petitioner was a painter at the time of accident and aged about 20 years. Therefore, the Tribunal ought to have considered the future prospects of the petitioner. For age of 20 years, future prospects is calculated at 40%. Accordingly, the petitioner is entitled for compensation under the head of future prospects at 40%. The Tribunal also failed to award any compensation under the head of attenders charges and amenities. The petitioner was admitted into hospital as inpatient from 18.04.2004 to 17.05.2004 and also his right hand was amputated above the elbow. Therefore, he is entitled for compensation under the head of attenders charges and amenities.

12. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of income	Rs.5,76,000/-	Rs.9,07,200/-
2	Pain and sufferings	Rs.20,000/-	Rs.20,000/-
3	Medical expenditure	Rs.3,000/-	Rs.3,000/-
4	Extra nourishment	Rs.5,000/-	Rs.5,000/-
5	Transport expenditure	Rs.1,000/-	Rs.1,000/-
6	Damage to clothes and articles	Rs.1,000/-	Rs.1,000/-
7	Temporary loss of income	Rs.9,000/-	Rs.9,000/-
8	Future medical expenses	NIL	Rs.5,000/-
9	Attenders charges	NIL	Rs.5,000/-
	Total	Rs.615,000/-	Rs.9,56,200/-



13. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.6,15,000 /- to Rs.9,56,000/-.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The second respondent herein / insurance company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the appellant / claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) The appellant/claimant is not entitled to any interest for the condoned delay (default) period, if any.

(vi) The claimant shall pay requisite Court fee before the receipt of the copy of the judgment for the enhanced compensation.

(vii) There shall be no order as to costs.

Sd/-

Deputy Registrar (Admn II)

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Sub Assistant Registrar

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To

1.The Judge, V Small Causes Court,
Motor Accident Claims Tribunal,
Chennai

2.The Section Officer,
V.R.Section, Madras High Court, Chennai.

+1cc to Ms.M.Malar, Advocate SR.No.23863

C.M.A.No.1305 of 2011

AK II(CO)

GMV(18/11/2021)