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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2021

C O R A M

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 2377 of 2017

B. Kuppusamy

...Appellant/Petitioner

Vs.

1. The Joint Secretary to Government,
Public Protocol Department,
Secretariat, Fort St. George,
Chennai - 9.

2. The District Collector of Nagapattinam,
Nagapattinam. Respondents/Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 04.11.2016 made in M.A.C.T.O.P.No.4679 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : Mr.Y.T.Aravind Gosh
Additional Government Pleader

J U D G M E N T

Challenging the liabilities as well as the quantum of compensation awarded by the Tribunal, the claimant has preferred this Civil Miscellaneous Appeal.

2. The Tribunal awarded a contributory negligence in the ratio of 50:50 for the rider of the two wheeler as well as the rider of the Scorpio vehicle. The accident occurred on 10.07.2012 at about 22.30 hrs, when the rider of the motor vehicle bearing Registration No. TN-22-T-1470 made an attempt to cross the GST Road from West to East direction at Katankolathur Junction, he met with an accident with Scorpio LMV Omni bus bearing Registration No.TN-01-AG-3333 driven by its driver.



3. The learned counsel appearing for the appellant submitted that the Tribunal fixed in the ratio of 50:50 a contributory negligence against the rider of the two wheeler and rider of Scorpio vehicle. The driver of Scorpio LMV Omni bus, who drove the vehicle in a rash and negligent manner, hit the two wheeler. After noticing the movement of vehicle on the main road, the rider made an attempt to cross the GST Road. However, the driver who drove the vehicle Scorpio Omni bus in a rash and negligent manner hit the two wheeler and thereby, the rider of the two wheeler sustained grievous injuries. Thereafter, he was admitted in SRM Hospital.

4. Further, he submitted that initially an FIR was filed on the complaint made by the driver of the Scorpio vehicle. However, the charge sheet has been filed, in which it is stated that the accident occurred due to the rash and negligent driving on the part of the Scorpio vehicle. Therefore, the learned counsel for the appellant submitted that fastening 50% liability as the rider of the two wheeler is not proper and the same is liable to be set aside.

5. The learned counsel appearing for the respondents submitted that the accident occurred only due to the negligence on the part of the two wheeler. The rider of the two wheeler should have made all precautionary steps before crossing the road. The rider of two wheeler made an attempt to cross the road, all of a sudden, without noticing the Scorpio on the GST Road, thus, the accident had occurred. The rider has not taken any precautionary measures before crossing the road. The said aspect has been dealt with by the Tribunal in proper manner and the Tribunal fixed the contributory negligence on the part of the rider of the two wheeler as well as the rider of the Scorpio in the ratio of 50:50 and the same is just and proper.

6. Upon a perusal of the rough sketch, it is clear that the rider of the two wheeler made an attempt to cross the road. When the rider of two wheeler made an attempt to cross the GST Road, he should have taken a look at both side of the road to verify whether any vehicle is coming or not, but in the present case, apparently no such precautionary steps appear to have been taken by the rider. In fact, in the present case, initially the driver of the Scorpio only gave a complaint to the Police Station. Thereafter, in the charge sheet, it has been stated as if the accident occurred due to a rash and negligent on the part of the driver of the Scorpio vehicle. However, on a perusal of the charge sheet, it is seen that it is simply stated therein that due to rash and negligence of the driver of the Scorpio, the accident had occurred. It is only a ten line charge sheet. Whether the Investigating Officer examined any person and



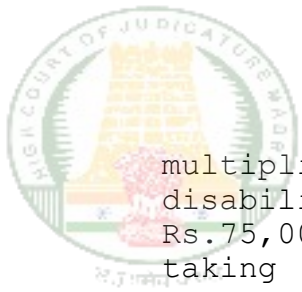
whether he perused the entire materials, all these aspects are not available and this cannot be considered at any cost as thorough investigation report. The fact remains that the rider of the two wheeler has not taken any steps before crossing the road to verify the movement of vehicle in the GST Road, and that was the reason why the accident had occurred. The Tribunal has also dealt with this aspect. Thus, I do not find any fault in the judgment and decree of the Tribunal with regard to the fixation of the liability on the part of the rider of the two wheeler as well as the driver of the Scorpio Omni bus. Hence, the fixation of liability by the Tribunal in the ratio is 50:50 stand confirmed.

7. The learned counsel appearing for the appellant submitted that the accident was of the year 2012. The income of the deceased was fixed by the Tribunal at Rs.6,500/- and the Tribunal awarded a sum of Rs.2,000/- per percentage of disability as compensation for the disability. The disability Certificate issued by the Doctor which was marked as Ex.P12. The Doctor fixed at 70% as disability. The Tribunal has taken the disability at 65% and awarded the compensation. He would submit that instead of awarding the compensation based on the percentage, it should have applied the multiplier method. In the present case, the injuries are severe in nature. Therefore, the counsel requested to fix the Claimant's functional disability to the extent of not less than 40%.

8. In the case of Raj Kumar v. Ajay Kumar and Another, reported in [CDJ 2010 SC 1153], the Apex Court considered for applying the multiplier method at the time of awarding the compensation. In the present case, the claimant has sustained the following injuries:-

- (i) Right Ankle joint exposed with abnormal mobility.
- (ii) Swelling Right Thigh? Fracture of femur.
- (iii) Abrasion of 5 X 4 cm, in the left knee.
- (iv) Abrasion of 5 X 7 cm. in the right forearm.
- (v) Abrasion of 3 X 2 cm in the left foot.

The deceased had undergone treatment for 144 days in the hospital, which shows that the injuries are grievous in nature which include the head injuries. Therefore, I am of the view that this case is a fit case to apply multiplier method to award compensation for disabilities. The disability certificate was marked as Ex.P12. The doctor quantified the disability at 70%. The Tribunal while awarding the compensation, considered this claimant's disability at 65% and a sum of Rs.3,000/- was awarded for every percentage of the disability. However, this Court as already decided, as the deceased was in hospital for 144 days and sustained grievous injuries this case would be fit case to apply multiplier and award compensation. Hence, I would like to apply the multiplier method as stated above and while applying



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multiplier method, this Court is of the view that the functional disability would be taken as 30%. The Tribunal awarded a sum of Rs.75,000/- for the loss of income for a period of 12 months, by taking the loss of income of the deceased as Rs.6,500/-p.m. However, in the present case, accident occurred in the year of 2012. The Hon'ble Apex Court in Syed Sadiq v. Divisional Manager, United India Insurance reported in [2014 (1) TNMAC 459 (SC)], fixed the notional income of a vegetable vendor as Rs.6,500/- in the accident of 2008. Therefore, this Court is of the view, for the accident of the year 2012, it would be appropriate to fix the notional income as Rs.8,000/- p.m. Accordingly, the notional income of this claimant is fixed as Rs.8,000/-p.m. As this Court fixed the notional income as fixed Rs.8,000/-, the said loss of income awarded by the Tribunal a sum of Rs.78,000/- stand increased to Rs.96,000/- (Rs.8,000x12) and with regard to all other income heads, the amount awarded by the Tribunal is just and proper and it need not be interfered with. Accordingly, the award with respect to other heads shall stand confirmed.

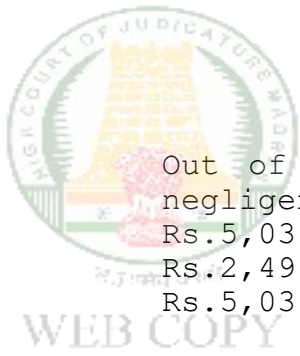
9. In the present case, the age of the injured at the time of accident was 27 years and multiplier applicable is "17". After hearing both sides as well as the perusal of this decision of the Apex Court for disability, this Court is of the view towards future prospects needs to be added at 40%. The functional disability is determined at 30%. Thus, the loss of income is redetermined by this Court as follows:-

- (i) Rs.8,000 + 40% of Rs.8000/-
(Rs.8,000 + Rs.3,200) : Rs.11,200.00
- (ii) Rs.11,200 x 12 x 17 : Rs.22,84,800.00
- (iii) Rs.22,84,800 x 30/100 : Rs.6,85,440.00

Accordingly, the compensation to the claimant is re-determined by this Court in the following manner:

- (i) Loss of earning capacity : Rs.6,85,440.00
- (ii) Pain and Suffering : Rs.50,000.00
- (iii) Loss of income : Rs.96,000.00
- (iv) Transport for Hospital : Rs.20,000.00
- (v) Extra-Nourishment : Rs.50,000.00
- (vi) Damage to Clothing and Articles : Rs.2,000.00
- (vii) Medical Expenses : Rs.3,500.00
- (viii) Attending Charges : Rs.50,000.00
- (ix) Loss of Amenities : Rs.25,000.00
- (x) Disfigurement : Rs.25,000.00

Total : Rs.10,06,940.00



Out of the said sum, 50% is reduced towards the contributory negligence. Therefore, the claimant is entitled to Rs.5,03,470/- (Rs.10,06,940/2). Hence, the award amount of Rs.2,49,250/- as awarded by the Tribunal stand increased to Rs.5,03,470/.

10. The Second Respondent is directed to deposit the entire amount along with 7.5% interest from the date of filing of the petition till the date of realization, after deducting the amount if any already deposited before the Tribunal, within a period of 8 weeks from the date of receipt of a copy of this order. Further, the Tribunal is directed to transfer the entire amount within a period three weeks from the date of the deposit amount made by the respondents by way of RTGS to the Bank account of the claimant or from the date of filing an application for withdrawal of the award amount whichever is later.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs.

12. List the case for reporting compliance on 27.09.2021.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msm
To

1. The Motor Accidents Claims Tribunal,
Special Sub Court No.II,
Small Causes Court, Chennai.
2. The Joint Secretary to Government,
Public Protocol Department,
Secretariat, Fort St. George,
Chennai - 9.
3. The District Collector of Nagapattinam,
Nagapattinam.



Copy to

1. The Section Officer,
V.R. Section, High Court,
Chennai-104.

2. The Section Officer,
Judicial Department,
High Court, Madras.

(To list the case for Reporting Compliance on 27/09/2021)

+1cc to M/s.M.Malar, Advocate Sr.23862

+1cc to the Special Government Pleader Sr.23780

C.M.A.No. 2377 of 2017 and
C.M.P.No.10566 of 2017

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