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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.799 of 2017

and

CMP No.8825 of 2020

The Managing Director,
Karnataka State Road Transport Corporation,
K.H.Road, Shanthi Nagar,
Bangalore.

...Appellant/Respondent

Vs

Mr. Shekar

...Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.12.2015 made in O.P.No.170 of 2014 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, at Hosur.

For Appellant	: Mr.T.Thyagarajan
For Respondents	: Mr.Mukund R.Pandian

J U D G M E N T

The Transport Corporation challenging the liability fastened on it to pay compensation to the claimant/accident victim has filed C.M.A.No.799 of 2017. Pending appeal, CMP No.8825 of 2020 is filed to receive additional document viz., the final report of the Traffic Investigation Wing concluding the case against the bus driver as mistake of facts.

2. As per the claim petition, on 27.05.2013 at 10 p.m., while the claimant was riding his Yamaha Crux Motor Cycle bearing Registration No.TN-29-P-6076 on Hosur to Bangalore National Highway road, the bus owned by the appellant Corporation bearing Registration No.KA-42-F-028 overtook the motor cycle and suddenly turned to the right side unexpectedly. Hence, the motor cyclist dashed on the backside of the bus and fell down in which, he sustained injuries. The claim petition



for Rs.16,00,000/- was filed before the MACT, Hosur. The Tribunal awarded Rs.5,35,580/- as compensation which is under challenge in this appeal.

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3. According to the claim petition, in the said accident, the claimant sustained fracture of right ulna, laceration over right knee joint and injury in the other parts of the body. He was treated as inpatient for two days at Sparsh Hospital, Bangalore and then for another two days at Vijay Hospital at Hosur. Thereafter, he took treatment as outpatient for mal united ulna fracture. He underwent treatment at Srinivasa Speciality Hospital, Hosur and surgery was conducted. The laceration on the right knee had caused difficulty in walking and lead a normal life. Contending that the accident injury has caused impairment in earning capacity, the claim petitioner has adduced evidence before the Tribunal, substantiated his claim through medical records and disability certificate.

4.The liability was contested by the Transport Corporation alleging that the accident occurred purely due to the negligence of the claimant, who rash and negligently dashed against the bus on the right rear side of the bus, when the bus slow down to take right turn near Hosur Dhurga.

5. The Tribunal, on considering the evidence held that the accident occurred due to the negligence of the bus driver. The injury sustained by the claimant has caused 40% functional disability. Hence, taking his income at Rs.6000/- per month notionally, applying the multiplier '14', a total sum of Rs.5,35,580/- was awarded under conventional and non conventional heads.

6. In the appeal, both the quantum of compensation and the liability challenged as excessive and contra to evidence. The miscellaneous petition is filed to receive additional documents which is the final report filed by the Hosur Police on completion of the investigation regarding the motor accident. As per the final report, the police has closed the F.I.R. as mistake of fact holding that the accident has occurred due to the negligence of the motor cyclist and not due to the negligence of the bus driver.



7. The learned counsel for the appellant submitted that based on the final report closed as mistake of fact, the appellant should be totally exonerated from its liability. Further, learned counsel for the appellant point out that the Tribunal has not only erred in fixing the liability on the Transport Corporation but while arriving at compensation, has applied wrong multiplier. The age of the injured claimant was about 50 years. Therefore, the multiplier should have been only '13' and not '14'. Further, when there is no evidence for future medical expenses, the Tribunal has erred in awarding Rs.30,000/- towards future medical expenses.

8. Per contra, the learned counsel appearing for the claimant submitted that the injured claimant is a professional driver having valid driving license and also running a travel agency. Though his monthly income is above Rs.25,000/-, the Tribunal has fixed only notional income of Rs.6,000/- and had wrongly applied multiplier '14' instead of '15' taking into consideration the age of the claimant, who was 37 years old at the time of accident. Learned counsel would submit that there was no negligence on the part of the claimant. The final report now relied as additional document by the appellant is not admissible and cannot be taken in as evidence at the appellate stage.

9. Heard the learned counsels appearing on either side and perused the records.

10. The occurrence of accident was on 27.05.2013. The F.I.R. which is relied by the Tribunal is dated 30.05.2013. The first informant is the wife of the claimant. The first informant is not the eyewitness to the accident. At the time of trial before the Tribunal, the appellant was not able to lay its hand to the final report wherein the police has closed the F.I.R. as mistake of fact after the investigation. No protest petition has been filed against this report. In the final report, it is stated that the motor cyclist due to rash and negligent driving without having any control of the vehicle dashed against the rear portion of the bus and sustained injury. It is true that the said fact has not been brought to the notice of the Tribunal and not elicited through witnesses during the cross-examination. Having come to know about the true fact regarding the accident, Court cannot refuse to look into it.



Hence, the application to receive additional document is allowed and the said final report is taken on record as Ex.R1 by consent.

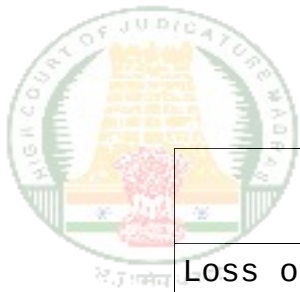
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11. For the evidence, this Court note that the accident has occurred due to involvement of two vehicles. No one vehicle can be totally fixed for negligence. Material evidence is available to show that the driver of the bus without proper signal has turned to right and the motor cyclist/claimant has dashed the bus due to his reckless driving thereby contributed for the accident. Hence, this Court is of the view that for the negligence and reckless driving by the claimant, 30% of responsibility should be fixed on him and the award amount accordingly has to be modified.

12. Learned counsel for the appellant also submitted that it is not a fit case to apply multiplier, since there is no impairment of earning capacity or total disability. This Court is unable to accept it, since there is material to show that the claimant was running a travel agency as per the F.I.R. and the fracture injury sustained by him at ulna will necessarily cause impairment in his earning capacity. Whether the functional disability will be to an extent of 40% is the point for consideration.

13. In Ex.P7, the Disability Certificate, the Doctor who has given disability certificate has assessed 40% disability. He is not the doctor who treated the claimant. His assessment is based on clinical examination. As per the Disability Certificate, the claimant has sustained swelling and deformity of right femur, fracture right femur, fracture 1/3 right ulna. The assessment of disability is not supported with proper table break up except making a vague reference that the disability has caused 40% impairment. Whether it relates to earning capacity is not specifically stated in the disability certificate. In any event, on considering the nature of injury viz., fracture of right femur, fracture 1/3 right ulna and the avocation of the claimant, this Court is of the view that the injury has caused impairment of earning capacity and it shall be assessed at 30%.

14. Having considered the evidence and the submissions made in favour and against the award, the award of the Tribunal is modified as under:



Compensation under Various Heads	Award passed by this Court
Loss of Earning Capacity due to 30% functional disability (30/100X6000X12X15)	Rs.3,24,000/-
Pain and Suffering	Rs. 30,000/-
Transport	Rs. 10,000/-
Attender Charges	Rs. 10,000/-
Nourishment	Rs. 5,000/-
Loss of income during treatment period	Rs. 10,000/-
Future Medical Expenses	Rs. 37,380/-
Total	Rs.4,26,380/-

After reduction of 30% for contributory negligence, the sum payable is Rs.2,98,466/-.

15. Accordingly, the award of Rs.5,35,580/- is modified and scaled down to Rs.2,98,466/- payable with interest at 7.5% p.a. from the date of petition till the date of deposit. Learned counsel for the appellant states that the entire award amount with accrued interest has already been deposited in the MCOP account. In such case, the claimant is permitted to withdraw the compensation amount as modified by this Court in this appeal on appropriate petition. The balance amount, if any shall be withdrawn by the appellant Corporation.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The connected miscellaneous petition is allowed. No order as to costs.

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

vri



To
Motor Accidents Claims Tribunal
Additional District and Sessions Court,
Hosur.

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Copy to

The Section Officer, VR Section, High Court, Madras.

+1CC to Mr.Mukund R.Pandian, Advocate, SR.No. 3287

+1CC to M/s.T.Thyagarajan, Advocate, SR.No. 3465

CMA NO.799 OF 2017

AP(CO)

B.VC (13/09/2021)