

(2013) 07 KAR CK 0310
In the Karnataka High Court
Case No : M.F.A. No. 6596 of 2010 (MV)

Aishwarya

APPELLANT

Vs

Divisional Manager, Smt. Puspa Shetty and Melvin Blajo

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 07 KAR CK 0310

Hon'ble Judges : N.K. Patil, J;B. Manohar, J

Bench : Division Bench

Advocate : K. Prasanna Shetty, for the Appellant; V. Narayanaswamy, Advocate for R1, for the Respondent

Judgement

N.K. Patil, J.—This is a claimant's appeal against the impugned judgment and award dated 13/03/2009 passed in MVC No. 572/2004 by the Principal Civil Judge (Sr. Dn.) and Additional Motor Accident Claims Tribunal, Udupi, (for short" Tribunal"), for enhancement of compensation. By its judgment and award, the Tribunal has awarded a sum of Rs. 1,05,150/- under different heads with interest at 8% p.a., on Rs. 70,150/- from the date of petition till 27.3.2006 and from 15.12.2008 till realization as against the claim made by the appellant for a sum of Rs. 25,00,000/-, on account of the injuries sustained by her in the road traffic accident.

2. In brief, the facts of the case are:

The appellant claims to be aged about 24 years at the time of the accident. She was hale and healthy prior to the accident and studying in LLB Final Year. That at about 2.40 p.m., on 1.2.2004, at Heraga bus stand, when the appellant was getting into the bus bearing Reg. No. KA. 20.A.5599, the driver of the said bus without any instructions from the conductor and without noticing the passengers moved the bus towards backside rashly and negligently. As a result, appellant fell down and front wheel of the bus ran over on her leg. As a result, she sustained injuries and her skin over the dorsum of foot was discoloured to bluish colour

about 12 x 5 cms left leg and there was an abrasion over the left ankle. Immediately, she was shifted to Hospital, where she took treatment as inpatient for 7 days and thereafter, on the advise of the Doctor she has taken bed rest and follow up treatment.

3. It is the further case of the appellant that she spent considerable amount towards medical and other incidental expenses. On account of the injuries sustained by her she has sustained temporary partial disability of 15%. Taking all these aspects into consideration, she has filed a claim petition before the Tribunal, u/s 166 of M.V. Act, claiming compensation against the respondents.

4. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 1,05,150/- as compensation under different heads with interest at 8% p.a., on Rs. 70,150/- from the date of petition till 27.3.2006 and from 15.12.2008 till realization.

5. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement of compensation.

6. We have heard the learned counsel appearing for appellant and learned counsel for Insurer.

7. The learned counsel appearing for the appellant, at the outset submitted that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings and towards loss of amenities, discomforts and unhappiness and what is awarded under these heads is inadequate and it requires to be enhanced. To substantiate the said submission, he pointed out para-11 of the judgment and submitted that, having regard to the nature of injuries sustained by her and since she is aged about 24 years and prosecuting her studies in LLB Final year and undergone treatment for 7 days as inpatient and sustained temporary partial disability, the compensation awarded by the Tribunal may be enhanced by modifying the impugned judgment and award passed by the Tribunal.

8. As against this, learned counsel for the Insurer, inter-alia, contended and substantiated that the judgment and award passed by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence available on file and taking into consideration the year of the accident and nature of injuries sustained by the appellant and therefore, it does not call for interference.

9. After hearing the learned counsel for the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

10. The occurrence of the accident and the resultant injuries sustained by the appellant as per Ex. P4 are not in dispute. Further it emerges that, "the Tribunal, after assessing oral and documentary evidence, particularly, the medical bills produced by the appellant, has rightly awarded a sum of Rs. 35,000/- towards medical expenses, Rs. 5,150/- towards conveyance, nourishing food and attendant charges and Rs. 35,000/- towards future medical expenses and therefore, it does not call for interference by this Court.

11. However, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings and towards loss of amenities, discomforts and unhappiness and therefore, it needs to be enhanced. Admittedly, it is not in dispute that, on account of the injuries sustained by the appellant as referred above, she has taken treatment as inpatient for 07 days and on the advice of the Doctor she might have taken bed rest and follow up treatment. During the said period, she might have undergone pain and agony on account of the injuries sustained by her and discomforts and unhappiness persists through out her life since she has sustained temporary partial disability of 15% and it would affect her happiness in life. But these aspects of the matter have not been looked into or considered by the Tribunal while awarding compensation. Taking all these aspects into consideration and after critical evaluation of the oral and documentary evidence available on file, we award a Rs. 30,000/- towards injury, pain and sufferings instead of Rs. 20,000/- and Rs. 30,000/- towards loss of amenities, discomforts and unhappiness instead of Rs. 10,000/- awarded by the Tribunal. In all, the appellant is entitled to the total compensation of Rs. 1,35,150/- instead of Rs. 1,05,150/- and there would be an enhancement of Rs. 30,000/- with interest at 8% p.a., from the date of petition till its realization. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part.

The impugned judgment and award dated 13/03/2009 passed in MVC No. 572/2004 by the Principal Civil Judge (Sr. Dn) and Additional Motor Accident Claims Tribunal, Udupi, stands modified, awarding the compensation of Rs. 1,35,150/- instead of Rs. 1,05,150/-. There would be an enhancement of Rs. 30,000/- with interest at 8% p.a., from the date of petition till its realization.

The first respondent-Insurer is directed to deposit the enhanced compensation of Rs. 30,000/- with interest at 8% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment.

Immediately on deposit by the Insurer, the entire enhanced compensation with interest shall be released in favour of appellant.

Draw the award, accordingly.