

(2016) 02 KAR CK 0374
In the Karnataka High Court
Case No : MFA No. 1942/2015 (MV)

B. Ramakrishna Reddy

APPELLANT

Vs

The Managing Director, Bangalore Metropolitan Transport
Corporation

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 02 KAR CK 0374

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : R. Vijay Kumar, Advocate, for the Appellant; K. Nagaraj, Advocate,
for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—1. This appeal by the claimant is arising out of the impugned judgment and award dated 2nd January 2015 passed in MVC No. 1024/2013 on the file of the Judge, Court of Small Causes and XXVI ACMM, MACT, Bangalore (SCCH-09) (hereinafter referred to as "Tribunal" for short).

2. By its judgment and award, the Tribunal has awarded a sum of Rs. 5,98,000/- with interest at 6% p.a., from the date of petition till its realization as against the claim made by the appellant, on account of the injuries sustained by him in the road traffic accident.

3. It is the case of the appellant that, he was aged about 74 years as on the date of accident, hale and healthy and working as security-in-charge and earning Rs. 10,000/- p.m. On 10.10.2012 at about 5.00 p.m when the appellant was standing on the left side of the road so as to cross the road, at Banshankari Bus stop, Bangalore, the driver of BMTC bus bearing Reg No. KA-57-F-49 drove the same in a rash and negligent manner towards left side of the road and ran the bus on the left leg of the appellant due to which he sustained crush injury on left

foot and left ankle. He was hospitalized and took treatment as an inpatient in the hospital and incurred the medical expenses. Due to the injuries, the appellant underwent operation for amputation of left leg below knee. He was admitted in the hospital as inpatient for 90 days. He has taken bed rest for a period of 6 months. The appellant has spent huge amount for medical treatment. In spite of best medical treatment, the appellant is suffering from the physical disability. Due to the accidental injuries and physical disability, it is not possible for him to carry on his profession as before. Therefore, he filed a claim petition under Section 166 of MV Act before the Tribunal claiming compensation against the respondents. The said claim petition had come up for consideration before the Tribunal. To substantiate his case, he examined himself as P.W. 1, Dr. Rajendra Reddy as PW2 and Dr. K. Madhusudan Rao as PW3 and got marked documents as Exs. P1 to P20. Respondent-corporation examined RW1 and got marked document as Ex. R1. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence and taking disability at 25%, has allowed the said claim petition in part and awarded a sum of Rs. 5,98,000/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, so far as it relates to pain and sufferings, medical and traveling expenses, attendant charges, special diet etc. loss of future earning capacity and also disability on account of the injuries sustained in the road traffic accident, appellant has presented this appeal, seeking enhancement of compensation.

4. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-corporation.

5. Sri R. Vijay Kumar, learned counsel appearing for the appellant submits that, the income assessed by the Tribunal is on lower side. The Tribunal erred in not awarding reasonable compensation towards pain and sufferings, loss of amenities and future medical expenses and other heads. It has also erred in not assessing the reasonable functional and whole body disability on account of grievous injuries sustained in road traffic accident. The claimant was aged about 74 years and the accident occurred on 10.10.2012. Tribunal erred in assessing the income of the claimant at Rs. 5,000/- p.m and also submitted that the rate of interest awarded at 6% per annum is also on the lower side since the accident is of the year 2012 and the same may be enhanced to 9% to 10% per annum. Therefore, impugned judgment and award passed by the Tribunal is liable to be modified awarding just and reasonable compensation.

6. Per contra, Sri. K. Nagaraj, learned counsel appearing for the respondent-corporation inter alia contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper and is passed after considering the oral and documentary evidence and hence interference by this Court is not called for.

7. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the

impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

8. Occurrence of the accident resulting in the injuries to the appellant is not in dispute. Further it is not in dispute that the appellant was aged about 74 years as on the date of accident and hale and healthy and working as security in charge. It is stated that he was earning a sum of Rs. 10,000/- p.m. But, to that effect, he has not produced any credible documents nor examined the security officer or employer. In the absence of the same, the Tribunal took only Rs. 5,000/- p.m as his income, which is on the lower side. The accidental injuries resulted in amputation of left leg below knee. He has undergone treatment for 90 days as in-patient in the hospital on account of the grievous injuries sustained in the accident. He underwent follow up treatment for a period of 6 months because of accident. The doctor has assessed disability at 75% to the lower limb and 25% to the whole body. The Tribunal assessed the disability at 25%.

9. Having regard to his age and nature of the injuries sustained, we can safely re-assess the whole body disability at 60% as against 25% assessed by the Tribunal, to meet the ends of justice. Having regard to the injuries, we are of the view that the appellant has made out a case for enhancement of reasonable compensation under different heads. Further, as rightly pointed out by the learned counsel appearing for the appellant, the income of the appellant assessed by the Tribunal is on lower side and having regard to the age, avocation and year of accident, we can safely re-assess the income at Rs. 6,000/- per month, to meet the ends of justice.

10. He is not in a position to do the work as he was doing before accident. He has to endure the said difficulty throughout his life. Taking into consideration all these aspects, we deem fit to award Rs. 1,50,000/- towards pain and sufferings as against Rs. 50,000/-, Rs. 50,000/- towards conveyance, Nourishing and food and attendant charges, as against Rs. 15,000/-, Rs. 36,000/- (Rs. 6,000/- x 6 months) towards loss of income during treatment period as against Rs. 24,000/-, Rs. 1,00,000/- towards loss of amenities as against Rs. 10,000/-, Rs. 2,16,000/- (Rs. 6,000/- x 12 x 5 x 60/100) towards permanent disability and loss of future earning capacity as against Rs. 75,000/-, Rs. 75,000/- towards future medical expenses as against Rs. 30,000/-. However, the Tribunal has rightly awarded a sum of Rs. 3,94,000/- towards Medical Expenses. Therefore, interference by this Court is not called for.

11. As rightly pointed out by the learned counsel appearing for the appellant, the rate of interest awarded by the Tribunal at 6% is on the lower side as accident occurred in the year 2012. Therefore, in the light of catena of Judgments, we deem it fit to award interest at 9% per annum on enhanced compensation.

12. Having regard to the facts and circumstances of the case, as stated above,

appeal is allowed in part. The impugned judgment and award dated 2.01.2015 passed by the Tribunal in MVC No. 1024/2013 is hereby modified. The total compensation payable comes to Rs. 10,21,000/- with 9% interest per annum on the enhanced sum as against Rs. 5,98,000/- awarded by the Tribunal and the break- up is as follows:

The respondent-Corporation is directed to deposit the enhanced compensation of Rs. 4,23,000/- with interest at 9% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment and award.

Out of the enhanced compensation, Rs. 2,00,000/- with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled/Gramena Bank, in the name of the appellant for a period of five years and renewable for another five years, with liberty to him to withdraw the periodical interest accrued on it.

The remaining Rs. 2,23,000/- with proportionate interest shall be released in favour of the appellant immediately, on deposit by the respondent-Corporation.

Draw the award, accordingly.