

(2016) 01 KAR CK 0163

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 9556/2011 (MV)

Beenarani

APPELLANT

Vs

The Manager, The Oriental Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 01 KAR CK 0163

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Girish B. Baladare, Advocate, for the Appellant; K. Suresh, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—1. The injured, dissatisfied with the quantum of compensation and failure to fasten liability on the Insurance Company by judgment and award dated 01.08.2011 in MVC. No. 1087/2008 of the Fast Track Court and Additional MACT, Hassan, (for short "MACT") has presented this appeal.

2. Appellant filed claim petition invoking Section 166 of Motor Vehicles Act 1988, claiming compensation of Rs. 15,00,000/- for injuries sustained in a road traffic accident that occurred on 14.7.2007, at about 4.30 P.M. According to the appellant, while walking near Mathrusri Nursing Home on Salagame road, in Hassan, the rider of the motor cycle bearing certificate of registration No. KA-13-R-9502 came from behind and dashed against her, as a result of which she sustained injuries to her leg and when unconscious was shifted to Sanjeevini Hospital and thereafter referred to St. John's Hospital, Bangalore.

3. That claim petition was resisted by the first respondent-owner of the offending vehicle, though admitted the accident and the involvement of the motor cycle, while the second respondent-insurer of the motor vehicle denied the allegations, while admitting that the risk of the owner of the offending motor vehicle was

covered by a policy of insurance.

4. The trial Court framed issues, the first of which related to actionable negligence on the part of the rider of the motor vehicle and the second over the liability and third on quantum of compensation. The MACT recorded the testimony of P.W.1-the appellant and one Dr. Abharani Kujur as P.W.2 and another Dr. H.M. Prakash as P.W.3, while the driver of the ambulance which is stated to have ferried the claimant from Hassan to St. John's Hospital as P.W.4 and marked Exs.P1 to P15; X-rays as Exs.C1 to C5 and two case sheets as Exs.C6 and 7. For the respondents there is neither oral nor documentary evidence was let in.

5. The MACT having regard to the material on record and admission of the first respondent over the involvement of the motor vehicle recorded a finding in the affirmative over Issue No. 1 attributing actionable negligence to the rider of the motor cycle in causing the accident, while recording a finding in the negative over fastening liability on the insurer of the motor vehicle and by judgment and award impugned determined the following compensation:-

i.e. total of Rs. 3,87,000/- with interest at 6% per annum.

6. Learned counsel for the appellant submits that the MACT failed to eschew irrelevant material, and though attributed actionable negligence to the rider of the motor vehicle i.e. insured, nevertheless did not fasten liability on the insurer on the premise of vacillatory statements made by the appellant as recorded by Sanjeevini Hospital and St. John's Hospital in the medical records, Exs.C1 to C7. According to the learned counsel, at the very first instance when appellant was admitted unconscious at Sanjeevini Hospital, at about 6.30P.M, on 14.07.2007, it was recorded that she was walking on the footpath when somebody in the motor cycle came from behind and dashed against her and therefore, further recording in the medical history sheet had no relevance. The statement of P.W.4-driver of the ambulance which ferried the appellant from Sanjeevini Hospital to St. John's Hospital, Bengaluru is that not knowing the cause of the accident had made statement to the hospital authorities at St. John's Hospital which when recorded did not throw light over the nature of the accident, which when not considered by the MACT has occasioned grave injustice. It is further argued that award of compensation under the various heads are meager and on the lower side.

7. Per contra, learned counsel for the insurer seeks to sustain the judgment and award impugned as being well merited and not calling for interference. The learned counsel for the insured is conspicuously absent.

8. There is no more dispute that 1st respondent owner of the offending motor vehicle filed written statement admitted the factum of the accident caused by the said motor vehicle insured by the 2nd respondent-Insurance Company. The MACT too accepted the said fact and attributed actionable negligence to the rider of the motor vehicle and answered Issue No. 1 in the affirmative. In other words, the MACT accepted the version of the claimant as well as that of the owner of the

offending motor vehicle that when the claimant was walking in front of Mathrusri Nursing Home, the rider of the motor vehicle in a rash and negligent manner, came from the hind side and dashed against her due to which she suffered grievous injuries. In the light of said finding, the MACT having noticed that the owner of offending motor vehicle had obtained a policy of insurance, valid as on the date of accident covering the risk of third parties declined to fasten the liability on the Insurance company, on the premise that certain vacillatory statements were recorded in the Medical records, relating to the nature of accident.

9. Suffice it to notice that at 4.30 pm on 14.7.2007, the accident having occurred, at about 6.30 pm the claimant-injured was taken to the hospital in an unconscious condition, whence Ex.P11, the medical record, states that the injuries were due to RTA collided with two wheeler at 4.30 p.m. on Salagame road, Hassan, while walking by the side of the road after her school work, and the registration number of the Vehicle as KA-13-R-9502. When the claimant was unconscious, since it is not known who made the statement the only presumption is that of the person who brought the claimant to Sanjeevini Hospital.

10. Ex.P15 is the history and physical examination sheet which records the cause of accident thus "at about 4.30 p.m. at Salagame Road near Mathrushri Nursing Home, she was walking on the side of road after her school, hit by two wheeler (No. KA-13-R-9502). PT directly brought here; O/E unconscious". The said record further relates to the treatment extended to the injured.

11. Ex.P15 said to be a Nurse's record of St.John's Hospital, Bangalore, dated 11.9.2007, states in the admission note thus: "27 year old female got admitted to the Ward E H/O RTA on 14.7.2007. When she was riding on bike she fell down and has got sustained injury to right leg and lateral condyle of tibia. She has taken treatment from outside hospital and she was c/o loss of sensation of right leg."

12. PW.4 the driver of ambulance who is said to have ferried the appellant to St.John's hospital Bangalore, on 14.7.2007, testifies that he made the statement to the nurse who recorded the same in the nurse's report Ex.P15, without knowing the cause of the accident.

13. In the light of the aforesaid evidence both oral and documentary and oral testimony, there was a necessity for the MACT to eschew irrelevant material. In the facts and circumstances it is sufficient to notice that on the day of the accident appellant when admitted to Sanjeevini Hospital, Hassan; was unconscious and the statement recorded was of the person who brought her to the hospital, stating, that while she walking by the side of road near Mathrushri hospital, a motor cycle came from behind and dashed against her. This being the first of the statement, necessarily, throw light upon the cause of the accident. The subsequent statement in the nurse's report Ex.P15 three days after the accident, stating that she had fallen when riding a motor cycle, was the

statement of PW.4, who had no knowledge about the cause of the accident.

14. The testimony of PW.4, when found to be acceptable over the statement recorded in Ex.P15, by the nurse regarding the cause of the accident, which is not shown to be incriminatory or unbelievable. In the circumstances, there was no necessity for the MACT to come to the conclusion that there were vacillatory statements of the appellant, to decline to fasten the liability on the Insurance Company, to pay the compensation, which finding is a rank absurdity.

15. In the circumstances, the MACT was not justified in declining to fasten the liability to pay compensation, on the insurer of the offending motor vehicle.

16. It is the case of the claimant/appellant that she is employed by Sri Malavika Vidya Samsthe R), Hassan, as a teacher on a monthly wage of Rs. 10,000/- from the month of May 2007 as indicated in the letter dated 20.11.2008 Ex.P12 of the Principal. If that is so, in the absence of an order of termination from service, it cannot but be said that claimant/appellant continues to work hence disentitled to future loss of income, although, the MACT awarded Rs. 1,22,400/- reckoning Rs. 4,000/- as monthly income, applying multiplier "17" and permanent disability of 15%.

17. Testimony of PW.2 and 3/the doctors are clear indication that claimant/appellant suffered permanent disability of 64.4% to the right lower limb due to injuries which in other words is 21.4% to the whole body. In the cross-examination of PW.2, Doctor, nothing incriminatory is elicited over permanent disability suffered by the claimant/appellant. In that view of the matter, the MACT was not justified in assuming that the disability was 15%.

18. In the facts and circumstances, more appropriately, the appellant had to undergo surgical intervention to set-right the fracture of tibia and fibula of right leg and was extended treatment at Sanjeevini Hospital at Hassan at the first instance and thereafterwards, at St.John's Hospital, Bangalore, is entitled to Rs. 50,000/- towards pain and suffering as against Rs. 30,000/- awarded by the MACT.

19. Appellant was an inpatient from 11.9.2007 to 12.10.2007 for 85 days and required the assistance of an attendant, while not a resident of Bangalore and in that view of the matter, award of Rs. 5,000/- towards medical attendant and the award for conveyance being on the lower side, it is just and proper to award Rs. 10,000/- towards attendant charges and Rs. 5,000/- towards conveyance charges. Rs. 10,000/- awarded by the MACT towards nutritious food does not call for interference.

20. Claimant having suffered the injury was an inpatient for 85 days hence, it cannot be said that she was hale and healthy immediately thereafter, do so as to attend to duties. In the circumstances the appellant must have been off duty for atleast four months and reckoning monthly wage of Rs. 5,000/- on the date of accident and injury, since Ex.P12, letter of Principal is not proved by adducting

the evidence of the author, the appellant is entitled to Rs. 20,000/- towards loss of income during laid-up period of 4 months.

21. There is force in the submission of learned counsel for insurance company that Rs. 1,22,000/- awarded towards loss of future income can be reduced and awarded towards loss of amenities of life.

22. Regard being had to the fact that the appellant aged 27, a female, married and teacher by avocation, required to stand and discharge duties, coupled with the permanent disability of 21.4%, it is reasonable to award Rs. 1,22,000/- towards loss of amenities in addition to Rs. 15,000/- awarded by the MACT.

23. In the result, this appeal is allowed in part. The judgment and award against is modified fastening liability to pay compensation on the insurer of the offending motor vehicle and entitling the appellant to a total compensation of Rs. 2,32,000/- with interest at 6% p.a. from the date petition and in all other respects remains unaltered.