

(2013) 02 KAR CK 0138

In the Karnataka High Court

Case No : M.F.A. No. 1671 of 2010 (MV) and 262 of 2011 (MV) and Misc. Cvl. 19430 of 2011

Bhavya @ Kavya

APPELLANT

Vs

Babu Shivaram Mahishale and Another
 North West
Karnataka Road Transport Corporation Vs Bhavya @ Kavya
and Another

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Citation : (2013) 2 ACC 854

Hon'ble Judges : Vegi Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—These two appeals respectively by the injured-claimant and the Corporation are directed against the same common judgment and award dated 8th September, 2009, passed in MVC No. 388/2005, by the Presiding Officer, Fast Track Court-II, Motor Accident Claims Tribunal, Bangalore Rural District, Bangalore (for short, "Tribunal"). While the injured-claimant has filed the appeal seeking enhancement of compensation on the ground that, the compensation of Rs. 1,19,600 awarded by Tribunal for the injuries sustained by her in the road traffic accident is on the lower side as against her claim for Rs. 22,00,000; the Corporation has filed the appeal seeking to set aside the liability fastened on it, on the ground that the accident occurred purely on account of negligent act on the part of the injured claimant.

2. The facts in brief are that, the injured-claimant filed the claim petition u/s 166 of the Motor Vehicles Act, contending that, at about 12.45 a.m., on 27.5.2005, when the injured-claimant along with others had been to Dharwad to attend a Marriage of a relative and returning to Bangalore by Bus bearing Registration No. KA-23/F-194, near Satish Petrol Bunk on NH-4, Nelamangala, the driver of the said bus drove the same at a very high speed, in a rash and negligent manner

and hit against a Lorry bearing Registration No. MP-09/KD-1975, that was parked on the left side of the road. Due to the impact, the injured-claimant sustained grievous injuries such as lacerated wound over left parietal region measuring 15 cms. x 18 cms. Swelling over the right wrist. As per Ex. P45 - Discharge Summary, the injured-claimant has sustained a globular swelling over the posterior axillary fold which was non-tender, freely mobile, not fixed to underlying structures, etc. She also underwent an operation on her left temporo-parietal region. She was immediately shifted to General Hospital, Nelamangala and on the advice of the Doctor, she was shifted to M.S. Ramaiah Memorial Hospital. She also took treatment at NIMHANS Hospital, where he was in-patient for a period of eight days and was in-patient for one day at Rajmahal Vilas Hospital.

3. It is the case of the injured claimant that she was aged about 22 years at the time of accident and was a First Class Graduate in B.Sc. Microbiology and working as Medical Transcriptionist Ajay Dotcom with a salary of Rs. 5,000 per month. On account of the grievous injuries sustained in the road traffic accident, the injured-claimant filed the claim petition before the Tribunal, u/s 166 of the Motor Vehicles Act, seeking compensation of Rs. 22,00,000 against the Corporation. The said claim petition had come up for consideration before the Tribunal on 8th September, 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 40,000 towards injury, pain and sufferings, Rs. 11,600 towards medical expenses, Rs. 15,000 towards loss of income during treatment period, Rs. 3,000 towards conveyance, nourishing food and attendant charges and Rs. 50,000 towards loss of amenities, discomfort and unhappiness and also loss of marriage prospects, in all a sum of Rs. 1,19,600, with 6% interest per annum, from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the injured-claimant is in appeal before this Court, seeking enhancement of compensation; whereas the Corporation is in appeal seeking to set aside the liability fastened it, on the ground that the accident occurred purely on account of negligent act on the part of the injured-claimant.

4. We have gone through the grounds urged in the memorandum of appeal filed by both injured claimant and also the Corporation and also the impugned judgment and award passed by Tribunal and heard the learned Counsel appearing for the injured-claimant and the Corporation, for considerable length of time.

5. Learned Counsel appearing for injured-claimant vehemently submits that, the compensation awarded by Tribunal towards all the heads is on the lower side and liable to be enhanced reasonably for the reason that the claimant has sustained grievous injuries on account of which her marriage prospects are likely to be affected. Therefore, he submits that the impugned judgment and award passed by Tribunal is liable to be modified.

6. So far as the specific ground taken by the Corporation at Ground No. 6 of the appeal filed by Corporation, Mrs. H.R. Renuka, learned Counsel appearing for Corporation fairly submitted that the appeal filed by the Corporation challenging the negligence in connected matter, arising out of the same accident, has been dismissed by this Court and, therefore, she submits that the instant appeal filed by Corporation may also be dismissed as having become infructuous. Her submission is placed on record and the appeal filed by the Corporation is liable to be dismissed as being devoid of merit.

7. After hearing the learned Counsel appearing for both parties and after careful perusal of the impugned judgment and award passed by the Tribunal and after going through the original records made available, it can be seen that the compensation awarded by Tribunal for the injuries sustained by the claimant is on the lower side and liable to be enhanced.

8. It is not in dispute that on account of the road traffic accident, the claimant has sustained grievous injuries such as lacerated wound over left parietal region measuring 15 cms. x 18 cms. Swelling over the right wrist. As per Ex. P45 - Discharge Summary, she has sustained a globular swelling over the posterior axillary fold which was non-tender, freely mobile, not fixed to underlying structures, etc. She also underwent an operation on her left temporo-parietal region. She was immediately shifted to General Hospital, Nelamangala and on the advice of the Doctor, she was shifted to M.S. Ramaiah Memorial Hospital. She also took treatment at NIMHANS Hospital, where he was in patient for a period of eight days and also was in-patient for one day at Rajmahal Vilas Hospital, Further, it can be seen that as per the deposition of P.W. 7. Dr. Chandramouli, when the claimant was brought to the Hospital, he found extra dural Haematoma on the left side and deposed that an operation was conducted. The Wound Certificate reveals that she was also unconscious when she was brought to the Hospital. The Tribunal ought to have taken into consideration that the claimant ought to have undergone lot of unsaid pain and agony during the treatment and also follow-up treatment period. Further, we presume that on the advice of the Doctor, she must have taken bed rest and follow-up treatment at least for a period of six months. Further, it can be seen that the claimant was hospitalized for a period of eight days in one Hospital and one day in another Hospital and she has taken treatment at various other Hospitals. During this period, she must have spent reasonable amount towards conveyance, nourishing food and attendant charges apart from medical and other incidental expenses. Therefore, having regard to the age, avocation, nature of injuries sustained nature and duration of treatment, and the facts and circumstances of the case on hand, we award a sum of Rs. 10,000 towards conveyance, nourishing food and attendant charges as against Rs. 3,000; Rs. 30,000 towards loss of income during treatment period, at the rate of Rs. 5,000 per month for a period of six months as against Rs. 15,000; Rs. 2,00,000 towards loss of amenities, discomfort and unhappiness and loss of marriage prospects as against Rs. 50,000; and Rs. 75,000 towards injury, pain and sufferings as against Rs. 40,000 awarded by

Tribunal. Thus, the claimant would be entitled to total compensation of a sum of Rs. 3,26,600 as against Rs. 19,600 awarded by Tribunal. Therefore would be enhancement of compensation by a sum of Rs. 12,07,000 with 6% interest per annum. However, a sum of Rs. 11,600 awarded by Tribunal towards medical expenses is as per the medical bills and hence, it does not call for interference. The breakup is as follows:

In the light of the facts and circumstances of the case, as stated above, the appeal filed by injured claimant is allowed in part and the appeal filed by the Corporation is dismissed as being devoid of merit.

The impugned common judgment and award dated 8th September, 2009, passed in M.V.C. No. 388/2005, by the Presiding Officer, Fast Track Court-II, Motor Accident Claims Tribunal, Bangalore Rural District, Bangalore, is hereby modified, awarding a sum of Rs. 2,07,000, with interest at 6% per annum from the date of petition till the date of realisation, in addition to the compensation awarded by Tribunal.

The Corporation is directed to deposit the enhanced compensation of Rs. 2,07,000, with interest thereon at 6% per annum, within three weeks from the date of receipt or copy of the judgment.

Immediately on such deposit by the Corporation, 50% shall be deposited in the name of the injured-claimant, in Fixed Deposit, in any scheduled/Nationalised Bank, for a period of ten years, renewable by another ten years, with liberty reserved to her to withdraw the periodical interest.

Remaining 50% shall be released in favour of the injured-claimant, immediately on deposit by the Corporation.

The statutory amount is deposit by the Corporation in the appeal filed by it is directed to be transmitted to the jurisdictional Tribunal, forthwith.

Office to draw award, accordingly.

In view of disposal of main matter on merits, Misc. Cvl. No. 10430/2011 filed by the Corporation for stay of the impugned judgment and award passed by Tribunal is dismissed as having become infructuous.