

(2014) 07 KAR CK 0134
In the Karnataka High Court
Case No : M.F.A. No. 10512 of 2012 (MV)

B.S. Bhagyadarshini

APPELLANT

Vs

The Branch Manager, National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 07 KAR CK 0134

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

Bench : Division Bench

Advocate : H.C. Prakasha, Advocates for the Appellant; K. Sridhara, Advocates for the Respondent

Judgement

N.K. Patil, J.—Though this appeal is posted for Admission, the same is taken up for final disposal, with the consent of the learned counsel appearing for both the parties.

2. This appeal by the claimant is directed against the impugned judgment and award dated 18th August 2011, passed in MVC No. 1214/2010, by the IV Additional District Judge, Mysore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,70,680/-, awarded in her favour as against her claim for Rs. 57,50,000/-, is inadequate.

3. The appellant claims to be aged about 23 years and working as Computer Operator, earning a sum of Rs. 6,000/- per month. He was hale and healthy prior to the date of accident. That at about 10:30 A.M., on 03-02-2008, when the appellant was proceeding on her Kinetic Honda bearing Registration No. KA-09/X-7582, slowly, by following the traffic rules, she met with an accident, on account of rash and negligent driving by the driver of Lorry bearing Registration No. KA-09/2278 near Banashankari Temple. Due to the impact, the appellant sustained grievous injuries. Immediately, she was shifted to the nearby Hospital.

4. It is the case of the appellant that she has spent considerable amount towards

conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, she has to be compensated adequately.

5. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 57.50 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 18th August, 2011. 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. 1,70,680/- with interest at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

6. We have heard learned counsel for appellant and learned counsel for first respondent/Insurance Company for considerable length of time.

7. It is the case of the appellant that on account of the road traffic accident, the appellant sustained pain over the left leg ankle while running and walking for long distance, cross leg and squatting is painful and restricted, tenderness and lateral and posterior malleolus and dorsiflexion restricted by 10 degree and was inpatient for some days and therefore, he has to be awarded reasonable compensation.

8. As against this, learned counsel appearing for first respondent/Insurer inter alia contended and substantiated the impugned judgment and award passed by Tribunal, stating that the same is passed after due consideration of the oral and documentary evidence available on file, taking into consideration the age, avocation and year of accident, since no credible documentary evidence is produced by the injured to establish that she was getting salary of Rs. 6,000/- per month, except making oral statement. Hence, interference in the same is uncalled for.

9. After hearing learned counsel for the appellant and learned counsel appearing for first respondent/Insurer and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that she was aged about 23 years and working as a Computer operator. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 90,680/- towards medical expenses, as per the medical bills and prescriptions. Hence, interference in the same is uncalled for.

10. However, so far as the compensation awarded under injury, pain and sufferings and loss of amenities, discomfort and unhappiness is concerned, the same is on the lower side and needs to be re-determined. Further, the Tribunal has failed to award any compensation towards disability and also conveyance,

nourishing food and attendant charges as the appellant was in-patient for treatment of the accidental injuries in BGS Apollo Hospital, Mysore.

11. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries, such as fracture dislocation of Talo Calcaneal joint and fracture distal end of radius of durj strain with tenderness in the right wrist joint. PW2, Doctor has stated that as per X-ray, the appellant has sustained posterior osteo phytes and sustained permanent partial locomotor disability of about 14.755% to the whole body. The appellant being aged about 23 years, has to endure this disability for the rest of her life. Because of the injuries sustained, she must have been away from work for a period of not less than three months. Having regard to the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 5,500/-, to meet the ends of justice. Further, it is stated that the appellant took treatment as in-patient for a period of ten days from 03-02-2008 to 13-02-2008 at BGS Apollo Hospital, Mysore. During this period, she must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Further, it is seen that, the Tribunal has failed to award any compensation towards loss of income during treatment period and also conveyance, nourishing food and attendant charges apart from incidental expenses. Further, it is to be seen that on account of grievous injuries sustained, and the disability assessed by Doctor at 14.755%, there would be some disability on account of the same, which the appellant has to endure for the rest of her life. Therefore, having regard to the age, avocation, nature of injuries, nature and duration of treatment undergone, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 50,000/- towards injury, pain and suffering as against Rs. 40,000/-; Rs. 5,000/- towards conveyance, nourishing food and attendant charges; Rs. 16,500/- towards loss of income during treatment period, at the rate of Rs. 5,500/- per month for a period of three months; and Rs. 1,00,000/- towards loss of amenities, discomfort and unhappiness on account of disability as against Rs. 40,000/- awarded by Tribunal.

12. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 18th August 2011, passed in MVC No. 1214/2010, by the IV Additional District Judge, Mysore, is hereby modified, awarding a sum of Rs. 2,62,180/- as against Rs. 1,70,680/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization. There would enhancement of compensation by Rs. 91,500/- with 6% interest per annum, excluding interest for the delayed period of 329 days in filing the appeal. The break-up is as follows:

The first respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 91,500/-, with interest thereon at 6% per annum, excluding interest for the delayed period of 329 days in filing the appeal, within four weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, 50% of it shall be invested in the

name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable by another ten years, with liberty reserved to her to withdraw the periodical interest.

Remaining 50% of it shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.