(2016) 06 KAR CK 0176

In the Karnataka High Court

Case No : M.F.A. No. 23742 of 2011 (MV) and M.F.A. CROB No. 100145 of 2015

Deputy General Manager, NWKRTC, Hubli — APPELLANT

Vs

Bharat Dwarakadas Umarani — RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1810

Hon'ble Judges : Mrs. Rathnakala, J.

Bench : Single Bench

Advocate : S.C. Bhuti, Advocate, for the Petitioners; Ashok A. Naik, Advocate, for the Respondents; Ashok A. Naik, Advocate, for the Petitioners; S.C. Bhuti, Advocate, for the Respondents

Final Decision : Partly Allowed

Judgement

Mrs. Rathnakala, J.—This appeal and cross objection are directed against the judgment and award dated 30-04-2010 in MVC No. 1238/2006 passed by the Presiding Officer, Fast Track Court-II, Member, Additional MACT, Belgaum, (for short, ?the Tribunal?) in respect of the claim petition filed by the injured under Section 166 of the Motor Vehicles Act, 1988 (for short, ?the Act?) on account of injuries suffered in a vehicular accident.

2. While the insurer/appellant in MFA No. 23742/2011 is challenging the liability mulcted against it by the Tribunal to pay compensation, the claimant/cross-objector in MFA Crob No. 100145/2015 is dissatisfied with the quantum of compensation awarded in his favour.

3. At this stage, it is not in dispute that the claimant sustained injuries in the vehicular accident on 22-01-2006, while he was travelling in KSRTC Bus bearing registration No. KA-22-F-1364.

4. The Tribunal on appreciation of the material placed before it and medical evidence produced by the injured had found that he was suffering from 1) Buster

fracture Til vertebra, 2) Traumatic paraplegia, 3) Fracture of 4th, 5th ribs right side and 4th rib left side. While computing the compensation, the Tribunal allowed the medical expenses for Rs. 2,00,000/- though he had claimed to the tune of Rs. 2,60,495/-. The Tribunal has awarded a sum of Rs. 15,000/- towards conveyance charges. On the basis of the documentary proof produced by the injured and considering the declaration made in Saral form and income-tax returns submit by the injured, the Tribunal assessed his income at Rs. 34,000/- per annum and awarded the loss of future income at Rs. 3,53,600/- by accepting the medical evidence that he is suffering 80% physical disability. In all, the Tribunal has awarded a compensation of Rs. 7,72,600/-.

5. Sri. S.C. Bhuti, learned counsel for the appellant/insurer submits that the appellant questioned its liability in the connected appeals, but the same was negatived by this Court vide considered orders. Hence, he is restricting his appeal ground regarding amount of compensation awarded in favour of the injured as excessive.

Sri. S.C. Bhuti, learned counsel further submits that the doctor who had examined the claimant is not the one who had treated him; after 3-4 years, this witness had examined the injured and assessed the disability at 80%. During the cross-examination, he had admitted that he had not mentioned the condition of the patient as paraplegia and disability assessed at 80% is on a higher side. Hence, loss of future earning has to be reassessed and excess compensation amount awarded shall be reduced by modifying the impugned judgment and award.

With regard to medical expenses, Sri. S.C. Bhuti submits that though Rs. 60,000/- is disallowed by the Tribunal, the claimant had failed to produce the documents to prove in respect of Rs. 2,00,000/- towards medical expenses. Hence, the amount awarded under the medical expenses shall also be reduced. On his own showing the claimant was running a grocery shop; if that is so, in the absence of any evidence that business had to be closed, owing to his physical disability, it shall be conveniently presumed that the business is continued by the family members and there is no loss of future income either to the claimant or his family members. In view of the above, the amount of Rs. 7,72,600/- awarded by the Tribunal is excessive. Hence, the impugned judgment and award has to be intervened by scaling down the compensation substantially.

6. In reply, Sri. Ashok A. Naik, learned counsel for the claimant submits that the Tribunal was not justified in disallowing a sum of Rs. 60,495/- towards medical expenses. He had spent much more amount towards his treatment, but inadvertently he had not preserved the bills. The income assessed by the Tribunal at Rs. 34,000/- per annum acting on the Saral form is justified, even a manual worker at the relevant point of time was found earning Rs. 3,750/- per month by the Tribunal while adjudicating the claim petitions. Though he is suffering from paraplegia, the compensation of Rs. 25,000/- awarded towards loss of amenities and Rs. 25,000/- towards loss of future medical expenses is on

the lower side. Hence, the judgment and award may be modified by enhancing the compensation amount reasonably.

7. In the backdrop of the above submissions and on a perusal of the judgment and award of the Tribunal below, it is established by the evidence of PW8-Doctor that the injured is suffering with buster fracture T11 vertebra, traumatic paraplegia, fracture of 4th, 5th ribs right side and 4th rib left side leading to inability to move both the lower limbs/loss of sensation below the level of umbilicus/loss of bowel and bladder control/inability to stand and walk. The doctor observed his functional disability as complete loss of severation below the level of limitation (T10), power in both the lower limbs grade O. Patient has no control over the bowel and bladder. Pressure sores present on posterior aspect of heels and the sacrum. Patient is a total paraplegic. His cross-examination did not yield any result for the benefit of the insurer. Thus, the Tribunal accepted his evidence to that he is suffering from paraplegia and rightly assessed the disability of 80%.

8. Having held so, the Tribunal has rightly awarded a sum of Rs. 1,00,000/- towards pain and suffering, accepting the documentary evidence coupled with the oral evidence of the witness awarded a sum of Rs. 2,00,000/- towards medical expenses. However, Rs. 25,000/- awarded towards loss of amenities is on the lower side, having regard to the present condition of the injured, which he has to endure for the rest of his life. Hence, it is just and reasonable to award another sum of Rs. 50,000/- towards loss of amenities.

9. Towards loss of future income, the Tribunal acted on the basis of the income declared by the injured/claimant in the Saral form and assessed the income of the injured at Rs. 34,000/- per annum. However, having accepted the evidence of the injured that he was running a grocery shop and having regard to his age and date of accident, I hold that it is required to workout his loss of future earning, re-assessing his income at Rs. 4,000/- per month. Age of the claimant is 30 years and suitable multiplier applicable to his age is 13. The loss of future income works out to Rs. 4,99,200/- (Rs. 4,000/- x 12 x 13 x 80/100 = Rs. 4,99,200/-). Thus, he is entitled for the enhanced compensation of Rs. 1,45,600/- under the head of loss of future income. The compensation awarded towards future medical expenses is also on the lower side, which needs to be enhanced by another sum of Rs. 50,000/-.

In all, the claimant is entitled for the enhanced compensation of Rs. 2,45,600/- with interest at 6% per annum from the date of petition till payment.

10. For the foregoing reasons, the appeal filed by the insurer is dismissed as devoid of merits and the cross-objection filed by the claimant/injured is allowed in part.

11. The judgment and award dated 30-4-2010 in MVC No. 1238/2006 passed by the Presiding Officer, Fast Track Court - II, Member, Additional MACT, Belgaum, is hereby modified to the extent that the cross-objector is entitled to an additional

compensation of Rs. 2,45,600/- with interest at 6% per annum, excluding the interest for the delayed period of 1054 days in filing the cross-objection.

12. The Corporation is directed to deposit the enhanced compensation amount along with accrued interest within three weeks from the date of receipt of the certified copy of this judgment.

13. Out of the enhanced compensation amount of Rs. 2,45,600/-, Rs. 1,45,600/- with accrued interest shall be invested in the name of cross objector/claimant in any Nationalised Bank/Scheduled Bank/Grameena Bank of claimant?s choice for a period of 5 years, with liberty to him to with draw the interest accrued on it, periodically.

14. Rest of the amount shall be disbursed in his favour.

15. Draw up the award, accordingly.

16. The amount in deposit by the Corporation in MFA No. 23742/2011 shall be transmitted to the jurisdictional Tribunal, along with the records, forthwith.