

(2015) 12 KAR CK 0111
In the Karnataka High Court
Case No : M.F.A. No. 6013 of 2010 (MV)

G.S. Bhagya

APPELLANT

Vs

The New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 12 KAR CK 0111

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : N. Gowtham Raghunath for Lakshmy Iyengar, Advocate, for the Appellant; M.P. Srikanth, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant-appellant for enhancement of compensation is directed against the impugned common judgment and award dated 12/01/2010, passed in MVC No. 546/2009, by the Presiding Officer, Fast Track Court-II and Additional Motor Accident Claims Tribunal, Mysore, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 2,11,000/- under different heads with interest at 6% p.a., from the date of petition till the date of deposit, excluding compensation awarded towards future medical expenses as against the claim of Rs. 29,94,100/-, on account of the injuries sustained by her in the road traffic accident.

3. In brief, the facts of the case are:

"The appellant claims to be aged about 45 years at the time of the accident. She was hale and healthy prior to the accident, working as Lecturer and drawing the salary of Rs. 18,658/- per month. That on 13.2.2003 at about 4.30 p.m. she along with her father was moving in her scooty near Adichunchanagiri road, RMP quarters, Kuvempunagar, Mysore city, at that time, the driver of the lorry bearing

Reg. No. MEY 4307 came in a rash and negligent manner and dashed against the TVS Scooty. Due to which, both the rider and pillion rider fell down and appellant sustained injuries to right foot, tip of the front tooth and to nose. Immediately, she was shifted to BGS Appolo hospital, Mysore, where she took treatment as inpatient for three weeks, underwent surgery and thereafter, on the advise of the Doctor, she has taken bed rest and follow up treatment."

4. It is the further case of the appellant that, she spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the appellant in the said accident, she has suffered permanent disability. Therefore, appellant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 2,11,000/- as compensation under different heads with interest at 6% p.a., from the date of petition till its deposit, excluding interest on the compensation awarded towards future medical expenses.

6. Being dis-satisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented this appeal.

7. The submission of the learned counsel appearing for appellant, at the outset is that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and suffering and towards loss of amenities, discomforts and unhappiness and what is awarded is inadequate and it requires to be enhanced reasonably. To substantiate the said submission, he submitted placing reliance on the evidence of the Doctor, that, appellant has sustained grievous injuries, due to which, she has taken treatment as inpatient for three weeks and she could not attend her work she being a Lecturer by profession and on account of injury sustained by her to right foot, she underwent amputation of the toes of the right leg and due to which, she has suffered mental shock and agony and discomforts and unhappiness persists through out her life and therefore, she has to be compensated reasonably. But these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. Per contra, learned counsel appearing for R1-insurer, inter- alia, contended and submitted that the Tribunal, after due appreciation of the oral and documentary evidence available on file has justified in awarding reasonable compensation under all the heads and therefore, it does not call for interference.

9. After careful consideration of the submission made by learned counsel appearing for the appellant, learned counsel appearing for respondent No. 1 and after perusal of the material available on record, including the impugned

judgment and award passed by the Tribunal, the only point that arises for our consideration is:

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

10. The occurrence of the accident and the resultant injuries sustained by the appellant as per wound certificate are not in dispute. It is also not in dispute that, appellant was aged about 45 years and working as Lecturer and hale and healthy prior to the accident. In the accident, she has sustained tramatic degloving injury of right lower limb of foot, open fracture of 1,2,3,4 base of metra and undisplaced/fracture of medial malleolus, on account of which, she took treatment as inpatient for three weeks and follow up treatment for three months and she could not attended her work during the said period. The Tribunal, after due appreciation of the oral and documentary evidence available on file has justified in awarding a sum of Rs. 50,000/- towards medical expenses, Rs. 10,000/- towards incidental expenses, Rs. 56,000/- towards loss of income during treatment period, Rs. 10,000/- towards future medical expenses and Rs. 10,000/- towards disfigurement and therefore, interference by this Court is uncalled for.

11. However, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings and towards loss of amenities, discomforts and unhappiness and what is awarded is inadequate and it needs to be enhanced. Admittedly, on account of the injuries sustained by the appellant in the accident, she took treatment as inpatient for three weeks. To prove the same, she examined the Doctor as P.W. 3, who, after clinical examination of the appellant has deposed that there is 75% disability on account of amputation of toes and degloving injury. Due to which, appellant might have suffered mental pain and agony during the treatment period and on account of the discomforts and unhappiness persists through out her life and it would affect her happiness in future life as there is disfiguration of toe and therefore, the appellant has to be compensated reasonably. Taking all these aspects into consideration and after re-appreciation of the oral and documentary evidence available eon file, including the evidence of P.W. 2, Doctor, we award a sum of Rs. 75,000/- towards injury, pain and suffering as against Rs. 50,000/- and Rs. 1,00,000/- towards loss of amenities, discomforts and unhappiness as against Rs. 25,000/- awarded by the Tribunal.

In all, the appellant is entitled to the total compensation of Rs. 3,11,000/- instead of Rs. 2,11,000/- and the break- up is as follows:

12. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned common judgment and award dated 12/01/2010, passed in MVC No. 546/2009, by the Presiding Officer, Fast Track Court-II and Additional Motor Accident Claims Tribunal, Mysore, stands modified, awarding the compensation of Rs. 3,11,000/- instead of Rs. 2,11,000/-

as awarded by the Tribunal. There would be an enhancement of Rs. 1,00,000/- with interest at 6% p.a., from the date of petition till its realization.

The first respondent-Insurer is directed to deposit the enhanced compensation of Rs. 1,00,000/- with interest at 6% p.a., from the date of petition till the date of realization, within three weeks from the date of receipt of a copy of this judgment and award.

Immediately on such deposit by the Insurer, the entire enhanced compensation with interest shall be released in favour of the appellant.

Draw the award, accordingly.