
(2015) 11 KAR CK 0285
In the Karnataka High Court
Case No : M.F.A. No. 2193 of 2012 (MV)

Iliyas	Vs	APPELLANT
P. Gopalakrishna Bhat and Others		RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 11 KAR CK 0285

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

Bench : Division Bench

Advocate : Sandesh Shetty T., Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant-appellant is directed against the impugned judgment and award dated 12/10/2011, passed in MVC No. 443/2008, by the Presiding Officer, Fast Track Court and Member, Motor Accident Claims Tribunal, Mangalore, D.K., (for short "Tribunal").

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 5,20,000/- under different heads fixing 40% liability on the part of the rider of the two wheeler and 30% each on the part of respondent Nos. 2 and 4, Insurer of the autorickshaw and the bus with interest at 6% per annum from the date of petition till its payment, as against the claim of Rs. 22,00,000/-, on account of the injuries sustained by him, in the road traffic accident and directed the respondent Nos. 2 and 4 to deposit the said amount with interest.

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

The claimant was aged about 28 years at the time of accident. He was hale and healthy prior to the accident and working as Mason under PW3 and getting the monthly salary of Rs. 6,250/- per month. That at about 8.45 a.m. appellant was proceeding as a pillion rider in the motor cycle bearing Reg. No. KA.19.U.5028 and when they were going near Marnabil of Sajipa Munnur village, at that time,

the driver of the auto bearing Reg. No. KA.19.B.1893 came from opposite direction with high speed in a rash and negligent manner and dashed against the motor cycle, due to which, rider and pillion rider of the motor cycle along with the vehicle fell on the road and meanwhile, the driver of the bus bearing Reg. No. KA.21.A.8284 came behind him with high speed passed on his legs and caused multiple grievous injuries to various part of his body. Immediately, appellant was shifted to Tejaswini Hospital, Mangalore, where he took treatment as inpatient upto 26.9.2005, his left lower limb below knee has been amputated, implants were inserted and thereafter, on the advise of the Doctor he has taken bed rest and follow up treatment.

4. It is the further case of the appellant that he spent considerable amount towards medical expenses and other incidental charges. On account of the injuries sustained by him, he has suffered permanent disability and the Doctor has assessed the disability at 42% to the whole body. Therefore, he has filed a claim petitions before the Tribunal under Section 166 of M.V. Act, claiming compensation against the owner and insurer of the auto and bus.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part, as referred above. Being aggrieved by the said judgment, the appellant has presented this appeal.

6. We have heard learned counsel appearing for the appellant and learned counsel appearing for respondent Nos. 2 and 4 Insurer.

7. The submission of the learned counsel Sri Sandesh Shetty, appearing for the appellant, at the outset is that, the Tribunal has erred in not assessing the income of the appellant reasonably and what is assessed is on the lower side and therefore, his income may be re-assessed. Further he submits that, on account of the injuries sustained by the appellant in the accident, he took treatment as inpatient for 14 days, under went two surgeries, his left leg was amputated below knee at middle 1/3rd, but the Tribunal has erred in assessing the permanent disability only at 42% to the whole body and the same is liable to be reassessed in the light of the judgment of the Apex Court and this Court and having regard to his age, at 60 to 70% to the whole body. Further he submits that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, towards conveyance, nourishing food and attendant charges, towards loss of amenities, discomforts and unhappiness, towards loss of future income and towards future medical expenses, including purchase of artificial limb and conveyance charges and therefore, it is liable to be enhanced reasonably.

Further he submits that the Tribunal has erred in fixing 40% negligence on the part of the rider of the motor cycle baring Reg. No. KA.19.U.5028 which is on the higher side and is liable to be reduced by fixing reasonable negligence on the

part of the rider of the motor cycle and other two vehicles involved in the accident viz., Auto bearing Reg. No. KA.19.B.1983 and bus bearing Reg. No. KA.21.A.8284. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. Per contra, learned counsel appearing for the Insurer of the auto and the bus, inter-alia, contended and sought to substantiate that, the Tribunal after due appreciation of the oral and documentary evidence available on file and after assigning valid reasons has justified in fixing 40% negligence on the part of the rider of the motor cycle and 30% each on the part of the driver of both the auto and the bus. The reasoning given by the Tribunal for fixing negligence is just and reasonable and it does not call for interference. Further, they submits that, the Tribunal has justified in awarding reasonable compensation under all the heads and therefore, it does not call for interference.

9. After hearing learned counsel appearing for the parties and after careful perusal of the material available on file, 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 Ex. P4-wound certificate are not in dispute. It is the case of the appellant that he was aged about 28 years at the time of accident, hale and healthy prior to the accident and working as Mason.

The Tribunal, after considering the oral and documentary evidence available on file and after assigning cogent and valid reasons, has recorded the finding of fact for fixing negligence at 40% on the part of the rider of the Motor cycle bearing Reg. No. KA.19.U.5028 and 30% each on the part of the drivers of the auto bearing Reg. No. KA.19.B.1983 and the bus bearing Reg. No. KA.21.A.8284. The reasoning given by the Tribunal for fixing the said negligence is just and proper and it does not call for interference.

11. Regarding quantum of compensation, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has erred in not properly assessing the permanent disability and what is assessed is on the lower side and is liable to be reassessed. Admittedly, on account of crush injury to left leg with below knee degloving, the appellant has undergone surgery, his leg was amputated below knee at middle 1/3rd middle. To prove the same, he examined the Doctor as PW 2, who has deposed that, appellant underwent operation and his left leg was amputated below knee at middle 1/3rd and due to which he has got permanent disability. Therefore, having regard to the amputation of left leg below knee and the evidence on the Doctor, we re-assess the permanent disability at 60% to the whole body to meet the ends of justice. The Tribunal has assessed the income of the appellant at Rs. 5,000/- per month as he was working as mason under PW 3 and we accept the same. The proper multiplier applicable taking the age of appellant as 28 is "17" as rightly adopted by the

Tribunal.

12. Admittedly, on account of the injuries sustained by the appellant, he has taken treatment as inpatient for 14 days and thereafter, on the advise of the Doctor, he might have taken follow up treatment for another six months and during the said period, he might have undergone lot of pain and agony, incurred considerable expenses towards conveyance and other incidental expenses. As left leg of the appellant was amputated below knee at middle 1/3rd, he has suffered permanent disability, due to which, discomforts and unhappiness persists through out his life and it would affect his happiness in future life and reduces his earning capacity as now he is not in a position to do any work he being the mason by profession. Further, it is significant to note that, on account of amputation of left leg below knee, he has to incur future medical expenses viz., for purchase of artificial limb, including incidental expenses. But these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation. Therefore, taking all these aspects into consideration and after re-appreciation of the oral and documentary evidence available on file, we award a sum of Rs. 1,50,000/- towards injury, pain and suffering as against Rs. 45,000/-, Rs. 10,000/- towards conveyance, nourishing food and attendant charges as against Rs. 5,000/-, Rs. 6,12,000/- (Rs. 5,000/- x 12 x 17 x 60%) towards loss of future earnings as against Rs. 3,40,000/-, Rs. 1,00,000/- towards loss of amenities, discomforts and unhappiness as against Rs. 30,000/- and Rs. 75,000/- towards future medical expenses, including purchase of artificial limb.

13. However, the Tribunal after due appreciation of the oral and documentary evidence available on file has justified in awarding a sum of Rs. 40,000/- towards medical expenses as per medical bills and Rs. 30,000/- towards loss of income during treatment period and therefore, it does not call for interference.

In all, the appellant is entitled to the total compensation of Rs. 10,17,000/- instead of Rs. 5,20,000/- awarded by the Tribunal and the break-up is as follows:

Out of the compensation of Rs. 10,17,000/-, if 40% (Rs. 4,06,800/-) is deducted towards contributory negligence on the part of the rider of the motor cycle bearing Reg. No. KA.19.U.5028, the remaining compensation comes to Rs. 6,10,200/- as against Rs. 3,12,000/- awarded by the Tribunal. There would be an enhancement of Rs. 2,98,200/- (Rs. 6,10,200 - Rs. 3,12,000/-) with interest at 6% p.a., from the date of petition till its realization.

14. For the foregoing reasons, the appeal filed by the appellant is allowed in part.

The impugned judgment and award dated 12/10/2011, passed in MVC No. 443/2008, by the Presiding Officer, Fast Track Court, and Member, Motor Accident Claims Tribunal, Mangalore, D.K., is hereby modified, by awarding additional compensation of Rs. 2,98,200/- with interest at 6% p.a., from the date of petition till its realization.

The respondent Nos. 2 and 4 Insurer of the auto and the bus are directed to deposit the enhanced compensation of Rs. 2,98,200/-, with interest at 6% per annum, from the date of petition till its realization in the ratio of 30% each, within three weeks from the date of receipt of a copy of this judgment.

Immediately on such deposit by the Insurer of the auto and the bus, out of the enhanced compensation of Rs. 2,98,200/-, a sum of Rs. 2,00,000/- with interest shall be invested in Fixed Deposit in any Nationalized or Scheduled or Grameena bank, in the name of the appellant for a period of 10 years and renewable by another 5 years, with liberty reserved of him to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 98,200/- with proportionate interest shall be released in favour of the appellant immediately.

Draw the award, accordingly.