

(2015) 10 KAR CK 0130
In the Karnataka High Court
Case No : MFA No. 9090/2011 (MV)

Jayaram

APPELLANT

Vs

S. Shruthi and Others

RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:

Citation : (2015) 10 KAR CK 0130

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : K. Venkate Gowda, Advocate, for the Appellant; G.B. Manjunatha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—Appellant is the owner of a goods auto. Being aggrieved by the judgment and award dated 17.8.2011 made in MVC No. 213/2008 by the Additional MACT, Mysore, fastening the liability on him to compensate the claimant, he has filed this appeal.

2. The 1st respondent herein filed the claim petition contending that on 16.7.2007 at about 6.00 a.m., she was proceeding in her TVS Scooty Pep bearing Regn. No. KA-09/ED-2840 towards Chamundipuram from her house at K R Mohalla. When she reached near Mahadeshwara Temple, Narayana Sastry Road, a goods auto bearing Regn. No. KA-09/A 4465 came from opposite direction in a rash and negligent manner and dashed against the Scooty Pep of the claimant. Due to the said impact, she fell down and sustained grievous injuries. She was shifted to J.S.S. Hospital, Mysore for first aid treatment and thereafter she was shifted to BGS Apollo Hospital, Mysore and took treatment as inpatient for a period of 17 days. At the time of accident, she was aged about 21 years, studying in final year B.Com and also conducting tuition classes to the higher primary and high school students and earning a sum of Rs. 3,000/- p.m. In view of that, she sought for compensation of Rs. 15,09,514/- with interest at 12% p.a.

3. The owner as well as driver filed written statement denying the entire averments made in the claim petition. It was contended that due to rash and negligent riding of TVS Scooty Pep, the accident had occurred. The claimant is not entitled for any compensation. The compensation claimed by the claimant is exorbitant and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The claimant in order to prove her case got examined herself as PW1 and also examined the doctor who treated her as PW2 and got marked the documents as Exs. P1 to P19. On behalf of the respondents, the 1st respondent was examined as RW1.

6. The Tribunal, after considering the oral and documentary evidence let in by the parties and taking into consideration the police records, spot mahazar, rough sketch and IMV report, held that due to the rash and negligent driving of the goods auto, the accident had occurred and the claimant is entitled for compensation.

7. With regard to the quantum of compensation is concerned, in the road traffic accident occurred on 16.7.2007, Ex. P5-wound certificate and Ex. P11-discharge summary disclose that the claimant sustained the following injuries:

- "1) RTA with polytrauma with hypovolumic shock,
- 2) Type III A compound fracture right clavicle/body of right scapula,
- 3) Type III A intra articular fracture right lateral femoral condyle with mid shaft fracture,
- 4) fracture upper pole of right patella with right surgical emphysema
- 5) multiple cut wound over the face and chest.:"

She was hospitalized for three times and took treatment as an inpatient for a period of 17 days in BGS Apollo Hospital, Mysore. The doctor, who treated the claimant, in his evidence had assessed the disability to an extent of 10% towards right knee joint, 10% towards patellofemoral tenderness, 10% towards scar on the right chest, right knee and right hip, there is restricted movement to an extent of 30 degree and assessed the disability to an extent of 20% to the whole body. The Tribunal taking into consideration the fact that she is a student of final year B.Com and also conducting tuitions to higher primary and high school students, taking into consideration the income of Rs. 3,000/- p.m, the disability to an extent of 20%, awarded a sum of Rs. 1,29,600/- towards future loss of income, Rs. 62,000/- under the head pain and sufferings, Rs. 6,000/- towards conveyance, Rs. 6,000/- towards attendant charges and nourishing food, Rs. 15,000/-towards loss of income during the period of treatment and Rs. 14,100/-towards discomfort and loss of amenities of life and loss of marriage prospects and Rs. 1,52,300/- towards medical expenses, in all, Rs. 3,85,000/-. Since the offending goods auto did not have insurance coverage, liability has been fastened

on the owner of the vehicle. Being aggrieved by the quantum of compensation awarded by the Tribunal, the owner of the vehicle has filed this appeal.

8. Sri Venkate Gowda, Advocate appearing for the appellant contended that the judgment and award passed by the Tribunal is contrary to law. The compensation of Rs. 62,000/- towards pain and suffering is on the higher side. Further, the income of Rs. 3,000/- p.m. taken by the Tribunal is on the higher side. Further the interest at 6% p.a. awarded by the Tribunal with condition that failure to pay the compensation amount within a period of two months, the owner of the vehicle has to pay interest at 8% p.a. is contrary to law and sought for setting aside the judgment and award.

9. On the other hand, the Advocate appearing for the respondents argued in support of the judgment and award passed by the Tribunal and contended that taking into consideration the injuries sustained and suffering undergone, the Tribunal has awarded just and fair compensation and sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence.

11. The records clearly disclose that the claimant has sustained injuries in the road traffic accident occurred on 16.7.2007 at about 6.00 a.m. due to rash and negligent driving of the offending vehicle. She was inpatient for a period of 17 days in BGS Apollo Hospital, Mysore and she was admitted to the hospital for thrice for different treatment. Ex. P5 discloses the injuries she has suffered. The injuries are serious in nature. As on the date of accident, she was unmarried. There is scar on the right chest, right knee and right hip. The injuries sustained by the claimant are serious in nature. The doctor, who treated the claimant, assessed the disability to extent of 20% to the whole body. I find there is no infirmity or irregularity in the assessment of disability to an extent of 20%.

12. Further, the records clearly disclose that the claimant was a student of final year B.Com. Usually, the final year student will be conducting tuitions to higher primary and high school students. The said portion of evidence is not disputed by producing any document. Hence, the finding of the Tribunal taking into consideration the income of Rs. 3,000/- p.m. is to be accepted. Though the compensation awarded towards pain and suffering is on the higher side, the compensation awarded towards the amenities in life is on the lower side. The claimant has to lead the remaining life with 20% disability. The interest awarded by the Tribunal is also fair and reasonable. In the event of non-payment of compensation amount to the victim within a period of two months, the owner has been directed to pay interest at 8% p.a. In the facts and circumstances of the case, there is no infirmity or irregularity in the judgment and award passed by the Tribunal. The appellant has not made out a case to interfere with the same.

Accordingly, I pass the following:

The appeal is dismissed.