

(2015) 07 KAR CK 0291

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 414 of 2014 (MV)

Jayashree B.

APPELLANT

Vs

IFFCO Tokio General Insurance Company Ltd. and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 07 KAR CK 0291

Hon'ble Judges : N.K. Patil, J; Rathnakala, J

Bench : Division Bench

Advocate : Siji Malayil, for the Appellant; B. Pradeep, Advocates 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 judgment and award dated 03/07/2013, passed in MVC No. 6233/2011, by the II Additional Small Causes Judge & XXVIII ACMM & Motor Accident Claims Tribunal, Bengaluru (SCCH-13), (hereinafter referred to as "Tribunal" for short), on the ground that, a sum of Rs. 69,403/- awarded by the Tribunal with interest at 6% p.a., from the date of petition till realization, as against the claim of Rs. 25,00,000/-, on account of the injuries sustained by her in the road traffic accident is inadequate.

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

The appellant claims to be aged about 39 years at the time of the accident. She was hale and healthy prior to the accident, working as Social Security Assistant (SSA) in Employers Provident Fund Organization and was earning Rs. 32,189/- per month as per Ex. P11. That on 21.6.2011 at about 9.15 a.m. appellant was riding her scooter bearing Reg. No. KA.03.EU.9641 on Challaghatta main road and when she came opposite to Arun Ice cream Parlour, Murugeshpalya, at that time, the driver of the car bearing Reg. No. KA.51.P.536 came from the same

direction at high speed in a rash and negligent manner and dashed against her scooter. Due to which, she sustained grievous injuries and the vehicle was also badly damaged. Immediately, she was shifted to Manipal Hospital, where she took treatment as inpatient, undergone surgery, implants were inserted and after discharge she has taken follow up treatment as per advise.

3. 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. The Doctor has assessed the disability at 30% to right lower limb and at 10% to the whole body. Therefore, appellant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents.

4. 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. 69,403/- as compensation under different heads with interest at 6% p.a., from the date of petition till realization.

5. Being dis-satisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellant has presented this appeal, seeking enhancement.

6. We have heard the learned counsel appearing for appellant and learned counsel appearing for first respondent-Insurer.

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 sufferings, towards loss of amenities due to disability and what is awarded is inadequate and is liable to be enhanced reasonable. Further, he has submitted that, the Tribunal has failed to award any compensation towards Physiotherapy as the appellant has spent huge amount towards the same. Further, he submitted that the rate of interest awarded by the Tribunal at 6% p.a., is on the lower side and is liable to be enhanced since the accident is of the year 2011. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. Per contra, learned counsel appearing for insurer, inter-alia, contended and sought to substantiate that the compensation awarded by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference. However, he fairly submitted that the compensation awarded by the Tribunal towards loss of amenities, discomforts and unhappiness is on the lower side and the Tribunal has not awarded any compensation towards loss due to disability and therefore, the same may be considered in accordance with law.

9. After careful consideration of the submission made by learned counsel

appearing for both the parties and after perusal of the materials 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 Ex. P4-wound certificate are not in dispute. On going through Ex. P4-Wound certificate and Ex. P7-discharge summary, it reveals that appellant had sustained right medial and lateral tibial plateau fracture, for that, she took treatment at Manipal Hospital, Bengaluru, as inpatient for five days from 21.6.2011 till 25.6.2011, during the said period, she has undergone surgery of open reduction and internal fixation of right tibial plateau under SA. She examined one Dr. Chandrashekar Reddy, Orthopaedic Surgeon in Manipal Hospital as PW 2, who has stated on examination of appellant on 30.1.2013 that, appellant complained pain in right knee, finding difficult to squat, standing for long time, walk fast or to run and there is surgical scar on the right medial aspect and there is mild tenderness on medial aspect and assessed the disability to the tune of 30% to right lower limb and 10% to the whole body. Discomforts and unhappiness persists through out his life and it would affect her happiness in future life.

11. Further, it emerges that, during the course of treatment, appellant might have undergone pain and agony during the period of treatment, she might have sustained financial loss, as she could not have attended her work regularly and the disability is permanent in nature. Taking all these aspects into consideration, we award a sum of Rs. 60,000/- with interest in addition to the compensation awarded by the Tribunal.

In all, the appellant is entitled to the total compensation of Rs. 1,29,403/- instead of Rs. 69,403/- as awarded by the Tribunal.

12. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2011. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum on the entire compensation instead of 6% awarded by the Tribunal.

13. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned judgment and award dated 03/07/2013, passed in MVC No. 6233/2011, by the II Additional Small Causes Judge & XXVIII ACMM & Motor Accident Claims Tribunal, Bengaluru (SCCH-13), stands modified, awarding the compensation of Rs. 1,29,403/- instead of Rs. 69,403/- as awarded by the Tribunal. There would be an enhancement of Rs. 60,000/- with interest at 9% p.a., from the date of petition till its realization.

The first respondent-Insurer is directed to deposit the enhanced compensation of Rs. 60,000/- with interest at 9% 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 enhanced compensation of Rs. 60,000/- with interest shall be released in favour of the appellant, immediately.

Draw the award, accordingly.