

(2016) 03 KAR CK 0270

In the Karnataka High Court

Case No : Misc. First Appeal No. 10 of 2015 (MV)

Karnataka State Road, Transport Corporation

APPELLANT

Vs

Syed Kouser Hashmi

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2016) AAC 1616

Hon'ble Judges : N.K. Patil and Mrs. Rathnakala, JJ.

Bench : Division Bench

Advocate : D. Vijaya Kumar, Advocate, for the Appellant; Girimallaiah, Advocate, A.N. Krishna Swamy, Advocate, K. Narayana, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mrs. Rathnakala, J.—This appeal is by the K.S.R.T.C. (the Corporation for short), assailing the judgment and award dated 16th October, 2014 passed in M.V.C. No. 7436/2012 on the file of the XIII Additional Judge, Court of Small Causes, Member, M.A.C.T.-4, Bangalore, (the Tribunal for short) whereby the claim petition filed by the respondent/claimant under Section 166 of the Motor Vehicles Act is allowed in part, awarding compensation of Rs. 70,000/- with interest @ 6% per annum from the date of petition till realisation by fixing liability on the Corporation to pay 50% of compensation.

2. The fact is, the respondent/claimant filed the claim petition before the Tribunal alleging that on 5-11-2012 at 6.30 a.m., while she was travelling in the KSRTC bus bearing registration No. KA-01/F-9218 from Bangalore to Chikmagalur, due to the rash and negligent driving of the driver of the said bus, it dashed against the Canter Lorry bearing registration No. KA-01/C-6394, thereby causing injuries to her and she took treatment in the Hospital. She was aged 50 years and a Teacher by profession earning Rs. 30,000/- per month. Because of the injuries suffered during the accident, she has suffered permanent disability and discomfort.

3. The claim was contested by the Corporation and also the insurer of the Canter lorry. The Tribunal on overall consideration of the evidence adduced by both the parties allowed the petition in part and awarded compensation of Rs. 70,000/- @ 6% per annum from the date of petition till realisation and fixed the ratio of contributory negligence at 50 : 50 on the drivers of both the vehicles.

4. Sri. D. Vijayakumar, learned counsel appearing for the appellant/Corporation while vehemently assailing the award of the Tribunal submits that, a false claim is made by the claimant : her name was not shown in the FIR; on her own admission on the very same day, she travelled to Chikmagalur and attended duty in the afternoon, after three days of the incident, she took treatment in the Hospital; she has not examined the Doctor, who treated her, not even the X-ray report in proof of the fracture suffered by her is produced by her. Further, she has not produced any documentary proof/Ticket to show that she was travelling on the said date in the K.S.R.T.C. bus. That apart, the amount awarded is exorbitant and does not commensurate with the injuries said to have been suffered by her in the accident. In the judgment of this Court in M.F.A. No. 8025/2014 c/w 9/2015, D/- 18-3-2016 in reference to the very same accident, the contributory negligence is fixed at 30% against the KSRTC bus driver and 70% against the Canter Vehicle. In that view of the matter, if this Court "were to affirm the award of the Tribunal, the liability shall be apportioned in accordance with the apportionment made in the above said appeals.

5. Sri Girimalliah, learned counsel appearing for first respondent/claimant while substantiating the award of the Tribunal submits that, in fact, the Tribunal has not considered the grievousness of the injuries viz., fracture of mandible left and fracture of fibula left (as per wound certificate Ex.P6); the amount awarded is inadequate; still she did not pursue for enhancement, hence compensation awarded may not be interfered.

6. Sri. A.N. Krishnaswamy, learned counsel appearing for respondent No. 2/insurer of the Canter lorry submits that, undoubtedly it is an accident involving two vehicles. The accident could not have occurred without there being equal negligence on the part of the KSRTC bus. Rightly the Tribunal has apportioned the contributory negligence at 50% on each of the vehicle and the award may be confirmed and the interference by this Court is not warranted.

7. In the light of the rival submissions made at the Bar. We have gone through the impugned award and also the lower Court records.

8. Before the Tribunal, the claimant had placed her evidence and had produced the wound certificate/Ex.P6 issued by the Sanjay Gandhi Accident Hospital and Research Institute, Bangalore. As per the said wound certificate, she has suffered fracture of mandible left and also fracture of fibula left. During her cross-examination, the veracity of her evidence could not be shattered. The doubt expressed by the Insurance Company about the very presence of the claimant in the bus as its inmate is not founded on any tangible evidence. Merely because

she did not preserve the bus ticket and took treatment after three days, shall not lead to an inference that she has brought a false claim. In the wound certificate, it is mentioned that, the accident had occurred on 6-11-2012 at 2.45 p.m. near Yeshwanthapur on Tumkur Road. Bangalore. She has placed her evidence that from Chikmagalur, she was shifted to Bangalore and treated at Sanjay Gandhi Accident Hospital and Research Institute, Bangalore. In the absence of any foolproof material to suspect the presence of the claimant in the bus at the time of accident, we uphold the finding of the Tribunal, which is a primary fact finding authority, that she has suffered injuries during the accident.

9. The Tribunal on overall consideration of the evidentiary material has awarded compensation of Rs. 30,000/- towards pain and suffering. Rs. 20,000/- towards loss of amenities and happiness; Rs. 5,000/- towards medical and incidental charges and Rs. 15,000/- towards loss of earning during treatment period; totally Rs. 70,000/-. The amount being most reasonable, we are not inclined to interfere with the quantum of compensation. However, in the light of the expression made in the judgment in M.F.A. No. 8025/2014 c/w 9/2015, D/- 18-3-2016, the ratio of contributory negligence shall be at 30% in respect of the driver of the appellant/KSRTC bus and 70% against the driver of Canter lorry.

10. For the discussion made supra, the appeal is partly allowed.

11. The judgment and award dated 16th October, 2014 passed in M.V.C. No. 7436/2012 on the file of the XIII Additional Judge, Court of Small Causes, Member, M.A.C.T.-4, Bangalore, is hereby modified; while affirming the compensation awarded by the Tribunal, the liability of the accident/contributory negligence is modified. The appellant/Corporation is liable to pay compensation @ 30% as against 50% awarded by the Tribunal. The remaining 70% shall be borne by the second respondent/insurer.

12. The amount deposited by the appellant/Corporation before this Court, so also the L.C.R. shall be transmitted to the jurisdictional Tribunal, immediately.

13. If it is found that excess amount is deposited by the appellant/Corporation, same shall be refunded to the Corporation by the jurisdictional Tribunal.