

(2011) 09 KAR CK 0004
In the Karnataka High Court
Case No : M.F.A. No. 1715 of 2009 (MV)

Kum. Dakshitha

APPELLANT

Vs

Sri. Siddappaji, M Nayaka and United India Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 09 KAR CK 0004

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

Bench : Single Bench

Advocate : K.T. Gurudeva Prasad, for the Appellant; Gangadhar Sangolli,
Advocate for R2, Notice to R1 dispensed, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil

1. Though this appeal is posted for Admission, with the consent of the learned counsel for the parties, the same is taken up for final disposal.

2. This appeal by the claimant is directed against the judgment and award dated 23rd September 2008, passed in M.V.C.No.4224/2007 by the Motor Accident Claims Tribunal. Court of Small Causes, 14th Additional Judge, Bangalore (SCCH-10), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,46,700/- with interest @ 8% p.a. awarded in favour of the claimant as against her claim for Rs. 7,00,000/-, is inadequate.

3. The appellant claims to be aged about 10 years and was studying and hale and healthy prior to the date of accident. That the occurrence of accident at about 4:30 P.M, on 10-05-2007, when the appellant was crossing the road, near Girinagara, Bangalore, within the limits of Banashankari Traffic Police Station, due to rash and negligent driving by the rider of Sccoty bearing No.KA-41/

H-2290, is not in dispute. It is also not in dispute that the appellant has sustained multiple injuries. Due to the said injuries sustained in the accident, she was shifted to Hospital, where she took treatment.

4. It is her further case that, on account of the accident, she sustained multiple grazed abrasions present over the left shoulder, left side front of chest, back of left arm elbow, left leg knee and leg, right side front of lower abdomen measuring 7x5 cm. To 1x1 cm.; fracture of right leg tibial bone with displacement; and fracture of right leg fibula bone with displacement and for the treatment of the said injuries, her parents have spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, they have to be compensated reasonably.

5. The learned counsel for appellant contends that the Tribunal is not justified in not awarding reasonable compensation towards all the heads and the impugned judgment and award is liable to be modified.

6. On account of the injuries sustained in the accident, the appellant, represented by her father and natural guardian, filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 7,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 23rd September, 2008. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,46,700/- under different heads, with interest at 8% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

7. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and also Insurer.

8. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 25,000/- towards loss of amenities, discomfort and unhappiness, Rs. 15,000/- towards loss of education, prospects of marriage and disfiguration, Rs. 10,000/- towards travelling expenses, attendant charges and sundry expenses, Rs. 25,000/- towards permanent disability, Rs. 15,000/- towards pain and sufferings, Rs. 10,000/- towards loss of expectation of life, and Rs. 46,700/- towards medical expenses. Therefore, interference in the same is uncalled for.

9. However, it can be seen that the appellant being aged about only 10 years, has sustained injuries to right leg, difficulty in standing, walking and running for long time, unable to climb stairs, squatting and using Indian toilet and deformity of right bit goe. On examination of right leg, hiper pigmented, thick scar present

over the right leg etc. the Doctor has assessed the disability of the extent of 25% in relation to right leg ankle and 5% in relation to big toe and 10% in relation to whole body, Therefore, having regard to the nature of injuries sustained, percentage of permanent disability, as assessed by the Doctor, age and also the fact that she is a student and has lost one academic year on account of the accident, I deem it fit to award a global compensation of a sum of Rs. 10,000/- with interest at 6% per annum, in addition to the compensation awarded by Tribunal.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 23rd September 2008, passed in M.V.C.No.4224/2007 by the Motor Accident Claims Tribunal, Court of Small Causes, 14th Additional Judge, Bangalore (SCCH-10), is hereby modified, awarding compensation of a sum of Rs. 10,000/-, with interest at 6% per annum, on it, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The second respondent - Insurer is directed to deposit the enhanced compensation of Rs. 10,000/-, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.