

(2013) 07 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 2100 of 2013 (MV)

Kum. Vidya

APPELLANT

Vs

Vittala, The Manager, Bajaj Allianz General Insurance Co.,
Ltd., Mr. Hilayee and The Manager, ICICI Lombard General
Insurance Co., Ltd.

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 07 KAR CK 0002

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

Bench : Single Bench

Advocate : Vishwanatha Poojary K, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the common judgment and award dated 28th November 2012, passed in MVC No. 842/2009, by the Additional Senior Civil Judge, Motor Accident Claims Tribunal, Puttur, D.K., (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 51,200/- with interest @ 6% p.a. awarded in favour of the claimant as against her claim for Rs. 2,00,000/-, is inadequate. The appellant claims to be aged about 21 years and studying in Prasanna Education Trust and she has produced the Transfer Certificate issued by Prasanna College and marks Card of her B.A. degree examination at Exs. P32 and P33. She was hale and healthy prior to the date of accident. That the occurrence of accident at about 4:00 P.M., on 20-03-2009, when the appellant along with others was travelling in a Jeep bearing Registration No. KA-21/2838, near Forest Check Post in Uppinangady village of Puttur Taluk, due to rash and negligent driving by the driver of the said Jeep, is not in dispute. It is also not in dispute that the appellant has sustained grievous injuries to her scalp, forehead (L) hand and spine as well as all over her body. Due to the injuries sustained in the accident,

she took treatment in Mahaveera Hospital from 20-03-2009 till 25-03-2009 for a period of six days and also in KMC Hospital, for plastic surgery from 03-07-2009 till 05-07-2009 for a period of three days.

2. It is her further case that, on account of the accident, she sustained injuries stated above for the treatment of the said injuries, she has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, she has to be compensated reasonably.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 2,00,000/- against the Insurance Companies and owners of both the vehicles. The said claim petition had come up for consideration before the Tribunal on 28th November, 2012. 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. 51,200/- under different heads, with interest at 6% 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 has filed the appeal before this Court, seeking enhancement of compensation.

4. 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.

5. Shri. K. Vishwanatha Poojary, learned counsel appearing for appellant submits that the compensation awarded by Tribunal under all the heads, particularly towards loss of amenities is on the lower side and hence, reasonable enhancement may be made under all the heads. To substantiate the said submission, he submitted that, he has taken me through the contents of Wound Certificate to point out the nature of injuries sustained. He further submitted that, mere non examination of the Doctor cannot take away the legitimate entitlement of compensation and the Tribunal ought to have noted that the appellant was still prosecuting her studies and because of the injuries, her academic career is disturbed and therefore, reasonable enhancement may be made and the impugned judgment and award may be modified accordingly.

6. After perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel for claimant, occurrence of accident and the resultant injuries sustained....by appellant are not in dispute. The Tribunal, after assessing the oral and documentary evidence available on file, and having regard to the nature of injuries sustained, nature and duration of treatment, etc. has awarded compensation of Rs. 30,000/- towards injury, pain and suffering, Rs. 10,700/- towards medical expenses, Rs. 5,500/- towards conveyance, nourishing food and attendant charges and Rs. 5,000/- towards loss of amenities, discomfort and unhappiness, for the injuries sustained by the appellant in the

road traffic accident.

7. However, it can be seen that, in fact, a sum of Rs. 5,000/- awarded by Tribunal towards loss of amenities discomfort and unhappiness is on the lower side. But, the appellant has failed to examine the Doctor to assess the disability nor produced the Disability Certificate. In the absence of any credible documentary evidence and non examination of the Doctor, the Tribunal has awarded the said sum. Therefore, having regard to the totality of the case on band, the compensation awarded by Tribunal under all the heads is just and reasonable and it does not call for interference. For the foregoing reasons, the appeal filed by the claimant is liable to be dismissed as devoid of merits. Accordingly, it is dismissed.

Office to draw award, accordingly.