

(2016) 03 KAR CK 0259

In the Karnataka High Court

Case No : M.F.A. No. 276 of 2011 (MV) and Misc Civil No. 16074 of 2011.

Managing Director, KSRTC, Bangalore

APPELLANT

Vs

Raju

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1342

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : Chandini, N. Dinesh Rao, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J. - Eight days delay in filing the appeal by the Karnataka State Road Transport Corporation, for short "KSRTC," is sought to be explained in the affidavit of Assistant Law Officer stating that on the receipt of a certified copy of the judgment and award from the concerned advocate in MVC No. 8841/2007, same was examined by the Divisional Office and thereafter forwarded to the Central Office and on receipt of the certified copy from the Divisional Office, the Chief Law Officer was of the opinion that the award passed should be challenged in the High Court whence it was entrusted to the lawyer on the panel, hence the appeal.

2. The averments in the affidavit smacks of suppression of relevant material facts and dates. Material dates and material facts are not forthcoming. Negligence, inaction and lack of bona fides is attributable to the appellant. Misc. Cvl. No. 16074/11 is rejected.

3. Having had a glimpse at the judgment and award dated 24-7-2010 in MVC No. 8841/07 of the XII Addl. Small Causes Judge and Member, Motor Accident Claims Tribunal, Bangalore, for short "MACT," indisputably, the accident occurred on the Bangalore-Mysore road which has a width of 100 feet when the claimant was

crossing the road and the motor vehicle being a bus belonging to the appellant dashed against the claimant causing grievous injury leading to amputation of the left limb below knee level and other injuries. The MACT having noticed that the driver of the offending vehicle was not examined, where as one traffic inspector was examined as RW-1 who admitted in cross-examination that he is not an eye-witness, declined to accept the testimony as credible evidence. However having noticed that the accident was on the main thoroughfare between Mysore and Bangalore, attributed 25% contributory negligence to the claimant and 75% to the driver of the bus. The finding attributing 25% contributory negligence is neither based upon any issue framed nor a contention advanced by the appellant-Corporation in the statement of objections.

4. Be that as it may, if and when the claimant questions the finding on that issue, the same would be adverted. The submission that MACT was not justified in attributing 25% contributory negligence to the pedestrian, but should have exonerated the driver of the bus, is without merit and is rejected.

5. Claimant injured aged 40, suffered amputation of the left limb below knee level.

6. In the absence of evidence that he was a mason by occupation as also income, the MACT held that during the year 2007 a person could have earned nothing less than Rs. 4,000/- p.m. and reckoning disability at 100%, awarded Rs. 7,20,000/- towards loss of future earnings to which was added Rs. 5,000/- towards loss of amenities; Rs. 20,000/- towards medical and incidental expenses; Rs. 10,000/- towards future medical expenses and Rs. 75,000/- towards pain and agony, totalling Rs. 8,30,000/- with interest at 6% p.a. by the judgment and award impugned.

7. Apparently the MACT failed to award compensation towards the disability due to amputation of the left limb below knee level. In the facts, circumstances and evidence on record, no exception can be taken to the reasons, findings and conclusions arrived at by the MACT.

8. Even on merits, find no case made cut to interfere with the judgment and award. Appeal devoid of merit, is rejected. The amount in deposit is directed to be transmitted to the MACT, forthwith.

9. I.A. 1/16 is dismissed as unnecessary.