

(2013) 07 KAR CK 0195
In the Karnataka High Court
Case No : M.F.A. No. 11561 of 2011 (MV)

Mr. Jagadish S. Gurupra

APPELLANT

Vs

Mrs. Winny Vardin D'souza and Sri. Ram General Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0195

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

Bench : Single Bench

Advocate : P. Karunakar, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 30th March 2011, passed in MVC No. 361/2010, by the II Additional Senior Civil Judge, Motor Accident Claims Tribunal-VI, Mangalore, D.K., (for short, "Tribunal") on the ground that the compensation awarded is on the lower side and is liable to be enhanced. Along with the appeal, learned counsel appearing for appellant has also filed I.A. 1/2011, seeking condonation of delay of 235 days in filing the Appeal.

2. The delay of 235 days in filing the appeal has been explained at paragraphs 4 and 5 of the affidavit filed in support of the application, I.A. 1/2011. In the said affidavit, it is stated that the impugned judgment is passed by the Court below on 30th March, 2011 and the certified copy was applied on 23rd June, 2011 and the copy was ready on 5th July 2011. Thereafter, at paragraph 5, it is stated that the Advocate advised the claimant that there is 235 days time to file, the above appeal and that he was in deep financial crisis and after mobilizing the money from his friends and well wishers, he could prefer the above appeal. Therefore, he could not prefer the appeal well in time and he has stated that the said delay in filing the above appeal is not intentional, but the same is for aforesaid reasons and that if the delay in filing the above appeal is not condoned, he would be put

to irreparable injury and hardship, but, on the other hand, no hardship or injury would be caused to the other side, if the delay is condoned.

3. I have heard the learned counsel appearing for appellant and perused the statements made in the affidavit, accompanying the application, I.A. 1/2011.

4. After going through the statements made in the affidavit filed in support of the application, I am of the considered view that the inordinate delay of 235 days in filing the appeal has not been explained satisfactorily by assigning valid and cogent reasons. The explanation offered is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the delay of 235 days in filing the appeal. Whenever there is inordinate delay, the party is bound to explain each days delay in filing the appeal by setting out the dates and events. Further, it can be seen that, at paragraph 5, it is stated that the Advocate advised the claimant that there is 235 days time to file the appeal. The said statement is totally baseless and cannot be sustained at all and it shows sheer non application of mind while drafting the delay application. Hence, in view of non explanation of inordinate delay in filing the appeal, in a proper manner, I am of the view that delay cannot be condoned nor the appellant has made out a good case to condone the delay. Hence, for the foregoing reasons, I.A. 1/2011 is dismissed as misconceived.

5. However, in the interest of justice and equity, I have gone through the impugned judgment and award passed by Tribunal. After perusal of the same, it is seen that the claimant has sustained abrasion 6 cm x 1 cm over right flank, fracture of acetabulum and superior ramus of pubis of right hipbone, rupture of urinary bladder with hemoperitoneum and injuries all over the body. For the treatment of the said injuries, he was hospitalized for a period of ten days at A.J. Hospital, Mangalore.

6. The Tribunal, after critical evaluation of the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 20,000/- towards injury, pain and sufferings, Rs. 3,000/- towards conveyance, nourishing food and attendant charges, Rs. 36,190/- towards medical expenses, as per the medical bills and prescriptions and a sum of Rs. 20,000/- towards loss of income during treatment period. The same is just and proper and does not call for interference. Therefore, the appeal filed by appellant is liable to be dismissed. For the foregoing reasons, the appeal filed by appellant is dismissed both on the ground of delay and laches as also on merits.