
(2013) 09 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 11965 of 2011 (MV)

Mrs. Appi

APPELLANT

Vs

Ibrahim, Oriental Insurance Co. Ltd., Praveen Kumar and
National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0001

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 8th September 2010, passed in MVC No. 1104/2008, by the I Additional District Judge, Member, Motor Accident Claims Tribunal-II, 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 355 days in filing the Appeal.

2. The delay of 355 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 8th September, 2010 and the certified copy was applied on 9th September, 2010 and the copy was ready on 28-09-2010.

3. Further, it is stated that, his Advocate advised him that there is 90 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.

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

5. After going through the statements made in the affidavit filed in support of the application and also the impugned judgment and award passed by Tribunal, I am of the considered view that the inordinate delay of 355 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 355 days in filing the appeal. Whenever there is inordinate delay, the party is bound to explain each day's delay in filing the appeal by setting out the dates and events. 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.

6. 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, as per the Wound Certificate, at Ex. P21, the appellant has sustained bleeding "in the nose and mouth and contusion on the maxilla and on the both cheeks, tenderness over the nose, tenderness over the maxilla with abnormal movements, lacerated wound over right leg 1 cm x 0.5 cm as the junction of lower 1/3rd and middle third region, tenderness swelling and deformity of right leg and metatarsal orbital edema with chemorig, swelling of upper lip with tenderness over the aloes base, fracture of anterior maxillary sequent and injury Nos. 2, 4 and 5 are grievous in nature and injury Nos. 1 and 3 are simple in nature. He has taken treatment as in-patient for about 23 days and the Doctor has assessed 30% disability towards a particular limb and whole body, it comes to 10%. But, there is no loss of earning on account of disability or injuries sustained. Further, it can be seen that the appellant has claimed medical expenses, at Ex. P24 series, amounting to Rs. 60,691/-. The Tribunal, after evaluation of the same, has rounded it off to Rs. 61,000/- and awarded the same towards medical expenses. Further, the Tribunal is also justified in awarding compensation of Rs. 25,200/- towards disability. Therefore, interference in the same is not called for.

7. The Tribunal, after critical evaluation of the oral and documentary evidence available on file, and having regard to the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment, permanent functional and whole body disability has rightly awarded the compensation under all the heads and hence, interference in the same is not called for. For the foregoing reasons, the appeal filed by appellant is dismissed both on the ground

of delay and laches as also on merits.