

(2013) 07 KAR CK 0336
In the Karnataka High Court
Case No : M.F.A. No. 11758 of 2011 (MV)

Mrs. Bhuvaneshwari

APPELLANT

Vs

Jeevandas Adyanthaya and The Manager

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0336

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 5th January 2011, passed in MVC No. 1467/2008, by the Presiding Officer, Fast Track Court, Member, Motor Accident Claims Tribunal, 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 242 days in filing the Appeal.

2. The delay of 242 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 at paragraph 4 that, the impugned judgment is passed by the Court below on 5th January, 2011 and the certified copy was applied on 10th January, 2011 and the copy was ready on 21st January, 2011. Thereafter, at paragraph 5, it is stated that the Advocate advised the claimant that there is 242 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 242 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 242 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. Further, it can be seen that, at paragraph 5, it is stated that the Advocate advised the claimant that there is 242 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 appellant met with an accident on 05-09-2008 and sustained fracture distal 1/3rd radius right, fracture distal end of ulna right, lacerated wound measuring about 8 x 3 x 2 cm over dorsoradial aspect of right wrist, lacerated tendons of extensor digitorum and extensor pelvis longes and extensor endear right and capsule tear wrist right and it is stated that all the injuries are grievous in nature. Because of the said injuries, he was hospitalized for a period of eleven days at Padmavathi Hospital. Further, it is stated that the appellant has sustained 30% permanent physical disability. If 1/3rd is taken, the whole body disability comes to 10%. The Same has been rightly assessed by Tribunal. Further, it is stated that the appellant was earning a sum of Rs. 6,000/- per month by doing cleaning work at A.J. Hospital. But, in the written arguments, the learned counsel has sought to consider her income as Rs. 4,000/- per month. But, the appellant herself, in cross examination, has in unequivocal terms, admitted that she was getting income of Rs. 3,000/- per month. The same is rightly accepted by Tribunal and awarded compensation of Rs. 61,000/- under the head loss of future earnings on account of disability.

6. Further, the appellant has produced the medical bills, in all 23 marked under Ex. P11 series, amounting to Rs. 28,456/- along with prescriptions. The Tribunal, after proper appreciation of the documentary evidence coupled with oral evidence, has rounded it off to Rs. 28,500/- and awarded it towards medical expenses.

7. Therefore, having regard to the facts and circumstances of the case, nature of injuries sustained, nature and duration of treatment and also other relevant aspects of the matter, the Tribunal has, in all, awarded compensation of Rs. 1,53,500/-, rounded off to Rs. 1,54,000/-, for the injuries sustained by the appellant in the road traffic accident, i.e. a sum of Rs. 35,000/- towards injury, pain and sufferings, Rs. 28,500/- towards medical expenses, Rs. 10,000/- towards incidental expenses including conveyance, nourishing food and attendant charges, Rs. 9,000/- towards loss of income during treatment period, Rs. 61,000/- towards loss of earning capacity on account of disability and Rs. 10,000/- towards loss of amenities, discomfort and unhappiness on account of disability. The same, in my view, 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.