

(2011) 11 KAR CK 0382
In the Karnataka High Court
Case No : M.F.A. No. 4604 of 2008 (MV)

Mrs. Lakshmamma

APPELLANT

Vs

Ismail Shariff, Basavanagudi Beedi, Pandavapura Town,
Mandya District, M.L. Srikantegowda and The Divisional
Manager, The New India Assurance Co., Ltd., Hema Mansion,
II Floor, P.B. No. 96, Gandhinagar, Hassan

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) ACJ 2519

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

Bench : Single Bench

Advocate : B.M. Kenchegowda, for Shri. V.N. Madhava Reddy, for the Appellant;
S.V. Hegde Mulkhand, Advocate for R3 and Notice to R1 and R2, for the
Respondent

Judgement

N.K. Patil

1. This appeal by the claimant is directed against the judgment and award dated 17th September 2007, passed in M.V.C.No.1281/2004, by the Principal Civil Judge(Sr.Dn) and JMFC, Srirangapatna, (for short, Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 6,23,600/- with interest @ 6% p.a. awarded in favour of the claimant as against her claim for Rs. 10,55,000/- , is inadequate. The appellant claims to be aged about 26 years and was hale and healthy prior to the date of accident. That at about 4:30 P.M., on 17-04-2004, when the appellant was travelling in a Maxi cab bearing No.KA-12/2508 from Srirangapatna to K. Bettahalli, near PSSK Sugar Factory, Pandavapura, the said maxi cab while it was proceeding in the rash and negligent manner, turtled down on the left side of the road. Due to the impact, the appellant has sustained fracture of superior and inferior public rami and dislocation of right hip joint and fracture of left clavicle bone and cerebral contusion and was immediately taken to JSS Hospital, Mysore where she was

treated as in-patient as well as out patient.

2. It is her further case that, on account of the accident, 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. 10,55,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 17th September, 2007. 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. 6,23,600/- 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 is in 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 and the Insurer.

5. After hearing the learned counsel appearing for the appellant and the Insurer and after going through the impugned judgment and award passed by Tribunal, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 3,57,000/- towards loss of future earnings; Rs. 26,500/- towards medical expenses; and Rs. 21,000/- towards loss of income during treatment period. Therefore, interference in the same is uncalled for.

6. However, so far as the compensation awarded towards pain and sufferings, conveyance, nourishing food and attendant charges, loss of amenities, discomfort and unhappiness and loss of marital status is concerned, the same is on the lower side and needs to be enhanced. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for a period of thirty-one days. During this period, she would have spent some reasonable amount towards conveyance, nourishing food and attendant charges and also underwent lot of unsaid pain and agony. It is stated that the appellant has lost sensation in her trunk portion and lost control below the trunk portion. She cannot move her legs and cannot sit, walk and stand and is unable to answer nature call on her own. She has sustained three major fractures. The Doctor has opined that the appellant has sustained 50% disability towards whole body disability. Further, the Doctor has deposed that there is a mal-union in the hipbone and therefore, she cannot do her routine work as before and she cannot conduct tuition classes as usual. Further, since she was only 26 years old, her marital status would also be affected. Therefore, having regard to the nature of

injuries sustained, age and the nature and duration of treatment, disability, I award a sum of Rs. 1,25,000/- towards pain and sufferings as against Rs. 1,00,000/- ; Rs. 20,000/- towards conveyance, nourishing food and attendant charges as against Rs. 19,100/- ; Rs. 1,50,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 50,000/- and Rs. 1,50,000/- towards loss of marital status as against Rs. 50,000/- awarded by Tribunal. Thus, the appellant in all, would be entitled to a total compensation of Rs. 8,49,500/- with interest at 6% per annum, as against Rs. 6,23,600/- awarded by Tribunal, and the break up is as follows:

Towards Pain and sufferings

Rs. 1,25,000/-

Towards loss of income during treatment

Rs. 21,000/-

Towards Medical Expenses

Rs. 26,500/-

Towards conveyance, nourishing food and attendant charges

Rs. 20,000/-

Towards loss of amenities, discomfort and unhappiness

Rs. 1,50,000/-

Towards loss of marital status

Rs. 1,50,000/-

Towards loss of future income

Rs. 3,57,000/-

Total

Rs. 8,49,500/-

In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 17th September 2007, passed in M.V.C.No.1281/2004, by the Principal Civil Judge(Sr.Dn) and JMFC, Srirangapatna, is hereby modified, awarding compensation of a sum of Rs. 8,49,500/- , with interest at 6% per annum, as against Rs. 6,23,600/- , awarded by Tribunal. There would be an enhancement of compensation of Rs. 2,25,900/- with 6% interest per annum.

The third respondent - Insurer is directed to deposit the enhanced compensation, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment

and award.

On such deposit by the Insurer, 50% of it shall be deposited in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable for another ten years, with liberty reserved to her to withdraw the periodical interest.

Remaining 50% of the deposited amount shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.