

(2015) 06 KAR CK 0072

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 200013/2015 (MV)

Neelamma

APPELLANT

Vs

The Divisional Controller, KSRTC and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2015) 06 KAR CK 0072

Hon'ble Judges : C.R. Kumaraswamy, J.

Bench : Single Bench

Advocate : Sanganagouda V. Biradar, Advocate, for the Appellant; Ratna N. Shivayogimath, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

C.R. Kumaraswamy, J.—This Miscellaneous First Appeal is filed under Section 173(1) of MV Act against the judgment and award dated 26.09.2014 passed in MVC No. 948/2011 on the file of the Motor Accident Claims Tribunal No. XII Bijapur, partly allowing the claim petition and seeking enhancement of compensation.

2. With the consent of the learned counsel for the appellant as well as the learned counsel for the respondents, this matter was heard on merits. The materials placed before this Court is sufficient to dispose off this case.

3. The case of the claimant in the claims tribunal is as under: That on 05.04.2010 at about 4.00 PM the claimant was travelling in a KSRTC bus bearing Reg. No. KA-29/F-984. This bus was proceeding to Solapur from Pune. Near Temburani, the bus moved in a zig zag manner and the driver of the bus lost control of it and dashed against a Tractor bearing Reg. No. MH-12/CH-196. Consequently, the claimant sustained fracture of nasal bone and injury to head. She took treatment at BLDEA Hospital, Bijapur and Civil hospital Solapur. She was a coolie. She was earning Rs. 6,000/- per month.

4. Respondent Nos. 1 and 2 have filed objection statement in the Claims Tribunal.
5. The Claims Tribunal relied on the evidence of PW-1 and also Ex. P1 FIR, Ex. P2 complaint, Ex. P3 spot panchanama, Ex. P4 wound certificate, Ex. P6 charge sheet. The police papers disclose that Crime No. 65/2010 was registered and investigation was conducted. After investigation the charge was laid against the driver of the KSRTC bus bearing Reg. No. KA-28/F-984. The record discloses that the KSRTC bus dashed against the lorry bearing Reg. No. MH-12/C.H-2196. Therefore, the Claims Tribunal came to a conclusion that the driver of the bus drove the bus in a rash and negligent manner and caused the accident.
6. The claims tribunal has awarded compensation as under:
7. Feeling aggrieved by the same, the injured claimant has preferred this appeal.
8. The learned counsel for the appellant submits that the appellant is aged about 45 years. She was a coolie. She was earning Rs. 6,000/- per month. Though the doctor has specifically stated that there is disability to the extent of 15 to 20%, the disability assessed by the Claims Tribunal is on the lower side. Therefore, he prays to enhance the compensation amount. The learned counsel for the appellant also submits that the insured vehicle was hired by the KSRTC.
9. Learned counsel for the respondent No. 2 - Insurance Company submits that the charge sheet was laid against the driver of the KSRTC bus, the Tribunal has held that driver of KSRTC-respondent No. 1 bus was responsible for this accident. Therefore, the Insurance Company is not liable to pay the compensation.
10. Wound certificate issued by Sri B.M. Patil Medical College, Hospital and Research Centre, Bijapur discloses that Neelamma Hanamanth aged about 60 years met with a road traffic accident. She has sustained fracture of nasal bone. Fracture of zygoma and lateral wall of maxillary. No fracture is found on skull. The doctor who examined her has opined that she has sustained grievous injury. PW-2 Satish Madavrao Rashinkar has examined Neelamma on 05.04.2010 who met with a road traffic accident. He has examined the discharge card. She was hospitalized from 06.04.2010 to 17.04.2010. He found the following symptoms:
"(i) Nasal block
(ii) Nasal pain
(iii) Head ache
(iv) Bad smell in the nose."

Nose examination disclosed a depressed nasal bridge, tenderness present, inverted T-shaped scar on the nasal dorsum. X-ray reveals fracture of nasal bone, old fracture of left nasal healed with deformity. X-ray also reveals mastoid lateral shows suggest possibility of bilateral mastoiditis. X-ray both zygoma with occipito mental position 35 degree angulation shows old fracture of right zygoma healed with deformity. He is of the opinion that there is disability to the extent of

15 to 20% to the whole body. The medical records disclose that the claimant is aged about 60 years. Normally the income of the injured is taken as Rs. 5,500/- during the year 2010. This accident occurred on 05.04.2010. The age of the claimant is 60 years. Therefore, the income is assessed at Rs. 5,500/-. The suitable multiplier for the age group of 56 to 60 years is "9".

11. As stated earlier, the claimant has sustained fracture of nasal bone, fracture of zygoma and lateral wall of maxillary sinus. Mastoid lateral shows suggest possibility of bilateral mastoiditis. Considering the nature of injuries, in my opinion, the claimant is entitled for a compensation of Rs. 25,000/- under the head of pain and suffering.

12. Due to the injuries sustained by the claimant, she cannot chew. There is a curtailment of enjoyment of life by the claimant. Therefore, a sum of Rs. 10,000/- is awarded under the head of loss of amenities.

13. Claimant was impatient for about 11 days. She is a resident of Tajpur, Bijapur. She has taken treatment at Bijapur. Therefore, it is just and reasonable to award a sum of Rs. 6,000/- under the head of conveyance charges.

14. During hospitalization she needs assistant. Therefore, it is just and reasonable to award a sum of Rs. 5,000/- under the head of attendant charges.

15. She was hospitalized for about 11 days. She needs nourished food. Therefore, it is just and reasonable to award a sum of Rs. 5,000/- under the head of nourishment expenses.

16. The claimant is aged about 60 years. Even after discharge from hospital, she has to take rest for about three months. Therefore, it is just and reasonable to award Rs. 16,500/- under the head of loss of income during laid up period.

17. The doctor has stated in his evidence that there is disability to the extent of 15 to 20% to the whole body. Considering the evidence of the doctor and also the X-rays and other medical documents, in my view, the disability of the claimant can be assessed at 15% to the whole body. Income assessed is Rs. 5,500/- per month. The loss of income proportionate to the disability of 15% would be Rs. 825/-. So due to the reduced capacity of work, the claimant is entitled for a sum of Rs. 825/- x 12 = Rs. 9,900 x 9 = Rs. 89,100/-. In all, the claimant is entitled for compensation as under:

The enhanced compensation amount will bear interest at 7% per annum from the date of petition till the date of realization.

In view of the above discussion, I pass the following:

"(i) This appeal is allowed in part.

(ii) The compensation is enhanced from Rs. 85,800/- as awarded by the Claims Tribunal to Rs. 1,60,600/-.

(iii) The enhanced compensation amount will bear interest at 7% per annum

from the date of petition till the date of payment.

(iv) Since the claimant is aged about 60 years, the compensation awarded to her shall be released."