
(2010) 04 KAR CK 0122
In the Karnataka High Court
Case No : MFA No. 7542 of 2004

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
Dr. U.C. Niranjan and Others	RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) ILR (Kar) 2851 : (2011) 1 KarLJ 324 : (2011) 2 TAC 453

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : H.R. Renuka, in MFA No. 7542/2004 and A.N. Krishna Swamy, in MFA No. 8117/2004, for the Appellant; Nalina Mayagowda, for Poovayya and Co. for R1 and A.N. Krishna Swamy, for R5 in MFA No. 7542/2004 and H.R. Renuka, for R2, Nalina Mayagowda, for R1 and Hemanth R. Chandangoudar, for R5 in MFA No. 8117/2004, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—These two appeals arise out of the impugned judgment and award 20.7.2004 passed in MVC No. 371/2002 on the file of the District Judge and Member, MACT, Udipi (hereinafter referred to as "the Tribunal" for short).

2. The Tribunal by its impugned judgment and award, awarded a sum of Rs. 12,99,300/- with interest at 8% p.a. on account of the injuries sustained by respondent No. I/claimant -Dr. U.C. Niranjan, in a road traffic accident. It is the case of the appellant-Corporation in MFA No. 7542/2004 that, the quantum of compensation awarded to the claimant by the Tribunal is excessive, disproportionate and liable to be reduced substantially by modifying the impugned judgment and award, whereas, in the appeal - MFA No. 8117/2004 filed by the insurer, the contention is regarding fixing of the liability against them at 50% and it cannot sustainable on the ground that the Corporation has satisfied the judgment and award in the connected matters arising out of the same accident and therefore, the liability fixed on the insurer has to be set side.

Being aggrieved by the impugned judgment and award, the Corporation and the insurer felt necessitated to file these instant appeals.

3. The brief facts of the case are:

The claimant herein claims that he was aged about 37 years, working as a Professor in MIT Manipal and was also a visiting Professor at Karnataka Regional Engineering College, Surathkal, J.C.E. Mysore etc. and he was hale and healthy prior to the accident. When things stood thus, he filed the claim petition u/s 166 of the M.V. Act before the Tribunal claiming compensation against the Corporation, driver of the bus, owner, driver and insurer of the lorry on account of the injuries sustained in the road traffic accident that occurred on 6.7.2001 at about 10.30 p.m., when he was proceeding from Bangalore to Bailhongal at Tumkur, as he wanted to get down at Dharwad to see his newly born daughter, the driver of the bus was driving the said vehicle in a rash and negligent manner and dashed against the stationed lorry which had been parked in N.H.4 at Shiggaon town and as a result of the said impact, the iron bar of the seat in front of the claimant's seat hit both his legs below the knee joint and he could not move from his seat. He sustained compound fracture of both the bones of right and left legs, cut lacerated wound bone deep and cut lacerated wound on right leg measuring 3" x 2" bone deep and cut lacerated wound on left-leg measuring 3" x 3" x 2" bone deep. On account of the injuries sustained in the road traffic accident, he has undergone treatment in the hospitals as inpatient on several dates for a period of 99 days and he has underwent 8 surgeries. It was the further case of the claimant that he spent huge sums of money towards medical expenses, conveyance, nourishing food and attendant charges. On account of the injuries sustained by him, he could not continue his profession as a professor/faculty member for teaching the subject in the respective engineering colleges referred to above. The said claim petition had come for consideration before the Tribunal. The Tribunal, in turn, after assessing the oral and documentary evidence and after careful consideration of the relevant material on file, has allowed the claim petition in part awarding a sum of Rs. 12,99,300/- on different heads with 8% interest p.a. payable from the date of the petition till realisation.

The Corporation filed the appeal, contending that the quantum of compensation paid to the claimant by the Tribunal is excessive, disproportionate and liable to be reduced by modifying the impugned judgment and award of the Tribunal and the insurer filed the appeal contending that the liability fixed on it at 50% cannot be sustained on the ground that the Corporation has already satisfied the judgment and award in connected MVC Nos. 346, 809, 810, 811 and 812 of 2003, arising out of the same accident, which fact is also not disputed by the learned Counsel appearing for the Corporation.

4. The principal submission canvassed by the learned Counsel for the Corporation, at the outset, is that the Tribunal has committed grave error and material irregularity by awarding disproportionate compensation to the claimant in respect of loss of income during treatment period, loss of amenity and loss of

future income. To substantiate her submission she took us through the relevant records made available to the court and pointed out that, there is no justification on the part of the Tribunal to assess the income of the claimant at Rs. 20,000/- p.m. without any authenticated document to establish that as on the date of the accident he was earning Rs. 20,000/- p.m. out of his profession. Further, the Tribunal erred in accepting the disability assessed by the doctor at 12% to 15% to the whole body and thereby, awarding Rs. 75,000/- towards loss of amenities, discomfort and unhappiness and the same is excessive. She vehemently submitted that the claimant is not entitled to any compensation towards loss of future income on account of the disability.

Further, she submitted that taking the income of the claimant at Rs. 20,000/- p.m. and awarding compensation towards loss of income during treatment period for a period 30 months, cannot be sustained as the Tribunal has not assigned any valid reasons for taking the period of thirty months as laid-up period. Therefore, she submitted that the impugned judgment and award is liable to be modified by re-assessing the income of the appellant and reducing compensation in respect of the above three heads.

5. The learned Counsel for the insurer, at the outset, submitted that fixing the liability at 50% on the insurer without assigning any valid reasons is unsustainable as the Corporation has already satisfied the judgment and award passed by the Tribunal and accepted the full liability in connected MVC Nos. 346, 809, 810, 811 and 812 of 2003. When once the Corporation has accepted the full liability and satisfied the judgment and award, the question of fixing the liability at 50% on the insurer cannot be sustained. Therefore, he submitted that the judgment and award passed by the Tribunal, insofar as it relates to fixing of liability at 50% on the insurer is liable to be set aside.

6. As against this, the learned Counsel for respondent No. 1- claimant, inter alia, contended and substantiated the impugned judgment and award passed by the Tribunal as just and reasonable, as the quantum of compensation awarded by the Tribunal is after evaluation of the oral and documentary evidence and other relevant material on file, and also taking into consideration the educational qualification, experience and expertise of the claimant as a faculty member, and the Tribunal has rightly determined the compensation and therefore, interference by this Court is not called for.

7. After careful consideration of the submissions made by the learned Counsel for the parties, the points that arise for consideration in the instant appeals are:

i) Whether the quantum of compensation awarded by the Tribunal in favour of the claimant is sustainable in law?

ii) Whether the liability fixed at 50% on the insurer is sustainable in law ?

8. Re. Point No. 1 : The undisputed facts of the case are that, on account of the injuries sustained in the road traffic accident that occurred on 6.7.2001, the

claimant has sustained injuries as referred to above and P.W3 doctor has assessed the disability at 25% towards the limb and 12% to 15% to the whole body and that the claimant has undergone treatment in hospitals on various dates for a period of 99 days as inpatient and has underwent 8 surgeries. The Tribunal, after assessing the oral and documentary evidence and other relevant material on file, taking his age, occupation and experience, has rightly awarded just and reasonable compensation towards pain and sufferings, medical expenses, conveyance nourishing food and attendant charges and future medical expenses and therefore, it does not call for interference.

Further, the Tribunal has rightly awarded Rs. 75,000/- towards loss of amenities, discomforts and unhappiness. It is not in dispute that on account of the injuries sustained in the road traffic accident, the claimant has sustained grievous injuries and, it has come in the evidence that, he discontinued his profession as a professor. He has undergone treatment as inpatient for more than 99 days and underwent 8 surgeries and on account of these injuries, he has to suffer lot of pain and agony, discomforts and unhappiness throughout his future career and he could not continue in his post as a lecturer, as rightly pointed out by the learned Counsel for the claimant. Therefore, the compensation awarded at Rs. 75,000/- towards loss of amenity, discomforts and unhappiness does not call for interference and as such, we cannot accept the submission of the learned Counsel for the Corporation that the amount awarded under the said head is excessive.

However, the Tribunal has committed an error, resulting miscarriage of justice and material irregularity in awarding a sum of Rs. 5,28,000/- towards loss of income during treatment period of thirty months after deducting 12% towards income tax, which is exorbitant and therefore, unsustainable. The Tribunal without assigning any valid reasons has taken 30 months as laid-up period, which is on the higher side, and assessing the income of the appellant at the rate of Rs. 20,000/- p.m. without any clinching evidence on record also is on the higher side. It is not in dispute that the last drawn salary of the claimant as per Ex.P16, the Relieving Certificate, is Rs. 12,192/- p.m. as a Professor in MIT, Manipal. We accept the same as the income of the claimant per month to meet the ends of justice. It is not in dispute that the appellant has undergone treatment on different dates for a period of 99 days and has underwent 8 surgeries and he has suffered pain and agony during treatment period. Therefore, we presume that, on the advice of the doctor at least he might have taken bed rest and follow-up medical treatment for 10 months, which would be just and reasonable. Accordingly, we award a sum of Rs. 1,21,920/- at the rate of Rs. 12,192/- p.m. for a period of ten months towards loss of income during treatment period.

Further, on perusal of the judgment and award what emerges is that, the Tribunal has assessed the income of the claimant at the rate of Rs. 20,000/- p.m., applied the multiplier of "12" and accepted the disability of 12% to the

whole body while awarding compensation at Rs. 3,45,600/- towards loss of future income which is on the higher side and is liable to be reduced. We have already re-assessed the income of the claimant at Rs. 112,192/- p.m. and we accept the disability at 15% to the whole body as per the evidence of PW3-doctor. As the claimant was aged about 37 years, the appropriate multiplier applicable is "15" in the light of the judgment in Sarla Verma's case 2009 ACJ 1298 and we re-determine the loss of future income at the rate of Rs. 3,29,184/- (Rs. 12.192/- x 12 x 15 x 15/100) as against Rs. 3,45,600/~ to meet the ends of justice.

9. As stated above, the compensation awarded to the claimant is reduced on two heads i.e. towards loss of income during laid-up period at Rs. 1,21,920/- as against Rs. 5,28,000/~ and Rs. 3,29,184/- towards loss of future income as against Rs. 3,45,600/-.

10. Re: point No. 2 : Regarding fixing the liability at 50% against the insurer-appellant in MFA No. 8117/2004 is concerned, the same cannot be sustained and is liable to be set aside, as rightly pointed out by the counsel for the appellant-insurer. He vehemently submitted that, in fact, since the Corporation has accepted the full liability and satisfied the judgment and award of the Tribunal in connected MVC cases, as stated supra, fixing 50% liability on insurer is not justifiable. As this fact was not brought to the notice of the Tribunal, the Tribunal has proceeded on the basis of the records available and fixed the liability on the insurer at 50%. Hence, in the light of accepting the full liability by the Corporation, fixing 50% of the liability on insurer cannot be sustained and is liable to be set aside and this fact is not disputed by the counsel for the Corporation.

11. Having regard to the facts and circumstances of the case stated above, the appeal filed by Corpn. (MFA No. 7542/2004) is allowed in part. The impugned judgment and award is modified by reducing the compensation awarded by the Tribunal in MVC No. 371/2002. The claimant is entitled to compensation of Rs. 8,76,804/- as against Rs. 12,99,300/- awarded by the Tribunal. The break-up is as follows:

i) Towards pain and sufferings - Rs. 60,000/-	ii) Towards medical expenses - Rs. 2,45,000/-
iii) Towards conveyance, nourishing food and attendant charges - Rs. 30,700/-	iv) Towards loss of income during laid-up period - Rs. 1,21,920/-
v) Towards loss of future income - Rs. 3,29,184/-	vi) Towards loss of amenity, discomforts and unhappiness - Rs. 75,000/-
vii) Towards future medical Expenses - Rs. 15,000/-	----- Total compensation - Rs. 8,76,804/-

As stated above, from out of the total compensation of Rs. 12,99,300/-, the compensation is reduced by Rs. 4,22,496/-. The Corporation is directed to deposit the remaining compensation amount with interest at 6% p.a. from the date of the petition till realisation within a period four weeks.

12. The appeal filed by the insurer in MFA No. 8117/2004 is accordingly, allowed. Fixing of liability at 50% on it is hereby set aside.

The statutory deposit made by the appellant-insurer in MFA No. 8117/2004 shall be returned to the insurer immediately.

The statutory amount deposited by the Corporation shall be transmitted to the Tribunal immediately.

Office to draw the award accordingly.