(1997) 07 KAR CK 0076

In the Karnataka High Court

Case No : MFA 2629/91

P. Renukadevi APPELLANT

Vs

Shanthappa Alias Hippargi and Others RESPONDENT

Date of Decision : 04-07-1997

Acts Referred:
Constitution of India, 1950 — Article 140, 141
Motor Vehicles Act, 1988 — Section 140, 163 A, 163 B, 165, 166

Citation : (1998) 2 ACC 615 : (1998) ACJ 392 : (1997) ILR (Kar) 2812

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : K.G. Sadashivaiah, for the Appellant; Ashok Harnahalli, Seniro CGSC and N.S. Rajanna, for R-2, for the Respondent

Judgement

Chidananda Ullal, J.—These two appeals are directed against the common judgment and award dated 26.7.91 in MVC NO.365/89 and MVC No. 366/89 passed by the District Judge and Motor Accidents Claims Tribunal Chickmagalur, whereby the claims of the husband and wife, who both suffered injuries in a common road accident, were allowed in part.

2. We heard the Learned Counsel for the appellants Sri K.G. Sadashivaiah and Sri N.S. Rajanna for the respondent No. 2. We have also perused the case records including the records of the District Judge and Motor Accidents Claims Tribunal, Chickmagalur, in brief referred to herebelow as MACT for convenience.

3. When these two appeals were argued by the learned Counsel for the appellants Sri K.G. Sadashivaiah, an important question arose in the midst as to whether it is permissible for the Claims Tribunal to award a sum beyond a limit of Rs. 15,000/- under the head "Medical Expenses" as set out in second schedule of the Motor Vehicles Act, 1988 (herein after referred to as ''the Act'') and it is for that reason we thought it proper to direct the learned Central Government Standing Counsel to take notice of these two appeals and to render assistance to Court to decide that issue. Accordingly, we passed a judicial order thereto on

30.5.97. In response thereto, Sri Ashok Haranahalli, the Learned Central Government Standing Counsel had also appeared in the appeals and assisted the Court. We want to deal with that issue at the threshold before proceeding further in the instant appeals.

4. When we addressed the above issue to the learned Central Government Standing Counsel, he submitted that the second schedule to the Act is in pursuance to the Amendment to the Act in incorporating a special provision as to payment compensation on structured formula basis. He further submitted that the said amendment to the Act was by incorporating Section 163A and further Section 163B by Act No. 54 of 1994 with effect from 14.11.94. By incorporating Section 163A and the second schedule to the Act, the Parliament had brought on the statute certain fixed liability and fastened the same on the owner of the motor vehicle of the authorised insurer in the case of either injury or death caused due to the use of the motor vehicle and it is for that reason the second schedule indicating the sum of compensation to the third party was also brought in the second schedule and indicated a particular multiplier to be employed with reference to the age of the injured or the dead.

5. It is his further argument that the second schedule to the Act is referrable only to Section 163A and further to Section 140 of the Act, whereunder the liability to pay compensation in certain cases on principles of ''no fault'' liability was provided for. It is also his submission that such, a provision is very much brought on the statute by incorporating Section 163B to the Act under the head ''option to file claim in certain cases''. Therefore he submitted that the second schedule u/s 163A is operable only under the circumstances when claims were made u/s 163A and Section 140 of the Act. To answer the query of the Court as to whether the expenses under the head ''medical expenses'' has to be restricted to Rs. 15,000/- as set out under the head ''general damages'' for injuries and disabilities in 4(ii) of the second schedule or nor, Sri Ashok Haranahalli pointedly submitted that the second schedule is operable only when there are claims either u/s 163A or u/s 140 of the Act and not when there are claims filed u/s 166 of the Act. Elaborating that argument of his, Sri Haranahalli submitted that when there are claim cases for compensation arising out of an accident of the nature specified in Sub-section 1 of Section 165, the Claims Tribunals are directed to pay a just and equitable compensation to the claimants and that when the direction of the statute is so, the question of restriction of the claim by Claims Tribunal under the head ''medical expenses'' does not arise at all. He further pointed out that the awarding of the, compensation under the said head is matter of evidence both oral and documentary before the Claims Tribunal when the claim is u/s 166 of the Act.

6. Sri Haranahalli had also cited before us the decision of the Supreme Court reported in U.P. STATE ROAD TRANSPORT CORPORATION v. TRJLOKCHANDRA AND ORS. ILR 1996 Kar.2127 wherein the Supreme Court while discussing the second schedule u/s 163A of the Act, in para 17 of the Judgment held that the

second schedule in question, no matter abounds in mistakes in arriving at the quantum, but nevertheless, the same be used as a guide.

7. The sum and substance of the argument of Sri Haranahalli is therefore that awarding of compensation under the head ''medical expenses'' cannot be restricted and it is matter of evidence by a claimant before the Claims Tribunal thereto, where claim made was u/s 166 of the Act.

8. In this context, we fell it relevant to quote (Section 163A and 163B and the II schedule to the Act. To quote, the same read as hereunder:

"163-A Special provisions as to payment of compensation on structured formula basis - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the second schedule, to the legal heirs or the victim, as the case may be.

Explanation - For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as the Workmen''s Compensation Act, 1923(8 of 1923).

[(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the official gazette, from time to time amend the second schedule.

163-B, Option to file claim in certain cases - Where a person is entitled to claim compensation u/s 140 and Section 163A, he shall file the claim under either of the said sections and not under both."

THE SECOND SCHEDULE

(See Section 163A)

Schedule for compensation for third party fatal accident/injury cases claims

1. FATAL ACCIDENTS

Annual intone

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

8s.

3000

4200

5400

6600

7800

9000

10200

11400

12000

18000

24000

26000

40000

Age of victim

Multiplier

Compensation in case of death Rupees in thousands

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

Upto 15 yrs.

15

60

64

108

132

156

180

204

228

240

350

480

720

800

Above 15 yrs. but not exceeding 25 yrs.

15

57

79.8

102

125.4

148.2

171

193.8

216.6

223

342

456

684

760

above 20 yrs. but not exceeding 25 yrs.

17

54

75.6

97.2

118.8

140.4

162

183.6

205.2

216

324

432

648

720

Above 25 yrs. but not exceeding 30 yrs.

18

51

71.4

91.8

112.2

132.6

153

1734

1938

204

306

408

612

630

Above 30 yrs. but not exceeding 35 yrs.

17

50

67.2

864

1056

1248

144

1632

1924

192

283

384

576

640

Above 35 yrs. but not exceeding 40 yrs.

16

50

63

81

99

117

1J5

153

171

180

270

380

540

600

Above 40 yrs, bur not exceeding 45 yrs.

15

50

58 8

756

92.4

109.2

126

1428

1596

168

292

336

504

560

Above 45 yrs. all not exceeding 50 yrs.

13

50

504

648

792

936

103

1224

136.8

144

316

286

432

480

Above 50 yrs. Out not exceeding 55 yrs.

11

50

50

54

66

78

90

102

114

120

180

240

360

400

Above 55 yrs but not exceeding 60 yrs.

8

50

50

50

538

624

72

816

912

96

144

192

286

320

Above 60 yrs but not exceeding 65 yrs.

5

50

50

50

50

50

54

612

664

72

108

144

216

240

Above 65 yrs.

5

50

50

50

50

50

50

51

57

60

90

120

180

200

1. Inserted by Act No. 54 of 1994 w.e.f. 14-11-1994

Note: The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.

2. Amount of compensation shall not be less than Rs. 50,000.

3. General Damage (in case of death):

The following General Damages shall be payable in addition to compensation outlined above:

(i) Funeral Expenses Rs. 2,000/- (ii) Loss of Consortium, if beneficiary is the spouse Rs. 5,000/- (iii) Loss of Estate Rs. 2,500/- (iv) Medical Expenses - actual expenses incurred before death supported by bills/ vouchers but not exceeding Rs. 15,000/- 4. General Damages in case of injuries and disabilities:- (i) Pain and Suffering (a) Grievous injuries Rs. 5,000/- (b) Non-grievous injuries Rs. 1,000/- (ii) Medical expenses - actual expenses incurred supported by bills/vouchers but not exceeding as one time payment Rs. 15,000/-

5. Disability in non-fatal accidents:

The following compensation shall be payable in case of disability to the victim arising on of non-fatal accidents:

Loss of income if any, for actual period of disablement not exceeding fifty two weeks.

PLUS either of the following:-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in permanent total disablement/ permanent partial disablement and percentage of loss of earning capacity shall be as per Schedule 1 under Workman''s Compensation Act, 1923.

6. National income for compensation to those who had no income prior to accident:-

Fatal and disability in non-fatal accidents:-

(a) Non-earning persons Rs. 15,000 p.a (b) Spouse Rs. 1/3rd of income of the earning/surviving spouse. In case of other injuries only "General Damage" as applicable."

8. We have given our anxious consideration for the above submissions made by the learned Central Government Standing Counsel. We have also gone through the above provisions of law in Section 163A, 163B and Section 140 of the Act and further the second schedule and we are convinced to endorse the said view of the learned Central Government Standing Counsel holding that whereever there are claim petitions filed u/s 166 of the Act, the awardable compensation under the head ''medical expenses'' is not limited to Rs. 15,000/- as set out under 4(ii) of the second schedule to the Act and that the claim thereto is matter of evidence and proof before the Claims Tribunal and the sum may therefore be

beyond the said limit of Rs. 15,000/-.

9. Adverting to the decision of the Supreme Court referred to above by the Learned Central Government Standing Counsel, we also observe that despite there being certain mistakes in arriving at the quantum in the second schedule u/s 163A of the Act, the Supreme Court clearly held therein in the decision that the maximum multiplier shall not go below 5 years purchases factor. The Hon''ble Supreme Court discussed the same in paras 16 and 17 of the Judgment with reference to the changes. Those were brought about in the Act as amended by the Amendment Act No. 54 of 1994, more particularly in the matter of determination of compensation with reference to employable multiplier as set out in the second schedule u/s 163A of the Act.

10. It therefore appears to us that the second schedule to the Act be followed by all the MACTs below in so far as the same related to the question of application of multiplier thereunder in view of the fact that the above law laid down on the point of applying the multiplier by the Apex Court is binding not only on this Court (and also other High Courts), but also all the MACTs below in view of the provisions under Article 140 and 141 of the Constitution of India.

11. Now we advert to decide the instant two appeals before us. Both these two claim petitions filed before the MACT arose from a single incident that had taken place on 27.5.89 when both the appellants were the commuters travelling in the KSRTC bus bearing Registration No. CAF 9138 owned by the respondent No. 2. On the fateful day, both the appellants were on their way from Chickmagalur to Kadur. At the relevant point of time, the bus in question was crossing Veda bridge put across Gowry Halla near Sakrepatna, it is stated that the bus dashed against the parapet wall of the said bridge and fell down in the ''halla (river in English) below and in the said accident the appellants suffered bodily injuries. It is for that reason is, both the appellants had filed two independent claim petitions in MVC No. 365/89 and MVC No. 366/89 before the MACT. On appreciation of the evidence both oral and documentary, the MACT had awarded a global compensation of Rs. 18,000/- together with interest at 6% per annum to the appellant in the first appeal and a sum of Rs. 48,230/- to the appellant in the second appeal, also with interest at 6% per annum. The MACT had in passing the impugned judgment and award fastened the liability on both the respondents jointly and severally. Having been aggrieved by the said common judgment and award, the husband and wife - appellants are before this Court with a prayer that the compensation amount awarded by the MACT be enhanced substantially.

12. The learned Counsel for the appellants had argued that the award of global compensation at Rs. 18,000/- (Rs. 3,000/- towards medical treatment and other incidental expenses and Rs. 15,000/- for injuries including fractures, physical pain and suffering) to the appellant in the first appeal is on the lower side and the same has to be enhanced substantially. He, so argued on the twin grounds that the appellant - wife was hospitalised at the first instance in Chickmagalur Hospital for two days on 27.5.89 and 28.5.89 (both days inclusive) and for a

period from 29.5.89 to 4.8.89 (both days inclusive) in Tumkur Hospital (Government Hospital) and that the appellant had suffered fracture of the 7th and 8th ribs (left near their posterior angles).

13. It is to pointed out here that P.W.3 Dr. B. Rajanna in his evidence had clearly deposed that the appellant was in his hospital as inpatient from 29.5.89 to 4.8.89 and the X-ray confirmed the fracture of 7th and 8th left ribs near their posterior angles and she was treated with plaster strappings. It is also his evidence that she did not suffer any disability due to the said injuries.

14. In view of that positive evidence on record, it appears to us that the awarding of the global compensation at Rs. 18,000/- as above to the appellant wife is just and proper and the same is not in any way called for any enhancement in the instant appeal. Therefore, we confirm the award passed by the MACT in the first appeal.

15. Now we move to the second appeal filed by the husband. The learned Counsel for the appellant in the second appeal very vehemently argued that the awarding of the global compensation of a sum total of Rs. 48,230/- by the MACT is totally paltry in view of the circumstances that there is shortening of the right leg of the appellant by 3/4th inch to 1 inch and to that extent the appellant suffered permanent disability in his right leg and that the appellant had lost his earned leave for six months and under the head ''loss of salary'', the MACT had awarded salary only for two months, that the appellant had spent a sum total of Rs. 16,071.83 ps. by producing supporting medical bills and as against that, the MACT awarded only a sum of Rs. 10,000/- and lastly that for physical pain and suffering the award of compensation of Rs. 25,000/- was totally insufficient as the appellant was admitted to Government Hospital, Chickmagalur for two days on 27.5.89 and 28.5.89 at the first instance and further at Government Hospital, Tumkur, for the period from 29.5.89 to 4.8.89 (both days inclusive) at the second and further that subsequent to the discharge from the said Hospital on 4.8.89, the appellant had to undergo long drawn treatment in Jayanagar Orthopaedic Center, Bangalore, spending very heavily on that count. Therefore, he prayed that the global compensation of Rs. 48,230/-awarded by the MACT may be doubled by this Court in the instant appeal.

16. As could be seen from the impugned common judgment the MACT in awarding a global compensation of Rs. 48,230/- it had awarded the sum in four different heads. In para 26 of the impugned judgment the MACT had set down the breakup figures for the award as hereunder:

a)

Medical expenditure

?

Rs.10,000-00

b)

Travelling expenses special diet and nursing attendance

?

Rs.4,000-00

c)

Loss of two month''s salary

?

9,230-00

d)

for actual injuries physical pain and suffering

?

Rs.25,000-00

Total

Rs.48,230-00

17. It is true that the MACT had awarded a sum of Rs. 10,000/-towards medical expenditure despite the appellant producing medical bills to a sum total of Rs. 16,071-83 ps. and that under the head ''loss of salary'' it had awarded salary for two months at the rate of Rs. 4,615/-. On appreciation of evidence on record it appears to us that the MACT would have as well allowed the total sum of Rs. 16,071-83 under the head ''medical expenses'' and a sum of Rs. 27,690/- towards loss of salary at Rs. 4,615/- per month for six months instead of two months. As could be seen, the MACT had also awarded a sum of Rs. 25,000/- under the head physical pain and sufferings. This according to us is just and proper and we do not want to interfere with the awarding of the said sum under the head ''physical pain and sufferings''. But in passing the award impugned, in our considered view, the MACT had totally overlooked the physical disability the appellant had suffered with the shortening of his right leg by 3/4th an inch to 1(one) inch, thereby necessitating the appellant to wear a shoe with extra sole to make good that shortening. It is also in the evidence of P.W.3 - Doctor that the appellant would continue to suffer pain while he walks if that is so, obviously that suffering the appellant has to undergo all through the rest of his life. Hence, we want to award a further sum of Rs. 25,000/- under the head ''permanent disability'' of his right leg and further for loss of future amenity in life.

18. With the above enhancement under different heads, the breakup figures for the enhanced sums are as hereunder:

a)

Medical expenditure Rs. 16,071-83 rounded of to

Rs. 16,000-00

b)

Travelling expenses, -special diet and nursing diet (as awarded by the MACT)

Rs.4,000-00

c)

Loss of salary for 6 months earned leave at Rs.4,615/- per month

Rs. 27,690-00

d)

Physical pain and suffering due to injuries suffered (as awarded by the MACT).

Rs. 25,000-00

e)

Permanent disability due to shortening of the right leg by 3/4th inch to 1 inch and further for loss of amenities in life thereby caused.

Rs.25,000-00

Total

Rs.97,690-00

19. In view of the tact that the MACT and awarded a global compensation of Rs. 48,230/- to the appellant in the second appeal and that this Court had enhanced the global compensation to Rs. 97,690/- there is an enhancement of Rs. 49,460/- in the global compensation to the appellant in the second appeal.

20. In the result, when the first appeal of the wife stands dismissed, the other appeal of the husband stands partly allowed as above.

21. In view of the above enhancement in the global compensation payable to the appellant in the second appeal, we direct the respondent - KSRTC to deposit the said sum together with interest at 6% per annum (6% was awarded by the MACT) from the date of petition till the date of full payment of the enhanced sum, within a period of eight weeks from this day.

