

(2019) 05 KAR CK 0013

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 11320 Of 2012 (MV-GEN)

Radhika, D/O Krishna

APPELLANT

Vs

G. Deenadayal

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2019) 05 KAR CK 0013

Hon'ble Judges : K. Somashekar, J

Bench : Single Bench

Advocate : P. Nataraju, D. S. Sridhar

Final Decision : Partly Allowed

Judgement

1. Though this appeal is listed for admission, with the consent of the learned counsel for the appellant and the respondent, the matter is taken up for final disposal.

2. The appellant has challenged the impugned judgment and award passed by the court below in MVC No.1001/2011 dated 1.9.2012, awarding compensation in a sum of Rs.1,13,000/- with interest at 6% p.a., contending that the compensation awarded is on the lower side and sought for enhancement of compensation urging various grounds.

3. The factual matrix of this appeal is as under:

It is stated in the claim petition that on 3.6.2011 at about 4.15 p.m., while the minor petitioner was crossing the road near Peepul Tree, Dr.Ambedkar

Jnanaloka 2nd Main Road, Metagalli from North to South, the offending vehicle namely the canter bearing registration No.KA-09/A-1983 came from

East to West in a rash and negligent manner and dashed against the petitioner.

Due to which, the petitioner Radhika, aged about 2½ years, at the time of accident, fell down and sustained injuries. Immediately, she was shifted to JSS Hospital, Mysuru and later on shifted to Victoriya Hospital at Bengaluru and took treatment as an inpatient. The next friend and guardian of the petitioner has spent huge amount towards conveyance, attendant charges, nourishing food, medical expenses etc., Because of the accident, the minor petitioner sustained injuries and the same has been revealed in the wound certificate marked at Exhibit P-2 and she was subjected to X-rays as per Exs.P-4 and P-15. The Medical bill at Ex.P-6 and Medical prescription at Ex.P7 has been produced by the claimant Krishna said to be the father of the injured Radhika. The first respondent is the owner and second respondent is the insurer of canter and therefore, both the respondents are jointly and severally liable to pay the compensation. Therefore, the petitioner claim compensation of Rs.7,50,000/- with interest at 12% p.a., from the date of petition till the date of realization. But the Tribunal has awarded compensation of Rs.1,13,000/-with interest at 6% p.a., which is called in question by the claimant/appellant seeking enhancement of compensation before this court.

4. On service of notice, respondent No.1 owner of the vehicle did not entered appearance. Respondent No.2 insurer entered appearance and denied the petition averments and sought for dismissal of the claim petition.

5. Based upon the pleadings, the Tribunal framed the issues. In order to prove the claim, the claimant's father, next friend and natural guardian was examined as PW-1 and two doctors by name Dr.C.S.Rupa Kumar and Dr.Ramesh Mahadev Tambat are examined as PWs.2 & 3 and got marked Exhibits P-1 to P-16. On behalf of the respondents, no evidence was let in and closed their side. The Tribunal after hearing the arguments of the learned counsel appearing for both sides passed the impugned judgment, awarding compensation of Rs.1,13,000/- with interest at 6% p.a., from the date of petition till the date of realization. Being not satisfied with the compensation awarded by the Tribunal, the appellant/claimant has preferred this appeal seeking enhancement of compensation, by urging various grounds.

6. The learned counsel for the appellant contends that the Tribunal has erred in not properly assessing the compensation, and has taken me through the evidence of PW-1 Krishna, said to be the father of the injured Radhika, aged

about 2½ years, at the time of accident apart from the evidence of the doctors PWs.2 & 3 who have provided treatment. But the Tribunal has not appreciated the evidence given by the claimant - PW-1 Krishna who being the father of the injured Radhika in order to grant compensation. The Tribunal has not properly considered the nature of injuries sustained by her. The Tribunal has erroneously come to the conclusion in awarding compensation in a meagre sum of Rs.70,000/- under the head Pain and sufferings and for disablement. Therefore, it requires interference by the hands of this court. It is further contended that the injuries sustained by the minor child has not been properly appreciated by the Tribunal. On account of the injuries sustained in the accident, the injured cannot run or walk for a long distance and she cannot play and she cannot squat and cannot sit in crossed legs. The doctor has assessed the disability of 55% to the right lower limb. But the claims Tribunal ignoring the evidence on record erred in awarding only a sum of Rs.30,000/- towards disability which is grossly inadequate.

7. Per contra, Sri D.S. Sridhar, learned counsel for the respondent No.2 Insurance Company has taken me through the evidence of PW-1 Krishna, being the father of the injured minor child aged 2½ years, who has stated that the driver of the canter vehicle bearing registration No.KA-09/A-1983 hit on the minor child Radhika while she was crossing the road near Peepul tree situated at Dr.Ambedkar Jnanaloka 2nd Main Road, Metagalli from North to South at the relevant point of time and caused grievous injuries.

8. PW-1 Krishna, the father of the claimant child had been subjected to examination and cross examination. Likewise, PWs.2 & 3, who are the doctors are also subjected to examination. PW-2 specifically deposed in his evidence that he had given treatment to the injured Radhika, and issued wound certificate at Ex.P-2. He has further stated that the minor child Radhika injured was operated on 4.6.2011. These are all the evidence, which has not been properly appreciated by the tribunal in awarding a sum of Rs.1,13,000/- with interest at 6% p.a., Merely because the compensation awarded in a sum of Rs.4,800/- towards discomfort and loss of amenities in life, it cannot be said that under all the heads, the compensation awarded by the Tribunal requires to be looked into by re-appreciating the entire evidence of PW-1 Krishna so also the evidence of PWs.2 & 3. Therefore, the learned counsel for the respondent No.2 submit that there is no cogent evidence

adduced by PW-1 Krishna for interference of the impugned judgment rendered by the Tribunal. The compensation awarded by the Tribunal in a sum of Rs.1,13,000/- with interest at 6% p.a., are found to be justifiable and it is just and proper and does not call for interference and sought for dismissal of the appeal by confirming the impugned judgment rendered by the Tribunal in MVC No.1001/2011.

9. In this appeal, the appellant has taken a serious contention which is based on the evidence of PW-1 Krishna. There is no dispute with regard to the age of the injured and the injured met with an accident and sustaining injuries. Ex.P-2 is the wound certificate said to be issued by the doctor who has provided treatment to her. Exs.P-4 and P-15 are the X-ray taken and Ex.P-12 is the discharge summary, Ex.P-14 and P-16 are the case sheets, which show that the minor child aged 2½ years at the time of accident sustained grievous injuries i.e., degloving injury to right leg, fracture of lower parts of right tibia and fibula and she was hospitalized twice and took treatment as an inpatient for a period of 58 days in JSS Hospital at Mysuru and Victoriya Hospital at Bengaluru. The doctor has further stated tha the minor petitioner was operated on 4.6.2011 for the fracture of right tibia and stabilized with wire and in corroboration with Ex.P-14 case sheet, Ex.P-15 X-ray. Therefore, PW-2 the doctor who has examined was subjected to cross examination on behalf of the claimant.

10. Further, the petitioner examined PW-3 one more Doctor by name Dr.Ramesh Mahadev Tambat, who has deposed in his evidence with respect to treatment given by him to the petitioner in Victoriya Hospital at Bengaluru and in corroboration with Ex.P-16 case sheet. Further, PW-2 has not stated as to what was the percentage of disability when it was compared to the whole body. However, the court can take judicial note of the fact that if any part of disability other than head is compared to the whole body, it may come to its 1/3rd. As such, the disability of the petitioner may comes to 18%.

The Tribunal after considering the evidence of PWs.1 to 3, has to be awarded just and proper compensation under all the heads. Therefore, re-appreciation of the entire evidence on record is required to be done as the claimant Radhika, aged 2½ years child at the time of accident sustained grievous injuries.

11. Keeping in view the arguments advanced by the learned counsel for the

appellant and also the learned counsel for the respondent â?" Insurance

Company stated supra, it is relevant to state that there is no dispute with regard to the injuries sustained by the appellant in a road traffic accident. On

all these grounds, the learned counsel for the appellant prays for allowing the appeal and enhancing the compensation suitably.

12. In a case reported in AIR 2011 SC 1226 between Ravi Vs. Badrinarayan & Others, wherein the Hon'ble Apex Court, relating to Sections 140 and

166 has observed that the victim child aged about 8 years suffered grievous injuries and the father of the child was not aware of niceties of law and it

was more important for him to get his child treated first â?" Owner of vehicle made categorical admission that he was aware of accident caused by

his driver on same day. Here, the victim child was aged 8 years seriously injured in an accident and it was more important for his father to get him

treated and he was not aware of the significance of law.

13. In the present case on hand, the claimant being the minor child Radhika aged about 2½ years met with an accident. The offending vehicle is a

canter. The driver of the canter vehicle was driving the canter in a rash and negligent manner came in a high speed and hit the petitioner and caused

grievous injuries so also degloving injury to right leg, fracture of lower parts of right tibia and fibula which clearly indicates by the wound certificate

marked at Ex.P-2. Therefore, it requires reconsideration and on re-appreciation of the oral and documentary evidence adduced and produced by the

claimant, the compensation awarded under the head â?"Pain, Sufferings and disablementâ?" a sum of Rs.70,000/- is enhanced to Rs.1,00,000/-. The

Tribunal has awarded a sum of Rs.5,000/- towards Conveyance, Rs.15,000/- towards attendant charges and nourishing food and a sum of Rs.18,200/-

towards Medical expenses. On re-appreciation, in all, the claimant is entitled to a sum of Rs.50,000/- towards conveyance, nourishing food and

medical expenses. Further, the Tribunal has awarded a sum of Rs.4,800 towards discomfort and loss of amenities. As could be seen from the records,

the claimant child has suffered with two grievous injuries to fibula and tibia. Therefore, on re-appreciation of the entire oral and documentary evidence

on record, I am of the considered opinion that the compensation awarded requires enhancement. Claimant is entitled to a sum of Rs.50,000/- against

Rs.4,800/- awarded by the Tribunal. Thus, in all, the claimant is entitled for the

enhanced compensation of Rs.87,000/- in addition to the compensation awarded by the Tribunal with interest at 6% p.a., For the aforesaid reasons and findings, I proceed to pass the following:

The appeal preferred by the appellant is hereby partly allowed. Consequently, the appellant is entitled for the enhanced compensation of Rs.87,000/-

with interest at 6% p.a., from the date of petition till realization. The respondent " Insurance Company shall deposit the enhanced compensation with

accrued interest within a period of four weeks from the date of receipt of the copy of this Judgment rest of the order of the tribunal un-altered. There

shall be no order as to costs. Office to draw the decree accordingly.