(2015) 03 KAR CK 0193

In the Karnataka High Court

Case No : M.F.A. No. 4803/2010 (MV)

Shira Salma APPELLANT

Vs

Managing Director, Deepak Car Rentals Pvt. Ltd. and Others RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0193

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : Shripad V. Shastri, for the Appellant

Final Decision : Partly Allowed

Judgement

A.V. Chandrashekara, J.—Heard the learned counsel for the parties.

2. Claimants in MVC. 9986/08 which was pending on the file of XI Additional Judge, Court of Small Causes and Member, MACT, Bengaluru, are in appeal against the judgment and award dated 5.1.2010 on the ground that the amount of Rs. 1,49,440/- is grossly inadequate. It is their further grievance that 20% of the compensation assessed should not have been deducted towards contributory negligence.

3. The accident in question occurred on 9.12.2008 while she was traveling as pillion rider in a Kinetic Honda bearing registration No. KA-01-H-2326. Following is the amount of compensation awarded by the Tribunal as found in paragraph 19 of the impugned judgment:

The Tribunal has come to the conclusion that the rider of Kinetic Honda was also responsible for the accident and his percentage of contributory negligence is assessed at 20%.

4. Admittedly the owner and rider of the Kinetic Honda have not been made parties. Even if it is so, in the light of assessing 20% towards the rider of the vehicle, it would be a case of joint tortfeasor and on that ground, compensation

cannot be deducted insofar as it relates to the claimant who was the pillion rider.

5. Even otherwise, records would disclose that the charge sheet had been filed by the police against the offending vehicle, a TATA Tourist bearing registration No. KA-03-AA-405. The said charge sheet came to be filed after conducting thorough investigation by responsible police. Nothing is placed on record to suspect the bona fides of the investigation conducted by the police officer. In this view of the matter, deducting 20% out of the compensation determined by the Tribunal insofar as this claimant is concerned, is incorrect and improper. Therefore she is entitled for the entire compensation.

6. The claimant had sustained comminuted fracture of both bones of the left leg and was in-patient for 17 days. Hence Rs. 40,000/- awarded under the head ''pam and suffering'' is reasonable and does not require any interference. Likewise a sum of Rs. 40,000/- granted towards medical expenses also does not require any interference.

7. The claimant was hardly 20 years and was working in a call centre. Her income is assessed at Rs. 3,000/- p.m. The accident is of the year 2008. In the absence of clear documentary evidence, the same will have to be assessed on the basis of broad preponderance of possibilities. Thus her income will have to be assessed at Rs. 4,000/- p.m. in view of the gravity of injuries and the nature of injuries sustained by her, it would be reasonable to hold that she was not able to work at least for 5 months. Therefore a sum of Rs. 20,000/- towards ''loss of income during the laid-up period'' would meet the ends of justice. A sum of Rs. 15,000/- is awarded towards future medical expenses and the same does not require any interference.

8. Only Rs. 15,000/- is awarded towards ''loss of amenities and pleasure in future life.'' Considering the nature of injuries and period of treatment, awarding Rs. 35,000/- under the said head would meet the ends of justice. A sum of Rs. 64,800/- is awarded towards loss of future earning capacity considering disability at 10%. The doctor who treated her has assessed disability at 16%. What exactly is the effect of medical disability on her avocation has to be considered in the light of the principles enunciated in the case of Raj Kumar Vs. Ajay Kumar and Another, . Therefore assessment of 10% disability considered by the Tribunal cannot be considered as incorrect and improper. The same is perfectly justified.

9. Thus monthly loss of income would be Rs. 400/- and annually it will be Rs. 4,800/-. The same will have to be multiplied by 18 which is the appropriate multiplier applicable to the case at hand. Thus the total loss of future income on account of 10% disability will be Rs. 86,400/-. Thus the claimant is entitled to enhanced compensation under different heads as under:

Thus the claimant is entitled to enhanced compensation of Rs. 2,36,000/- as against Rs. 1,86,800/- determined by the Tribunal.

10. In the result, I pass the following order:

ORDER

The appeal is allowed in part. The claimant-appellant is entitled to a total compensation of Rs. 2,36,000/- as against Rs. 1,86,800/- determined by the Tribunal. The enhanced compensation of Rs. 49,200/- (rupees forty nine thousand two hundred only) shall carry interest at the rate of 6% p.a. from the date of petition till realization.

Deduction of 20% towards contributory negligence is set aside.

The judgment of the Tribunal stands modified accordingly.