

(2016) 09 KAR CK 0007

In the Karnataka High Court

Case No : MFA No. 200009 of 2014 (MV)

Shivappa Tippanna Ganjalkhed

APPELLANT

Vs

Irappa Basappa Vagaongeri

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2416

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri Umadevi S. Babshetty, Advocate, for the Appellant; Notice to R1 and R2 are dispensed with v/o dated 27.3.2014), for the Respondent; Sri Manjunath Chidalli, Advocate for Smt. Saroja S. Patil, Advocate, for the Respondent No. 3

Final Decision : Partly Allowed

Judgement

B. Veerappa, J. - The claimant has tiled the present appeal for enhancement against the impugned judgment and award dated 13.01.2012 made in MVC No.768/2009 on the tile of the Motor Accident Claims Tribunal Jewargi, awarding a total compensation of Rs.2,05,000/-with interest @ 6% from the date of petition till the date of realisation from the respondents jointly and severally.

2. It is the case of the claimant that on 10.04.2009 at about 3.15 p.m. he was riding as pillion rider on the Hero Honda motorcycle bearing registration No. KA-32/S-2674 which was driving by one Chandrakant Naikodi from Chigaralli to Ijeri village, Chandrakant stopped the motorcycle on the left side of the road, to have some talks with his brother Suryakan who was taking his bullocks to Ijeri village for sale. At that time, the first respondent was driving auto rickshaw bearing registration No. KA-33/6340 in a rash and negligent manner and by overtaking another auto rickshaw came in a high speed from the opposite direction and dashed the motorcycle on which the claimant was sitting in rear seat and hit the right leg of claimant. Consequently, the claimant fell down from the motorcycle

and sustained severe fracture to his right thigh, right knee, joint right foot and other injuries all over the body. Immediately, he was shifted to P.G Shah hospital Gulbarga and he was treated in said hospital for ten days and because of financial difficulties he got discharged from the hospital. Thereafter, he was took treatment under private orthopedic surgeon at Solapur and Gulbarga. The doctors advised the claimant to undergo major surgeries at different stages to get correct his right leg, which has multiple fractures. Due to the said injuries the claimant permanently disabled to do any hard work and he cannot put weight on his right leg and further contended that auto rickshaw belongs to respondent No.1 and being insured with respondent No.3. Therefore, the respondents are liable to pay the compensation.

3. The respondent Nos. 1 and 2 filed written statement denied the averments made in the claim petition and further denied the valid driving license of the driver at the time of the accident and also denied the nature of accident, age, expenses incurred and nature of injuries sustained and further contended that the accident was occurred due to the rash and negligence on the part of the claimant. Therefore, he is not liable to pay the compensation.

4. Based on the aforesaid pleadings, the Tribunal framed the following issues;

1. Whether the petitioner proves that on 10-04-2009 at about 3.15 p.m., when he was going as a pillion rider on the Hero Honda motorcycle bearing Regn. No. KA-32-S-2674 which one Chandrkanth Naikodi was riding and when the said motorcycle came near Ijeri village on Ijeri Chigaralli road, the Respondent No. 1 came driving the Auto Rickshaw bearing Regn. No. KA 33/6340 from the opposite direction in a rash and negligent manner and dashed against the said motorcycle and caused accident and that on account of the said accident he sustained grievous injuries?

2. Whether the respondent No. 3 proves that the accident has occurred on account of the rash and negligent riding of the said motorcycle by its rider?

3. Whether the respondent No. 3 proves that the driver of the said auto rickshaw was not holding valid and effective driving license as on the date of the accident to drive the respective class of vehicle?

4. Whether the petitioner is entitled for compensation? If so, what is the quantum of compensation to which the petitioner is entitled and from whom the compensation amount is recoverable?

5. What award or order?

5. In order to substantiate his case, the claimant examined as PW. 1 and examined doctors PWs.2 and 3 marked the documents Exs.P1 to P. 15 and Ex.C1. The respondents have not adduced any evidence but got marked policy copy marked as Ex.R1.

6. After considering the entire material on record, the Tribunal recorded a specific

finding that the claimant proved that he has sustained injuries viz., cut lacerated wound knee 4" x 4" x bone deep, cut lacerated wound fare foot 1" x 1" skin deep, cut lacerated wound over face ?" x ?" x skin deep, and comminuted femur fracture, on account of the rash and negligent driving of the driver of auto rickshaw bearing registration No.KA- 33/6340 of the respondent, further failed to prove that the driver of the auto rickshaw was not holding any valid and effective driving license as on the date of the accident. Hence, the claimant is entitled for compensation. Accordingly, by the impugned judgment and award dated 13.01.2012 the Tribunal awarded a sum of Rs.2,05,000/- with interest @ 6% from the date of petition till realization. Hence, the present appeal is filed for enhancement by the claimant.

7. I have heard the learned counsel for the parties to the lis.

8. Smt. Umadevi S. Babashetty, the learned counsel for the appellant contended that the Tribunal erred in awarding compensation only to Rs.2,05,000/- which is inadequate and contrary to the material on record. She further contended that the Tribunal erred in taking the income as Rs.3,000/- per month even though PW. 1 has stated on oath that the claimant was earning Rs.5,000/- per month and also contended that the award made in respect of other heads is on the lower side. Therefore, she sought for further enhancement.

9. Per contra, Sri. Manjunath Chidalli appearing for Smt. Saroja S. Patil, the learned counsel for respondent No.3-insurance company sought to justify the impugned judgment and award passed by the Tribunal and contended that in the absence of any material documents produced, the Tribunal is not justified in awarding the compensation. Hence, sought for dismissal of the appeal.

10. In view of the rival contentions urged by the learned counsel for the parties, the only point that arises for consideration in the present appeal is;

"Whether the appellant has made out a case for further enhancement in the facts and circumstance of the present case"?

11. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

12. It is an undisputed fact that the claimant has sustained serious injuries viz., cut lacerated wound knee 4" x 4" x bone deep, cut lacerated wound fare foot 1" x 1" skin deep, cut lacerated wound over face ?" x ?" x skin deep, and comminuted femur fracture, on account of the unfortunate accident occurred on 10.04.2009 due to the rash and negligent driving of the driver of the auto rickshaw bearing registration No.KA-33/6340 and the respondent No.3 failed to prove that the accident was occurred on account of the rash and negligent driving of the motorcycle and he was not holding the valid and effective driving license as on the date of the accident. The claimant examined as PW.I stated on oath that he was earning Rs.5,000/- per month. PWs.2 and 3 the doctors who stated on oath that the claimant sustained injury and issued wound certificate at

Ex.P6 and Dr. P.G. Shah Orthopedic Hospital who stated on oath that the claimant has sustained comminuted fracture of cut lacerated wound knee 4" x 4" x bone deep, cut lacerated wound fare foot 1" x 1" skin deep, cut lacerated wound over face ?" x ?" x skin deep, and comminuted femur fracture and accordingly he opined that the disability to the whole body is 30% to 40%. The trial Court while awarding the compensation in respect of other heads proceeded to grant a meager amount which is contrary to the law declared by the Hon"ble Supreme Court by the time and again.

13. In view of the aforesaid reasons, the point raised the present appeal has to be answered in the affirmative holding that the claimant has made out a case for further enhancement.

14. The insurance company has not adduced any evidence to disprove the statement by the claimant that he was earning Rs.5,000/- per month nor produced any evidence in support of their case. In the absence of any contra material by the Insurance Company, it is just and reasonable to take the income of the claimant at Rs. 5,000/- per month taking into consideration the age of tire claimant as 48 years and the date of the accident that occurred on 10.01.2009. The Insurance Company has not challenged either the adverse finding recorded by the Tribunal and percentage of disability fixed by it to the extent of 25%.

15. After reassessing the entire evidence of PWs.1 to 3 and material documents Exs.P1 to P15, the claimant is entitled to the compensation as under:

Pain and suffering

Rs. 25,000/-

Loss of amenities

Rs. 30,000/-

Medical expenses

Rs. 20,000/-

Loss of income during Laid-up period

Rs. 15,000/-

Attendant, nourishment and conveyance charge

Rs. 10,000/-

Future medical expenses

Rs. 60,000/-

Loss of future income

Rs. 1,95,000/-

Total

Rs.3,55,000/-

In all the claimant is entitled to total compensation of Rs.3,55,000/- as against Rs.2,05,000/- awarded by the Tribunal. The enhanced compensation would be Rs. 1,50,000/-.

16. In view of the aforesaid reasons, the appeal is allowed in part. The impugned judgment and award dated 13.01.2012 made in MVC No.768/2009 on the file of the Motor Accident Claims Tribunal, Jewargi is modified. The claimant is entitled to enhanced compensation of Rs. 1,50,000/- with interest at 6% per annum from the date of petition till realization.

17. Out of the enhanced compensation, 50% with interest shall be released in favour of the claimant and remaining 50% shall be kept in fixed deposit in the name of the claimant in any nationalised bank for a period of five years. The claimant is at liberty to withdraw the interest periodically.