

(2011) 10 KAR CK 0088
In the Karnataka High Court
Case No : M.F.A. No - 8621 of 2009 (MV)

Shubha C.N.

APPELLANT

Vs

The Oriental Insurance Co. Ltd. and Sri. A. Subramanya

RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 10 KAR CK 0088

Hon'ble Judges : N. K. Patil, J

Bench : Single Bench

Advocate : Shripad V. Shastri, for the Appellant; M. Arun Ponnappa, Adv for R1
Notice to R2 Dispensed With, for the Respondent

Final Decision : Allowed

Judgement

N. K. Patil

1. This appeal by the claimant is arising out of the impugned Judgment and award dated 19.06.2009 passed in MVC No. 9006/2007 on the file of the Motor Accident Claims Tribunal, XII Additional Judge, Court of Small Causes, Bangalore, (hereinafter referred to as Tribunal" for short). The Tribunal has awarded a sum of Rs. 1,20,000/- with interest at 6% p.a., from the date of petition till the date of realization on account of the injuries sustained by her in the road traffic accident The quantum of compensation awarded by the Tribunal being inadequate and it requires enhancement, the appellant has presented this appeal.

2. In brief, the facts of the case are:

The appellant was aged about 23 years. She was hale and healthy prior to the date of accident She further contended that she has completed B.A. B.Ed. Course, and conducting tutorial classes, getting income of more than Rs. 10,000/- per month. At about 6,45 p.m. on 21.11.2007 when she was travelling in TVS XL bearing No.KA-04-EC-785 as a pillion rider near Kammannahalli junction, the rider of the bike suddenly applied brake, as a result of which, she

fell down and sustained grievous injuries. On account of injuries sustained in road traffic accident, she was inpatient in the hospital for more than 18 days and also undergone one surgery. It is the further case of the appellant that she has spent considerable amount towards medical expenses, attendant charges and other incidental expenses. On account of grievous injuries sustained in the road traffic accident she is unable to lead her normal life and it has affected her marriage prospects and has to suffer the discomforts throughout her life. Taking all these aspects into consideration, she filed a claim petition u/s 166 of Motor Vehicles Act, claiming compensation of Rs. 8,00 lakhs on account of injuries sustained in road traffic accident. On the ground that the compensation awarded by the Tribunal is insufficient and it requires enhancement the appellant has presented this appeal.

3. The learned counsel appearing for the claimant Sri Shripad V Shastri submits that, the tribunal erred in not awarding compensation reasonable toward injury pain and suffering, loss amenities, disability, discomforts and not awarded any compensation towards loss of income during treatment period and loss of marriage prospects. To substantiate the same be pointed out that the appellant has sustained 40% disability to the affected part of the body and 14% disability to the whole body. This aspect of the matter is not looked into, nor considered, nor awarded any reasonable compensation. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by enhancing just and reasonable compensation.

4. As against this, the learned counsel appearing for the first respondent Insurer, Sri M. Arun Ponnappa at the outset submitted that the impugned judgment and award passed by the Tribunal is just and proper and it is passed after due appreciation of oral and documentary evidence and other material on record. Therefore, it does not call for interference. However, after going through the original records and perusal of the judgment and award passed by Tribunal, he fairly submits that, reasonable amount, may be awarded towards loss of income during treatment period and towards loss of marriage prospects, in accordance with law.

5. After careful consideration of the submission of the learned counsel appearing for both the parties, the only point that arise for my consideration in the instant appeal

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

6. The occurrence of accident and resultant injuries sustained are not in dispute. Further, it is not in dispute, on account of the injuries sustained by the appellant, she has undergone treatment for 14 days in the hospital and she also undergone one surgery. The Tribunal taking this material on record has rightly awarded just and reasonable compensation towards medical expenses conveyance nourishing food and attendant charges at Rs. 70,000/- and Rs. 10,000/- towards future

medical expenses. Therefore interference by this Court is uncalled for,

7. However, the Tribunal has erred in not awarding reasonable compensation toward injury, pain and suffering, loss of amenity, disability, discomfort and not awarded any compensation towards loss of income during treatment period and towards for loss of marriage prospects, After re-appreciation of the oral and documentary evidence available on file, taking into consideration the age, avocation and the year to co-operation of accident, I can safely assess the income of the appellant at Rs. 4,000/- per month Doctor has assessed the disability of 40% to the affected part of the body and 14% disability to the whole body. The same is accepted and she has under gone pain and agony during treatment period and as per the advice of the Doctor, I presume that she might have taken bed rest and follow-up the treatment for three months and the discomforts, unhappiness, disability persists throughout her life and the claimant being aged only 23 years, conducting tuition classes as a tutor having certificate of R.A., B.Ed. Course there will be some loss in her marriage prospectus. The Tribunal without taking this aspect of the matter into consideration has passed the impugned Judgment and award. Taking all these relevant aspects into consideration, I award a sum of Rs. 40,000/- towards pain and suffering instead of Rs. 30,000/- Rs. 12,000/-towards loss of income during the treatment period at the rats of Rs. 4,000/- per month for a period of three months Rs. 30,000/- towards loss of amenities towards disability, discomforts as against Rs. 10,000/- and Rs. 50,000/- towards loss of marriage prospects.

8. The appellant is entitled for a compensation on different heads is as follows:

Towards pain and sufferings

Rs. 40,000/-

Towards medical expenses, conveyances nourishing food and attendant charges

Ra. 70,000/-

Towards loss of income during the period of treatment

Rs. 12,000/-

Towards loss of amenities, disability, discomforts

Rs. 30,000/-

Towards future medical expenses

Rs. 10,000/-

Towards loss of marriage prospects

Rs. 50,000/-

Total

Rs. 2,12,000/-

9. In all, appellant is entitled for a sum of Rs. 2,12,000/- as against Rs. 1,20,000/-. There will be an enhancement of Rs. 92,000/- with interest at 6% p.a., from the date of petition till its realisation,

10. Having regard to the facts and circumstances of the case, as referred above, the instant appeal is allowed in part, The impugned Judgment and award dated 19.06.2009 passed in MVC No. 9006/2007 on the file of the Motor Accident Claims Tribunal, XIII Additional Judge, Court of Small Causes, Bangalore, is hereby modified awarding a sum of Rs. 92,000/- with interest at 6% p.a., from the date of petition till its realisation, in addition to the compensation awarded by the Tribunal.

11. The first respondent-Insurer is directed to deposit the enhanced compensation with interest, within three weeks from the date of receipt of a copy of this judgment and award.

12. Out of the enhanced compensation, Rs. 40,000/- with proportionate interest shall be deposited in the name of appellant in any Nationalised Bank or Scheduled Bank for a period of five years and renewed for another five years with permission to withdraw the Interest periodically.

13. Remaining Rs. 52,000/- with proportionate interest shall be released in favour of the appellant immediately on deposit by the Insurer.

14. Draw the modified award. Sri M. Arun Ponnappa is permitted to file vakhalat for 1st respondent within four weeks from today.