

(2013) 09 KAR CK 0167
In the Karnataka High Court
Case No : M.F.A. No. 3468 of 2009 (MV)

Smt. M.K. Saraswathi

APPELLANT

Vs

Mr. Prakash C. and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 09 KAR CK 0167

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

Bench : Single Bench

Advocate : N.M. Handral, for the Appellant; K. Suresh, Advocate for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 16th December 2008, passed in MVC No. 1017/2008, by the XVIII Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-4, Bangalore (SCCH-4), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,13,000/- with interest @ 6% p.a. awarded in favour of the claimant as against her claim for Rs. 6,00,000/-, is inadequate. The appellant claims to be aged about 39 years and working as a Tailor earning a sum of Rs. 5,500/- per month and was hale and healthy prior to the date of accident. That the occurrence of accident at about 8:15 P.M., on 22-12-2007, on Mysore Road, Bapujinagar, near BMTC Bus stop, on account of rash and negligent driving by the driver of Auto rickshaw bearing Registration No. KA-05/9660 is not in dispute. It is also not in dispute that the appellant sustained grievous injuries. Due to the injuries sustained in the accident, she was shifted to KIMS Hospital and then referred to Victoria Hospital. She also underwent a surgery for open reduction and fixation of plate and screws and discharged on 14-01-2008 and thereafter, she took follow-up treatment.

2. It is her further case that, on account of the accident, she sustained injuries stated above and for the treatment of the said injuries, she has spent reasonable

amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, she has to "be compensated reasonably.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 6,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 16th December, 2008. The Tribunal, after considering; the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,13,000/- under different heads, with interest at 6% per annum, from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

4. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and the Insurer.

5. The submission of the learned counsel appearing for appellant, at the outset is that the tribunal grossly erred in not awarding reasonable compensation towards conveyance, nourishing food and attendant charges, loss of income during treatment period, loss of amenities, discomfort and unhappiness, loss of future income and future medical expenses. To substantiate the said submission, he submitted that the Doctor has assessed the functional disability at 25% in respect of left lower limb and whole body at 12.5%. But the Tribunal erred in re-assessing the whole body disability at 8.3% and assessing the monthly income of the appellant at only Rs. 3,000/-. Therefore, he submits that the impugned judgment and award passed by Tribunal is liable to be modified by awarding reasonable compensation under all the heads.

6. Per contra, learned counsel appearing for Insurer inter alia contended and substantiated the judgment and award passed by Tribunal stating that the same is passed after due appreciation of the oral and documentary evidence available on file and after consideration of the entire material available on file including the submission made by the learned counsel appearing for both parties and hence, the compensation awarded by Tribunal is just and reasonable. Hence, it does not call for interference. However, having regard to the facts and circumstances of the case including the age, avocation and the year of accident, he submitted the income of the appellant could be re-assessed at Rs. 3,500/- per month to meet the ends of justice.

7. After hearing the learned counsel appearing for the appellant and the Insurer and after going through the impugned judgment and award passed by Tribunal, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 30,000/-

towards injury, pain and sufferings and Rs. 5,000/- towards future medical expenses. Hence it does not call for interference. However, so far as other heads are concerned, the Tribunal erred in not awarding reasonable compensation and therefore, it requires enhancement.

8. After perusal of the impugned judgment and award passed by Tribunal and after hearing the learned counsel appearing for both parties, the only point that arise for my consideration in this appeal is:

Whether the compensation awarded by Tribunal is just and reasonable?

After going through the entire material available on file, it can be seen that occurrence of accident and resultant injuries sustained by the appellant are not in dispute. It is also not in dispute that the appellant has sustained bimalleolar fracture of left ankle and underwent an operation for open reduction and fixation of plate and screws. It is further not disputed that she took treatment in various Hospitals for a period of 22 days as in-patient. PW2, Orthopaedic Surgeon has clearly stated the appellant has sustained 25% permanent disability in respect of left lower limb and 12.5% towards whole body. But, the Tribunal has reassessed the whole body disability at 8.3%. Having regard to the facts and circumstances of the case, I reassess the whole body disability at 9% to meet the ends of justice. The appellant, being aged about only 41-45 years, has to endure this disability for the rest of her life. Further, the monthly income of Rs. 3,000/- assessed by Tribunal is on the lower side. Having regard to the age, avocation and the year of accident, I re-assessed the monthly income of the appellant at Rs. 3,500/- to meet the ends of justice. It is stated that the appellant was aged about 39 years at the time of accident. But, the Tribunal, after assessing the oral and documentary evidence available on file including the medical records, has reassessed the age of the appellant as 43 years and I accept the same. For the said age of the appellant, the proper multiplier applicable is "14" as per the decision of the Hon"ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for nearly 22 days. During the period of treatment, the appellant must have undergone lot of unsaid pain and agony. Having regard to the nature of injuries sustained, I presume that she should have taken bed rest and follow-up treatment at least for a period of three months. Further, during the period of treatment, she would have spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental and medical expenses. Therefore, having regard to the nature of injuries sustained, age, avocation, functional disability and whole body disability and the nature and duration of treatment, I award a sum of Rs. 25,000/- towards loss of amenities, discomfort and unhappiness on account of disability as against Rs. 15,000/-; Rs. 10,500/- towards loss of income during treatment period, at the rate of Rs. 3,500/- per month for a period of three months as against Rs. 9,000/-; Rs. 52,920/- towards loss of future income (i.e. Rs. 3,500/- x 12 x "14" x 9/100) as against Rs. 39,000/- and Rs. 20,000/-

towards medical expenses including conveyance, nourishing food and attendant charges as against Rs. 15,000/- awarded by Tribunal. Thus, the appellant in all, would be entitled to a total compensation of Rs. 1,43,420/-, with interest at 6% per annum as against 71,13,000/- awarded by Tribunal, and the break up is as follows:

In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 16th December 2008, passed in MVC No. 1017/2008, by the XVIII Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal-4, Bangalore (SCCH-4), is hereby modified, awarding compensation of a sum of Rs. 1,43,420/-, with interest at 6% per annum, as against 71,13,000/-, awarded by Tribunal. There would be an enhancement of compensation of 730,420/- with 6% interest per annum.

The second respondent-Insurer is directed to deposit the enhanced compensation, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.