

(2010) 11 KAR CK 0102
In the Karnataka High Court
Case No : M.F.A. No. 7343 of 2005

Smt. Yallamma

APPELLANT

Vs

D. Sriramalu and Another

RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2011) ILR (Kar) 101

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Suresh M. Latur, for the Appellant; C.R. Ravishankar, for R2, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 21st February 2005, passed in M.V.C. No. 2138/2003, by the IV Additional Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-6), (for short, Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 86,197/- awarded in her favour as against her claim for Rs. 04.00 lakhs, is inadequate.

2. The Appellant claims to be aged about 30 years, by occupation, a vegetable vendor, and earning a sum Rs. 4,000/- per month. She was hale and healthy prior to the date of accident. That at about 2:10A.M., on 15.12.2002, when the Appellant was travelling in a Tempo along with her vegetable goods from Kagganur to Bangalore near Thindly Gate, Sarjapura Hobli, at that time, the driver of the said Tempo bearing No. KA-05/3-2538 drove the same at high speed, in a rash and negligent manner and dashed against the Appellant, due to which she fell down and sustained injuries and she was immediately shifted to Agape Hospital for treatment.

3. It is the case of the Appellant that on account of the injuries sustained, she has taken treatment for about 22 days as in-patient in the Hospital, during which

period, she has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and the Doctor has assessed the functional disability at 36% towards limb and 12% in respect of whole body and therefore, it is her case that the impugment and award is liable to be modified by awarding reasonable compensation.

4. It is the specific case of the Appellant that the Tribunal, without critical evaluation of the oral and documentary evidence and other material available on file, specifically with reference to oral evidence of PW1 and documentary evidence at Exs.P1, FIR and P2, the charge sheet, has proceeded to fasten the entire liability on the first Respondent - owner of the offending vehicle and dispensed the second Respondent - Insurer of the offending vehicle with the liability, without any justification. Therefore, the said finding may be set aside by modifying the impugned judgment and award passed by Tribunal.

5. 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. 04.00 lakhs against the Respondents. The said claim petition had come up for consideration before the Tribunal on 21st February 2005. 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 Rs. 86,197/- with interest at 6% per annum from the date of petition till the date of payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Appellant is in appeal before this Court, seeking enhancement of compensation.

6. We have heard Learned Counsel for Appellant and Learned Counsel for second Respondent - Insurance Company, for considerable length of time.

7. Learned Counsel appearing for Appellant at the outset submitted that the Tribunal committed an error in proceeding to pass the impugned judgment and award fastening the entire liability on the first Respondent - owner of the offending vehicle, contrary to the relevant material available on file. To substantiate his submission, he drew our attention to the evidence of PW1, the injured claimant who has stated in unequivocal terms that she was travelling in the offending vehicle, Tempo, carrying the vegetables from Kagganur to Bangalore. Further, he drew out attention to documentary evidence at Exs. P1 and P2, wherein, it is crystal clear that the case has been registered against the driver of the offending vehicle for the commission of offences punishable under Sections 279 and 337 IPC. Therefore, he submitted that the finding of the Tribunal may be set aside and the same may be fastened on the second Respondent - insurer of the offending vehicle.

8. After hearing Learned Counsel for the parties and after perusal of the judgment and award passed by Tribunal including the original records placed before us, the points that arise for our consideration are:

I) Whether the quantum of compensation awarded by Tribunal is just and

reasonable?

II) Whether the Tribunal is justified in fastening liability on the owner of the offending vehicle?

Re-Point (I): The occurrence of the accident and the resultant injuries sustained by Appellant are not in dispute. After careful perusal of the impugned judgment and award passed by Tribunal, we are of the view that, the Tribunal, after assessing oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 20,000/- towards pain and sufferings, Rs. 1,357/- towards medical expenses, and a sum of Rs. 51,840/- towards loss of future income. Hence, it does not call for interference.

However, the Tribunal erred in not awarding reasonable compensation towards loss of amenities, discomforts and unhappiness, loss of income during treatment period and towards conveyance, nourishing food and attendant charges. The fact that the Appellant was aged about 30 years and a vegetable vendor is not in dispute. She has taken treatment for about 22 days in the Hospital, during this period, she would have spent reasonable amount towards conveyance, nourishing food and attendant charges, apart from medical expenses, PW.2 - Doctor has assessed disability of the Appellant at 36% in respect of left lower limb and 12% in respect of whole body. The Appellant, being aged about 30 years, at the time of accident, has to pull on the life with this disability for the rest of her life and she cannot do her business as she was doing earlier. Having regard to the nature of injuries sustained in the accident, we presume that she would have taken follow-up treatment and bed rest atleast for a period of two months. However, we accept the monthly income assessed by the Tribunal at Rs. 3,000/-. Accordingly, taking into consideration all the above aspects, were-determine compensation by awarding a sum of Rs. 10,000/- towards conveyance, nourishing food and attendant charges as against Rs. 5,000/-; Rs, 6,000/- towards loss of income during treatment period, taking the income of the Appellant at Rs. 3,000/-per month for a period of two months, and a sum of Rs. 10,000/-towards loss of amenities, discomforts, and unhappiness on account of disability as against Rs. 5,000/- awarded by Tribunal.

Re-Point (II): So far as fastening the liability on the first Respondent -owner of the offending vehicle is concerned, we are of the considered opinion that the Tribunal has seriously erred in coming to the said conclusion. After critical evaluation of the original records available on file, specifically with reference to the oral evidence of PW.1 coupled with the documentary evidence at Exs.P1 - FIR and P2 - Charge sheet we are of the view that it is the specific case of the Appellant that she was travelling in the Tempo along with vegetables from Kagganur to Bangalore. The FIR discloses that the case is registered under Sections 279 and 337 IPC against the driver of the offending Tempo and the charge sheet also discloses that the driver of the Tempo has been charge sheeted for the offence and the panchanama has been drawn. Further, on the basis of these materials only, the Tribunal at internal page 5 of its judgment, has come to

the conclusion that the accident, in fact, has occurred due to the rash and negligent driving by the driver of the offending vehicle and answered the first issue framed by it in the affirmative. But, while answering with regard to liability, it has held that since the offending vehicle is registered as goods carrying truck, meant to carry goods alone and cannot carry passengers, the insurer is not liable to pay the compensation and the owner alone as liable to pay the compensation. The said reasoning given by the Tribunal is contrary to the clinching evidence of PW.1 and recitals at Exs.P1 and P2, referred supra. Therefore, we are of the considered opinion that the Tribunal is not justified in fastening the liability on the owner of the offending vehicle. Hence, we hereby set aside the said finding and fasten the entire liability on the second Respondent - insurer of the offending vehicle.

9. 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 21st February 2005, passed in M.V.G. No. 2138/2003, by the IV Additional Judge, Member, Motor Accident Claims Tribunal, Court of Small Causes, Bangalore (SCCH-6), is hereby modified, fastening the entire liability on the second Respondent - insurer of the offending vehicle, and awarding a sum of Rs. 99,197/- as against Rs. 86,197/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Pain and sufferings

Rs. 20,000/-

Towards Loss of amenities & enjoyment in life

Rs. 10,000/-

Towards Medical Expenses

Rs. 1,357/-

Towards conveyance, nourishing food and attendant charges

Rs. 10,000/-

Towards Loss of earning during treatment period

Rs. 6,000/-

Towards loss of future income

Rs. 51,840/-

Total

Rs. 99,197/-

The second Respondent - Insurer is directed to deposit the entire compensation

of Rs. 99,197/- (rounded off to Rs. 99,200/-), with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

The apportionment and the manner of disbursement of compensation ordered by Tribunal is also modified. On deposit of the aforesaid sum by the second Respondent - Insurer, 50% of the amount deposited shall be invested in Fixed Deposit in any Nationalised or Scheduled Bank, in the name of the Appellant, for a period of five years, renewable for another five years, with permission to her to withdraw the periodical interest.

The remaining 50% of the amount deposited shall be released in favour of the Appellant, immediately.

Office to draw award, accordingly.