**(2017) 06 KAR CK 0104**

**In the Karnataka High Court**

**Case No :** 3797 of 2016 (MV)

SMT.JAYANTHI R ACHARYA — APPELLANT

Vs

SHANKAR POOJARY, & ANR. — RESPONDENT

**Date of Decision :** 16-06-2017

**Acts Referred:**

**Citation :** (2017) 06 KAR CK 0104

**Hon'ble Judges :** N.K. Sudhindrarao

**Bench :** SINGLE BENCH

**Advocate :** G.N.MAIYA, S.T.RAJASHEKARA

**Final Decision :** Dismissed

## Judgement

1. This appeal is directed against the judgment and award passed in MVC No.629/2014 dated 13.04.2016 by the learned Senior Civil Judge and Additional MACT, Kundapura.

2. In order to avoid overlappings and confusions, the parties are hereafter referred with reference to their status before the Tribunal.

3. A road accident occurred on 17.05.2014 at 3.45 p.m., where the petitioner as a pedestrian, was standing at divider on the western side of NH-66 which is close to Shri Chempi Venkataramana Temple, Moodahadu Village, Udupi Taluk. By that time, a motorcycle bearing registration No.KA-20-S-0258 came from Kundapura side turned towards Udupi in a rash and negligent manner and dashed against the petitioner, because of which she sustained fractures.

4. It is also stated that the petitioner was taken to Mahesh Hospital, Brahmavara and thereafter KMC hospital, Manipal and was treated as in-patient from 17.05.2014 to 29.05.2014. Her injuries were said to be major fractures. She underwent major surgeries and was advised to take bed rest and follow up treatment. Petitioner claimed Rs.90,000/- for medical expenses, Rs.15,000/- for food and nourishment and attendant charges, Rs.10,000/- for conveyance

charges, Rs.20,000/- towards future treatment and surgery. She contended that she was assisting her husband in his business and thereby earning Rs.6,000/- per month.

5. This appeal is preferred by the claimant for enhancement of compensation. Respondent No.1 after his appearance did not contest before this court. Respondent No.2 -Insurance company contested the claim and denied the entitlement for compensation by the petitioner.

6. In so far as the insurance company, has filed its written statement before the Tribunal denying the claim of the injured petitioner or rash and negligent riding of the motorcycle bearing registration No.KA20-S-0258 by its rider and also asserts that the claim for compensation is exorbitant.

7. The Tribunal framed the issues regarding the accident dated 17.05.2014, the rash and negligent riding and claimant''s eligibility of compensation. The claimant herself got examined as PW1 and Dr.Kiran K.V.Acharya as PW-2 and relied upon Exs.P1 to 12, including FIR complaint, IMV report, medical prescriptions, and disability certificate in support of her claim.

8. The learned Member of the Tribunal found that, accident dated 17.05.2014 was due to rash and negligent driving of respondent No.1. A criminal case is registered against respondent No.1 for rash and negligent driving of motorcycle, accident on 17.05.2014, petitioner suffered injuries laboured disability, underwent medical treatment and also requires treatment in future.

9. By partly allowing the claim petition on 13.04.2016, the Tribunal granted a compensation of Rs.3,83,710/- together with interest at the rate of 6% p.a. on Rs.3,73,710/- from the date of petition till date of deposit as no interest is granted on Rs.10,000/- (Future medical expenses).

10. In so far as the disputes on documents and their benefits, there is no objection regarding the policy, nor violation of the terms of insurance policy or the license. Insofar as the disability is concerned the Tribunal holds that 23% to the lower left limb of the petitioner - injured and the stay of the petitioner as inpatient for four days and later was treated as outpatient. Pain and agony is assessed at Rs.40,000/-, medical expenses of Rs.1,00,943/-, the learned member has considered medical expenses on the basis of bills for Rs.99,313/- covered under Ex.P6 series and Rs.1,630/- covered under Ex.P11 and also has found that the medical expenditure are not disputed.

11. The break up of award under the heads, food and nourishment Rs.6,000/- and Rs.4,000 for attendant charges, Rs.5,000/- towards conveyance charges. The petitioner claimed monthly income of Rs.6,000/- since she was assisting her husband in his business. And the same is taken into consideration by the Tribunal.

12. The following injuries were suffered by the petitioner:

1. Posttraumatic stiffness of left knee 0 to 100, right knee 0 to 135.

2. Posttraumatic stiffness of secondary arthritis of left knee with patela femoral crepitation.

3. Posttraumatic weakness of left quadriceps femoris.

13. The age of the petitioner on the date of accident is about 50 years and multiplier applicable is taken at Rs.13''. Thus, the total compensation under the head loss of future earning capacity is: Rs.6,000x12x13x16/100 = Rs.1,49,760/- and total compensation awarded by the Tribunal is as under:

1 Pain and sufferings Rs.40,000-00

2 Medical expenses, Food and Nourishment, attendant and conveyance chargesRs.1,15,950-00

3 Loss of earning during the laid up period Rs.48,000-00

4 Loss of future earning capacity Rs.1,49,760-00

5 Loss of amenities Rs.20,000-00

6 Future medical expenses Rs.10,000-00

Total Rs.3,83,710-00

14. On considering medical file Ex.P12, X-rays, the Tribunal has granted Rs.20,000/- for loss of amenities to the petitioner. The disability as mentioned under Ex.P9 and also the oral evidence of the signatory of Ex.P9 is 23% on the left lower limb and the Tribunal has considered the disability at 16%. It is necessary to note and mention that disability 23% on a particular limb will have the impact of the total disability to the extent of 1/3rd of the disability of particular limb. The total disability at 16% neither 1/2 nor 1/3 or 1/4. Total loss of future income is considered at Rs.6,000x12=72,000x16% total disability. Age of the petitioner is 50 years on the date of the accident and the multiplier applicable is Rs.13''. But it is pertinent to note that no cross appeal is preferred by the respondent-insurance company, petitioner has claimed Rs.1,20,000/- towards medical expenses, Rs.12,000/- towards conveyance charges. Out of which amount of expenditure for medicines evidenced by medical bills Ex.P6 series. The Insurance Company has not objected for the same. Regard being had to the fact the petitioner claimant has preferred this appeal for enhancement of compensation.

15. The claim of appellant-petitioner regarding her monthly income at Rs.6,000/- in which the annual income would go to Rs.72,000/-. The multiplier applicable to her on the basis of age of 50 years is Rs.13''. If the total disability is considered at 16% i.e., as considered by the Tribunal, in the process the loss of future income would be Rs.6,000X12=72000X16%=Rs.11,520X13=Rs.1,49,760/-. Thus, the claim amount even as claimed by the petitioner on the basis of break up would be as under;

11,520X13= Rs.1,49,760.00

 

Conveyance Rs.10,000.00

Future treatment Rs.20,000.00

Medial expenses Rs.1,00,943.00

Food and nourishment Rs.15,000.00

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Total Rs.2,95,703.00

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16. Loss of income during the laid up period of eight months is assessed at Rs.6,000X8=Rs.48,000/- and pain and suffering by at Rs.40,000/- by the Tribunal.

17. Thus due to application of a wrong percentage of disability benefit gained by the appellant/claimant is Rs.77,974/-.

18. Considering the formula error committed by the Tribunal and the matter not being challenged by the insurance company, the total amount of compensation in its present shape as per the Judgment and award is more by Rs.77,974/- (6,000x12x7.67%x13=71,791/-). Thus, the learned Member of the Tribunal has committed error in calculating and it is nothing but arithmetical. But is not challenged by the insurance company.

19. Had the Tribunal applied the recognized percentage of disability the present award would have decreased by Rs.77,974/-. It is to be noted in so far as functional disability of a particular percentage will leave the total disability to 1/3rd of it as per the recognized principle. But the learned Member of the Tribunal has considered the functional disability at 13% and total disability at 16% which is neither 1/3rd nor 1/2. Thus, in any event the said amount of Rs.77,974/- was liable to be deducted but the insurance company has not preferred appeal. Thus, in the resultant circumstance, the amount of Rs.77,974/- is nothing but enhanced compensation. However, the appellant is not entitled for enhancement by any amount to the granted award of Tribunal.

20. Barring the above circumstance, the amount awarded amounts to just compensation and this court does not find irregularity, perversity or unreasonability. The award in its position does not call for interference.

Hence, appeal stands dismissed.

 