

(2017) 06 KAR CK 0064
In the Karnataka High Court
Case No : 22580 of 2009

SMT.SAROOMA, W/O HABEEB

APPELLANT

Vs

THE DIVISIONAL CONTROLLER

RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173(1), Section 173(1) - Appeals

Citation : (2017) 06 KAR CK 0064

Hon'ble Judges : H.B.Prabhakara Sastry

Bench : SINGLE BENCH

Advocate : Y. MALATHI REDDY, F. S. DABALI

Judgement

1. This appeal is filed under Section 173(1) of the Motor Vehicles Act, 1988, seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal No.XI, Bellary (hereinafter referred to as "The Tribunal, for short), by its judgment and award dated 06.04.2009, in MVC No.262/2007.

2. In her memorandum of appeal, the appellant has taken a contention that the compensation awarded by the Tribunal below under various heads is meager and requires to be enhanced. The Tribunal grossly erred in apportioning 50% liability on the KSRTC bus and 50% liability on the auto rickshaw, though the charge sheet was filed against the bus driver alone. Stating that the Tribunal below has grossly erred in concluding that the

auto rickshaw was also contributed to the accident, the appellant has prayed for modifying the judgment and award under appeal by enhancing the compensation awarded to the quantum that is prayed in her claim petition originally. On notice being issued, respondent - KSRTC has appeared through its learned Counsel Sri. F. S. Dabali. The records of Tribunal below were called for and the same are placed before me.

3. Heard the arguments from both sides and perused the memorandum of

appeal, impugned judgment and the entire materials placed before this Court. The point that arises for my consideration is: "Whether the claimant has made out a ground for enhancement of compensation?"

4. The summary of the case of the claimant as could be gathered from the materials placed before this court is that, on 06.10.2016 at about 7.30 pm, while the claimant/appellant alongwith her child, was travelling in an auto rickshaw bearing registration No.KA35/1162 from T. G. Mill towards Cowl Bazaar, Ballari, near Maremma temple on Bengaluru Road, Ballari, a KSRTC bus bearing registration No.KA-07/F1005, coming from opposite direction and being driven by its driver in a rash and negligent manner dashed to the auto rickshaw, in which she was travelling. Due to which accident, she, her child and the driver of the auto rickshaw, who was none else than her husband, all sustained injuries. She was shifted to the VIMS Hospital, Ballari, wherein she took treatment as an inpatient from 06.10.2006 to 25.10.2006. She was surgically operated and has spent a sum of Rs.50,000/- towards medical expenses. She has also stated that, at the time of accident, she was aged

25 years and apart from domestic work as housewife, she was also earning a sum of Rs.5,000/- per month from tailoring work. Holding that the accident has occurred solely due to the fault of the driver of the KSRTC bus, she claimed a compensation of Rs.5,00,000/- from the respondent - KSRTC in the Tribunal below holding him as the owner cum insurer of the offending bus. After recording the evidence led before it and hearing both sides, the Tribunal below by its judgment and award dated 06.04.2009, allowed the petition in part directing the respondent - KSRTC to pay the petitioner before it, the compensation of Rs.95,700/- (50% of the total compensation) with interest thereupon. It is the said judgment and award, the claimant as appellant has challenged in this appeal seeking enhancement of compensation.

5. For the sake of convenience, the parties would be referred to with the rankings they were holding in the

Tribunal below.

6. The learned counsel for the appellant in her arguments reiterated the contention taken up by her in the memorandum of appeal.

7. The learned counsel for the respondent - KSRTC, in his argument submitted that, admittedly, the driver of the auto rickshaw was none else than the husband of the claimant and he did not possess a valid driving licence at the time of the accident. Thus, knowing fully well that her husband was driving the auto rickshaw without a driving licence, the claimant thrown herself open to the risk. The learned counsel further submitted that, in such cases, when the accident occurs, the contribution towards accident would be more from an unlicensed driver irrespective of the nature of his vehicle. As such, the Tribunal below should have apportioned the contributory negligence as 30:70

percent between the KSRTC bus Vs. driver of auto rickshaw. He further submitted that the compensation awarded being reasonable and adequate, does not warrant any modification at the hands of this Court.

8. The present appeal being the claimant's appeal and the respondent having not preferred either crossobjection or a counter appeal, the question of occurrence of accident on the date, time and place alleged by the claimant is not in dispute. Therefore, the question of occurrence of accident need not be reanalysed again. The questions that remain to be considered are about the quantum of compensation awarded by the Tribunal below and the alleged liability of the insurer.

9. The Tribunal below has awarded the compensation under the following heads with the sum shown against them:

Amount(Rs.) Pain Suffering and Mental Agony 30,000.00 Loss of happiness, amenities, frustration, discomfort and inconvenience and impairing of future life 5,000.00 Medical expenses 20,000.00 Attendant charges and extra nourishment and conveyance charges and travelling expenses 5,000.00 Loss of earning during the period of treatment (Rs.3,000 x 3) 9,000.00 Permanent partial disability (Rs.36,000x17x20/100) 1,22,400.00 Total Rs.1,91,400.00 However, out of the said sum, it apportioned 50% as contributory negligence between the bus and auto rickshaw. As such, the claimant was held entitled for a compensation of a sum of Rs.95,700/- being 50% of the total compensation of a sum of Rs.1,91,400/-.

10. The wound certificate at Ex.P3 and the discharge summary at Ex.P5, when considered in the light of the evidence of PW1, reveals that the claimant

had sustained a fracture injury of middle third of right femur. She was surgically operated with insertion of nail in the said part. Considering the said nature of the injury and the pain undergone by the injured, the Tribunal below has awarded a compensation of Rs.30,000/- towards "pain and suffering", which I consider to be reasonable and does not require enhancement. As such, the same is retained. Towards "loss of amenities", the Tribunal below has awarded a sum of Rs.5,000/-. However, considering the nature of injuries, the age of the injured, her status as a house wife cum coolie, I am of the view that the compensation awarded under the said head requires to be enhanced by another sum of Rs.5,000/- making it to Rs.10,000/-. Towards "medical expenses", the Tribunal below has awarded a compensation of Rs.20,000/-. Though the claimant as PW1 has stated that she has spent more

than Rs.50,000/- towards medical expenses, but the medical bills produced by her and marked at Exs.P6 to P15 falls far short from Rs.20,000/-. However, the Tribunal below without going into totaling those medical bills, has awarded a sum of Rs.20,000/-. As such, the said quantum also does not require to be enhanced any further. Similarly, even with regard to the attendant charges, in the absence of any corroborative documents supporting the evidence of PW1, the Tribunal

below has awarded a sum of Rs.5,000/-, which also does not require to be enhanced any further. Even though the claimant/PW1 has stated that she was earning a sum of Rs.5,000/- per month by doing tailoring work, in addition to her household work, she has not produced any document or material to corroborate her statement. As such, the Tribunal below has taken her notional monthly income at Rs.3,000/- per

month. However, considering the fact that the Coordinate Benches of this Court in similar matters, in the absence of any documents, was considering the notional income of a person in the year 2006 at Rs.3,750/- per month, I am of the view that the same amount be taken as the notional income of the claimant in the present case also. As such, the compensation of Rs.9,000/- (Rs.3,000x3) awarded under the head of "loss of earning during laid up period" which was for 3 months requires to be enhanced to Rs.11,250/- (Rs.3,750 x 3). Towards "loss of future income/permanent partial disability", accepting the evidence of PW1 and PW2, and the disability certificate at Ex.P16, which fixes the percentage of alleged disability of the claimant at 20%, the Tribunal below has awarded a compensation of Rs.1,22,400/- (Rs.36,000 x 17 x 20/100). Since the income of the claimant was taken at Rs.3,750/- per month, the said calculation has to be recalculated. For the

claimant's age, which is said to be 25 as on the date of the accident, the multiplier applicable is 18, but not 17, as taken by the Tribunal below. Thus, the said calculation would be Rs.1,62,000/- (Rs.3,750 x 12 x 18 x 20/100). Thus, the compensation under the said head requires to be modified and enhanced to the said amount. The Tribunal below has not awarded any compensation towards "future medical expenses", even after making an observation in its judgment that the claimant was advised for implant removal. For the said implant removal, she has to admit to the hospital and enter into the operation theatre. As such, she incurs some medical expenses in future also. Thus, towards "future medical expenses", a sum of Rs.10,000/- deserves to be awarded. Thus, in total, the claimant/appellant is entitled for compensation under the following heads with the sum

shown against them: Amount(Rs.) Pain Suffering and Mental Agony 30,000.00
Loss of happiness, amenities, frustration, discomfort and inconvenience and impairing of future life 5,000.00
Medical expenses 20,000.00
Attendant charges and extra nourishment and conveyance charges and travelling expenses 5,000.00
Loss of earning during the period of treatment (Rs.3,750 x 3) 11,250.00
Permanent partial disability (Rs.3,750x12x18x20/100) 1,62,000.00
Future Medical Expenses 10,000.00
Total Rs.2,43,250.00

11. Even though the claimant is entitled for a sum of Rs.2,43,250/- as compensation, but the point to be observed here is that the accident in question has occurred due to the colliding of the bus and auto rickshaw. Observing the nature of accident and the fact that, admittedly the driver of the auto rickshaw, in which the claimant was travelling, did not possess any driving licence, the

Tribunal below has apportioned the

liability as 50:50 between the bus and the auto rickshaw. The claimant in the Tribunal below has not produced scene of offence sketch. Had she produced the same, a clear picture regarding the manner of accident could have been drawn. However, by going through Ex.P2, the spot panchanama and the admitted fact that the driver of the auto rickshaw who was none other than the husband of the claimant did not possess the driving licence at the time of the accident, it can safely be inferred that there is contribution in the negligence on the part of the driver of the auto rickshaw in causing the accident. Even though the said auto rickshaw is a smaller vehicle compared to the bus, it is not correct to always hold that a bigger vehicle would be at greater fault. In the instant case, the driver of the bus being a KSRTC bus driver, is expected to presume to possess a valid driving licence. However, the opposite side vehicle being an auto rickshaw, though a

smaller vehicle, as being driven by an unlicensed person, it throws more risk both to the passenger and to the third parties and other vehicles on the road. Probably for the reason that the driver of the auto rickshaw was none else than her husband, the claimant did not choose to array him as a party respondent in the Tribunal below. Probably, the said husband of the claimant must have been the owner of the auto rickshaw also, as such, she is confined her claim petition only against the KSRTC bus/its owner. Had the owner and the driver of the auto rickshaw was also made as a party, the sole respondent/KSRTC would have got an opportunity to elicit details from them regarding the manner of occurrence of accident and the percentage of contributory negligence, if any. Thus, the claimant herself has taken the risk of Tribunal below drawing an inference of contributory negligence based on the available material evidence. As such, the observation

made by the Tribunal below fixing the contributory negligence and fixing proportion of the contribution at 50:50 does not warrant any interference.

12. Accordingly, for these reasons, the contention of the learned counsel for the appellant that the Tribunal below erred in fixing the contributory negligence on the part of the auto rickshaw driver is not acceptable.

13. Thus, the claimant is entitled for a total sum of Rs.1,21,625/- (Rupees One Lakh Twenty One Thousand Six Hundred Twenty Five), which is 50% of the total compensation of Rs.2,43,250/- as compensation towards the injuries sustained by him in the alleged motor vehicle accident. Since the judgment and award passed by the Tribunal is a lower amount than what is the reasonable compensation is, appeal deserves to be partly allowed and the judgment and award under appeal requires to be modified.

14. In the light of these observations, I answer the above point partly in the affirmative and proceed to pass the following order: ORDER The appeal is allowed in part. The judgment and award passed by the Motor Accident Claims

Tribunal No.XI, Bellary, in MVC No.262/2007 dated 06.04.2009, is modified to the extent that the compensation awarded at Rs.95,700/- is enhanced and fixed at Rs.1,21,625/- (Rupees One Lakh Twenty One Thousand Six Hundred Twenty Five Only) (50% of Rs.2,43,250/-). The rest of the order of the Tribunal with respect to directing the respondent - KSRTC to deposit the awarded amount, awarding the interest, its rate, terms regarding release of the amount awarded, shall remain unaltered.