

(2010) 12 KAR CK 0042

In the Karnataka High Court

Case No : M.F.A. No"s. 8562 and 10905 of 2005

Sri C.V. Shashidhar Reddy

APPELLANT

Vs

The Executive Engineer (Electrical), BESCO and The
Director, Karnataka Government Insurance Department
(Motor Branch)
 Bangalore Electricity Supply Company
Limited Vs C.V. Shashidhar Reddy and The Director,
Karnataka Government Insurance Department, Motor Branch

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 6 RCR(Civil) 1613

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

Bench : Division Bench

Advocate : K.T. Gurudeva Prasad, in M.F.A. No. 10905 of 2005 and N. Krishananda Gupta, in M.F.A. No. 8562 of 2005, for the Appellant; N. Krishananda Gupta, for R1, Manjula R. Karnadolli, G.P. for R2 in M.F.A. No. 10905 of 2005 and K.T. Gurudevaprasad, for R1 and Manjula R. Kamadolli, G.P. for R2 in M.F.A. No. 8562 of 2005, for the Respondent

Judgement

N.K. Patil, J.—These two appeals respectively by the claimant and the BESCO are directed against the same impugned judgment and award dated 23rd June 2005, passed in M.V.C. No. 473/1999, by the Member, V Additional Motor Accident Claims Tribunal, Court of Small Causes, Mayo Hall Unit, Bangalore (SCCH-20), (for Short, Tribunal), awarding compensation of Rs. 3,65,00/- to the claimant, as against his claim for Rs. 10.00 lakhs.

2. While the claimant has filed the appeal on the ground that the compensation awarded is inadequate and needs enhancement, BESCO has filed the appeal on the ground that the Tribunal is not justified in fastening the entire liability on the BESCO, without fixing any percentage of contributory negligence on the part of the rider of the motor cycle.

3. The facts in brief are that, the claimant claims to be aged about 22 years and

was a Final year student of Bachelor of Business Management. He was hale and healthy prior to the date of accident. That at about 9:20 A.M., on 27-07-1998, on old Madras Road, near NGEF gate, when the claimant was engaged in riding the Motor cycle bearing Registration No. CAP 8676, the driver of a Jeep bearing No. KA-02/M-1226 drove the same, in a rash and negligent manner, so as to endanger human life, and dashed against the motor cycle and caused accident. Due to the impact, the claimant sustained grievous injuries and he was immediately shifted to Sree Amarjyothi Nursing Home and thereafter to Vignan Hospital.

4. It is the case of the claimant that, on account of the injuries sustained in the accident, he has taken treatment as in-patient in the Hospital for a period of 68 days and underwent two surgeries and was also admitted to ICU for three weeks, where he was fully unconscious. During this period, he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

5. On account of the injuries sustained in the accident, the claimant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 10.00 lakhs against the BESCO and another. The said claim petition had come up for consideration before the Tribunal on 23rd June 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 of Rs. 3,65,000/- with interest at 6% per annum from 04-07-2001 upto 18-11-2002 and then from 30-06-2004 till payment. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the appeal, seeking enhancement of compensation, whereas the BESCO has filed the appeal, seeking to set aside the liability fastened on it by the Tribunal.

6. We have heard the learned Counsel appearing for the claimant, learned Counsel for BESCO, and the learned Government Pleader appearing for second Respondent.

7. The principal submission canvassed by Sri Gurudeva Prasad, learned Counsel appearing for claimant is that, the Tribunal seriously erred in not awarding reasonable compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of one academic year, loss of future income and therefore it requires reasonable enhancement. Further, he submitted that, the claimant has undergone treatment for about 68 days in the Hospital, underwent two surgeries and was admitted in the ICU for about three weeks. The Doctor has assessed 30% disability in respect of left lower limb and 10% in respect of whole body. But, the Tribunal has erred in assessing the disability at only 5%, contrary to the evidence on record. Therefore, he submits that the impugned judgment and award passed by Tribunal is liable to be modified.

8. As against this, learned Counsel for BESCOV vehemently submitted that the Tribunal has grossly erred in fastening the entire liability on the driver of the Jeep belonging to the BESCOV, without fastening any liability on the rider of the motor cycle. To substantiate the said submission, he drew our attention to the Sketch at Ex. P3 and contents of Mahazar at Ex. P2 and submitted that both the rider of the motor cycle as well the driver of the Jeep contributed to the cause of accident, since the rider of the motor cycle came at high speed and dashed against the Jeep, resulting in the accident. Therefore, the Tribunal ought to have fixed contributory negligence on the part of the rider of the motor cycle also for the cause of accident. Therefore, he submitted that the impugned judgment and award is liable to be modified, by fixing contributory negligence on the rider of the motor cycle also.

9. After hearing learned Counsel for both 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 in these appeals are:

I] Whether the Tribunal is justified in not fixing contributory negligence on the part of the rider of the motor cycle?

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

Re-Point [I]: The occurrence of occurrence of accident and the resultant injuries sustained by claimant are not in dispute. After microscopic evaluation of the original records, threadbare, particularly Ex. P3 - sketch, it is seen that the rider of the motor cycle was coming from East to West direction, whereas the driver of the Jeep, instead of going straight, has taken U turn. In view of taking sudden U turn, the rider of the motor cycle hit the Jeep. This proves beyond reasonable doubt that there is certain amount of contributory negligence, on the part of the rider of the motor cycle also in the occurrence of accident. If the rider of the motor cycle had been a bit slow and taken due care and caution, he could have avoided the accident. Therefore, we are of the view that there is negligence on the part of both the rider of the motor cycle as well as the driver of the Jeep. Accordingly, we fix the contributory negligence in the ratio of 85:15 respectively, on the part of the driver of the Jeep and rider of the motor cycle and modify the impugned judgment to that extent.

Re-Point [II]: So far as the quantum of compensation awarded by Tribunal is concerned, we are of the view that the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 2,56,000/- towards medical expenses and a sum of Rs. 25,000/- towards loss of amenities, discomfort and unhappiness. Hence, interference in the same is uncalled for.

However, so far as the compensation awarded other heads is concerned, the Tribunal grossly erred in not awarding reasonable compensation. Admittedly, the claimant was in-patient for about 68 days in the Hospital and underwent two

surgeries and was unconscious for about three weeks in ICU. The Doctor has assessed disability at 30% in respect of left lower limb and 10% in respect of whole body. It is also stated that the claimant has suffered injury to his head also. The claimant, being aged only about 22 years, has to suffer this disability for the rest of his life and during the period of treatment, he must have also undergone lot of unsaid pain and agony and also spent reasonable amount towards conveyance, nourishing food and attendant charges. Because of the treatment and follow-up treatment, the claimant would have lost one academic year. Accordingly, taking into consideration all the above aspects, we re-determine compensation by awarding a sum of Rs. 35,000/- towards pain and sufferings as against Rs. 22,000/-; Rs. 20,000/- towards conveyance, nourishing food and attendant charges as against Rs. 18,000/-; Rs. 50,000/- towards loss of one academic year/loss of education as against Rs. 12,000/- and Rs. 64,800/- (i.e. Rs. 3,000/- x 12 x "18" x 10/100) towards loss of future income as against Rs. 32,000/- awarded by Tribunal.

10. In the light of the facts and circumstances of the case, as stated above, the appeals filed by the claimant as well as the BESCOM are allowed in part. The impugned judgment and award dated 23rd June 2005, passed in M.V.C. No. 473/1999, by the Member, V. Additional Motor Accident Claims Tribunal, Court of Small Causes, Mayo Hall Unit, Bangalore (SCCH-20), is hereby modified, awarding a sum of Rs. 4,50,800/- as against Rs. 3,65,000/- 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. 35,000/-

Towards Loss of amenities and enjoyment in life Rs. 25,000/-

Towards Medical Expenses Rs. 2, 56, 000/-

Towards conveyance, nourishing food and attendant charges Rs. 20,000/-

Towards Loss of education/loss of one academic year Rs. 50,000/-

Towards loss of future income Rs. 64,800/-

Total Rs. 4,50,800/-

The claimant is held entitled to a sum of Rs. 4,50,800/-. Out of the said sum, if 15% (Rs. 67,620/-) towards contributory negligence fixed by this Court on the claimant is deducted, then the net compensation payable comes to Rs. 3,83,180/-. Out of this, if the amount already awarded by Tribunal (Rs. 3,65,000/-) is deducted, the enhanced compensation would be Rs. 18,180/- with interest at 6% per annum from the date of petition till the date of realization.

The BESCOM is directed to deposit the enhanced compensation of Rs. 18,180/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

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

The statutory amount in deposit by the BESCO as well as any other amount deposited by virtue of the interim order, shall be transmitted to the concerned Tribunal, forthwith.

Office to draw award, accordingly.