

(2016) 02 KAR CK 0274

In the Karnataka High Court

Case No : M.F.A. Nos. 4688 of 2011 (MV) and 10268 of 2010 (MV)

The Division Controller, K.S.R.T.C. and Others

APPELLANT

Vs

Suchitra Prasanna and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 1025

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : Dinesh Rao, for Rao Associates, for the Appellant; Shripad V. Shastri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—1. These two appeals respectively by the Corporation and by the injured claimant are directed against the same impugned judgment and award dated 24/06/2010 passed in MVC No. 7055/2005, by the XII Additional Small Causes Judge and Member Motor Accident Claims Tribunal, Bangalore, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 10,32,000/- under different heads with interest at 6% per annum (excluding interest on future medical expenses) from the date of petition till its realization, as against the claim of the claimant/injured for a sum of Rs. 40,00,000/-, on account of the injuries sustained by her in the road traffic accident, fixing negligence at 40% on the part of the driver of KSRTC bus bearing Reg. No. KA.01.F.6637 belonging to the Corporation and 60% on the part of the rider of the Honda Activa Scooter bearing Reg. No. KA.05.EB.1875.

3. Aggrieved by the said judgment and award of the Tribunal, the Corporation has preferred an appeal for reduction of compensation, on the ground that, 40% negligence fixed on the part of the driver of KSRTC bus cannot be sustained is

liable to be set aside and that the quantum of compensation awarded by the Tribunal is on the higher side and is liable to be reduced and whereas, injured claimant has filed an appeal seeking enhancement of compensation, on the ground that, the compensation awarded by the Tribunal is on the lower side and is liable to be enhanced.

4. In brief, the facts of the case are:

"The claimant was aged about 28 years at the time of accident. She was hale and healthy prior to the accident and working as Call Centre Executive at M-Phasis, Bangalore and earning Rs. 15,000/- per month. That on 11.12.2003 at 2.30 p.m. injured claimant was traveling as a pillion rider and 2nd respondent as rider were proceeding in Honda Activa Scooter bearing Reg. No. KA.04.EB.1875 and when they came near Bangalore Dairy, at that time, the driver of a KSRTC bus bearing Reg. No. KA.01.F.6637 came in a rash and negligent manner on Hosur main road from west to east and dashed the same from behind against the scooter. Due to which, claimant fell down, the said bus ran over on her thigh and buttocks and she has also sustained other grievous injuries. Immediately, she was shifted to St. John's Medical College Hospital, Bangalore, where, she took treatment as inpatient from 11.12.2009 to 28.2.2004, underwent surgeries, skin grafting from hip to thigh on both sides were done, again, she took treatment as inpatient from 22.3.2004 to 29.3.2004, underwent surgery, underwent plastic surgery and thereafter, on the advise of the Doctor, she has taken bed rest and follow up treatment."

5. It is the further case of the claimant that, she has spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the claimant, she has suffered permanent residual physical disability at 50% to the whole body. Therefore, she has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the Corporation and the rider of the Honda active scooter.

6. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 10,32,000/- under different heads with interest at 6% p.a., (excluding interest for future medical expenses) from the date of petition till its realization fixing negligence in the ratio of 40:60 i.e. 40% on the part of the driver of KSRTC bus and 60% on the part of the rider of Honda Activa Scooter. Being aggrieved by the said judgment and award, the Corporation and the claimant have filed the appeals, seeking appropriate reliefs as stated supra.

7. We have heard learned counsel appearing for the Corporation and learned counsel appearing for claimant at considerable length of time.

8. Learned counsel Sri. Dinesh rao, appearing for the Corporation submitted that, the Tribunal has erred in directing the Corporation to satisfy 40% of the award amount fixing negligence on the part of the driver of the bus at 40% contrary to

the oral and documentary evidence available on file. Further he submitted that, three vehicles were involved in the accident viz., Car, Honda Activa and KSRTC bus and the claimant is the pillion rider of the Honda Activa. The accident is due to the fault on the part of the rider of the Honda Active as he came from behind the bus in high speed and dashed against a car which was going in the same direction and he lost his balance and fell down beneath right rear portion of the bus. But this aspect of the matter has not been considered or appreciated by the Tribunal and instead of fixing entire negligence on the part of the rider of Honda Activa, it has erred in fixing 40% negligence on the part of the driver of the bus belonging to the Corporation and 60% on the part of the rider of Honda Active and therefore, the same is not sustainable and is liable to be set aside. Further, he submits that, in fact, the driver of the KSRTC bus has filed his complaint first and thereafter, after two days, the father of the injured claimant has filed his complaint. Further, he submits that the quantum of compensation awarded by the Tribunal is also on the higher side and is liable to be reduced. Therefore, he submitted that the impugned judgment and award passed by the Tribunal is liable to be set aside and the matter may be remitted back to the Tribunal for consideration afresh

9. As against this, learned counsel appearing for claimant, inter-alia, contended that, the Tribunal, after due appreciation of the oral and documentary evidence available on file, has justified in recording the finding of fact holding that there is contributory negligence on the part of the driver of KSRTC bus and on the part of the rider of Honda Activa Scooter in the ratio of 40:60 after assigning cogent and valid reasons and the reasoning given by the Tribunal is just and proper and it does not call for interference. Further, he submits that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, loss of amenities, discomforts and happiness, loss of future income and the Tribunal has erred in not accepting the salary certificate produced by her and therefore, the income assessed by the Tribunal is on the lower side and is liable to be enhanced, reasonably, on the ground that, claimant was working as Call Centre Executive in M Phasis and earning Rs. 15,000/- per month and she has sustained 50% permanent disability to the whole body. Therefore, he submitted that the impugned judgment and award is liable to be modified by enhancing reasonable compensation under all the heads.

10. After hearing the learned counsel for the parties and after careful perusal of the material available on record at threadbare, including the impugned judgment and award passed by the Tribunal, it emerges that, in the accident that occurred on 11.12.2003, claimant has sustained injuries viz., Degloving injury bilateral thigh, gluteal region; right 4th to 9th ribs fracture with pneumothorax; pelvis fracture (bilateral pubic rami fracture); lateral vaginal wall tear; Crush injury resulting in the loss of skin and muscle over the left pelvic and thigh from anterior superior iliac spine encompassing left gluteal region and deep abrasion over left arm and left elbow respectively and over the left shoulder as per Ex. P4-Wound certificate and they are grievous in nature. Injured claimant has

examined the Doctor as PW2, who has assessed the disability at 50% to the whole body and the Tribunal has justified in assessing the disability a 25% and we accept he same. The Tribunal, after taking into consideration the nature of injuries sustained by the claimant, the nature and duration of treatment taken by her, the pain and agony suffered by her, taking into consideration the nature and gravity of the injuries sustained by her, assessing the disability at 25% to the whole body, taking notional income at Rs. 3,000/- per month and applying "17" multiplier in the light of the judgment of the Apex Court in Sarla Verma's case, and after assigning cogent and valid reasons at Paras 19 and 20 of its judgment, has justified in awarding reasonable compensation of Rs. 10,32,000/- under different heads with interest at 6% p.a. excluding interest on future medical expenses of Rs. 20,000/- on account of the injuries sustained by her in the accident and therefore, it does not call for interference.

11. Regarding contributory negligence fixed by the Tribunal in the ratio of 40:60 i.e. 40% on the part of the driver of the bus and 60% on the part of the rider of Honda Activa Scooter is concerned, the Tribunal, after appreciation of the oral and documentary evidence and after appreciating the contents of Mahazar, IMV report, nature of damages caused to the vehicle and after assigning cogent and valid reasons has justified in fixing negligence in the ratio of 40:60 on the part of the drivers of both the KSRTC bus and Honda Activa Scooter. Further, it is significant to note that, the Corporation has not taken any stand in the written statement regarding involvement of another vehicle. Therefore, we do not find any justification or good grounds as such made out either by the Corporation for reduction of compensation and for modification of the negligence fixed on it or by the injured claimant for enhancement of compensation.

12. Taking all these factors into consideration, the appeals filed by the Corporation and by the claimant are dismissed as devoid of merit.

The amount deposited by the Corporation shall be transmitted to the jurisdictional Claims Tribunal forthwith.

Office to draw the award, accordingly.