(2016) 08 KAR CK 0035

In the Karnataka High Court

Case No : M.F.A No. 200541 of 2015(MV)

The Manager Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Sushilabai RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 796

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : Sri Sanjay M. Joshi, Advocate, for the Appellant; Sri Naresh V. Kulkarni, Advocate, for the Respondent No. 1; Notice to R-2 dispensed with vide order dated 04.08.2016, for the Respondent No. 2

Final Decision : Allowed

Judgement

B. Veerappa, J.—The Insurance Company has filed the present appeal for reduction of compensation against the judgment and award dated 03.12.2014 made in MVC No. 543/2012 on the file of the II Addl. MACT and Addl. District Judge at Bidar, awarding the compensation of Rs. 12,48,320/- with interest at the rate of 6% from the date of petition till deposit.

2. The respondent No. 1 who is petitioner before the Tribunal filed the claim petition under Section 166 of M.V.Act, claiming compensation Rs. 20.00 Lakhs contending that on 23.12.2011, while she was travelling in Maruthi Omni Van bearing registration No. AP-10/R 7656 to Hyderabad after attending some family function at Manglur at about 10.00 a.m. when the vehicle was proceeding on NH-9 in the limits of Huggely outskirts near bridge, at that time goods lorry bearing registration No. MH-13/R-4984 came from opposite direction in high speed in a rash and negligent manner driven by the driver of the said vehicle who lost control, dashed against the Omni Van, as a result of which the claimant suffered fracture of right fore arm, hands and other parts of the body. Immediately, she was shifted to the Government Hospital, Zahirabad, where she

availed preliminary treatment then shifted to Icon Hospital Hyderabad, where she availed treatment up to 19.01.2012 during which period, her right upper limb was operated and later continued follow up treatment and spent Rs. 2.00 Lakhs for her treatment. The first respondent is the owner of the lorry which was involved in the accident and the second respondent is the insurer. A criminal case was also registered against the driver of the offending lorry. It is further contended that the claimant was hale and healthy, aged about 30 years and she was doing labour work earning more than Rs. 9,000/- per month. On account of the accident, she lost her strength and power, therefore, she is unable to continue in the work and earn the income. She is disabled, lost her future earnings. During the course of treatment she underwent surgery fixing the iron rod in the right upper limb etc.

3. On service of summons, the first respondent remained absent and was placed ex-pare. The second respondent/the present appellant insurance company filed the written statement denying the petition averments and also denied the age, profession, income of the claimant, nature of injuries, period of treatment and medical expenses and denied the disability that the petitioner incurred on account of her sustaining injuries in the accident etc. Therefore prays for dismissal of the claim petition.

4. Based on the pleadings, the Tribunal framed the following issues;

(1) "Whether the petitioner proves that she sustained grievous injuries in a motor vehicle accident, that occurred on 23.12.2011 at about 1 a.m on N.H.9 in the village limits of Hugeli, Tq Zaheerabad, Dist: Medak (AP) on account of the rash and negligent driving of the lorry bearing No. MH-13 R-4984 by its driver?

(2) Whether the petitioner proves that she is entitled for compensation? To what extent and from whom?

(3) What order or decree?"

5. In order to substantiate the case of the claimant, she has examined herself as PW.1 and the Doctor as PW.2, marked the documents Exs.P1 to 158. The second respondent Insurance Company did not adduce any evidence.

6. After hearing hot the parties and considering the entire material on record, the Tribunal recorded a finding that the claimant proved that she has sustained grievous injuries in the motor vehicle accident that occurred on 23.12.2011, on account of rash and negligent driving by the driver of the lorry bearing registration No. MH-13/R-4984 and the claimant is entitled for the compensation. Accordingly, the Tribunal by the impugned judgment and award dated 03.12.2014, granted compensation of Rs. 12,48,320/- with interest @ 6% per annum from the date of petition till deposit. Hence, the present appeal is filed by the Insurance Company for reduction of compensation.

7. The claimants have not filed any appeal for enhancement of compensation.

8. I have heard the learned counsel for the parties to the lis.

9. Sri Sanjay Joshi, the learned counsel for the appellant Insurance Company vehemently contended that the impugned judgment and award passed by the Tribunal granting compensation of Rs. 12,48,320/- with 6% interest is on higher side, exorbitant and without any basis. He further contended that the Tribunal has erred in adding 30% of income in the injury case which is unknown to law and Tribunal also taken disability as 60% when the doctor/PW.2 who is not the treated doctor has stated that the claimant has suffered 60% to 65% whole body disability, the same is contrary to the law, and contrary to the material on record and the income taken at Rs. 8,000/- is without any basis and the same is on the higher side. Therefore, he sought to modify the impugned judgment and award passed by the Tribunal.

10. Per contra, Sri Naresh V. Kulkarni, learned counsel for the claimant/ respondent No. 1 sought to justify the impugned judgment and award passed by the Tribunal and strenuously contended that while the Tribunal has recorded a specific finding that the unfortunate accident was occurred due to rash and negligent driving of the driver of the lorry. The claimant has sustained fracture of both bones of right arm and fore arm and she was in hospital for about 27 days. She has spent about Rs. 2.00 Lakhs towards the medical expenses and because of the fault committed by the driver of the lorry owned by the first respondent and insured by the second respondent, the claimant has to suffer loss through out her life. Therefore, he sought to dismiss the claim petition.

11. In view of the rival contentions urged by the learned counsel for both the parties, the issue that arises for consideration is;

"Whether the trial Court is justified granting compensation of Rs. 12,48,320/- in the facts and circumstances of the case and whether the interference is called for?

12. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

13. It is undisputed fact that the accident occurred on 23.12.2011 due to the rash and negligent driving of the lorry bearing registration No. MH-13/R-4984 by its driver and on account of the same, claimant sustained fracture of both bones of right fore arm. The claimant examined as P.W.1 has stated on oath that she was doing coolie work and earning Rs. 8,000/- per month. It is not in dispute that except her oral testimony, she has not produced any material document to show that she was earning Rs. 8,000/- per month. It is also not m dispute that P.W.2/Dr. Mallikarjun, G.B., the doctor examined on behalf of the claimant is not the one who treated the claimant. P.W.2 has stated on oath that the claimant has suffered 60-65% disability to the upper limb. It is also not in dispute that the Tribunal has taken 60% disability to upper limb on the basis of the evidence adduced by P.W.2/doctor, which is without any basis. Even assuming that P.W.2 stated on oath that claimant has suffered 60-65% disability to upper limb, in all

fairness, the Tribunal should have taken 25% disability. Further, in the absence of any material documents produced to show the income, the Tribunal has taken Rs. 8,000/- per month as income, taking into consideration that the accident took place on 23.12.2011. The Tribunal proceeded to add 30% towards loss of future prospects which is against the provisions of law. The addition and deduction will be done only in case of death and not in the case of injuries, in motor vehicle cases.

14. After reassessing the entire material on record, it is just and appropriate to take Rs. 6,000/- as income of the claimant and disability at 25%. Since the claimant is aged 41 years, the applicable multiplier would be 14. Thus, the loss of future earning would be Rs. 6,000 x 12 x 14 x 25% = Rs. 2,52,000/-,.

15. Taking into consideration the nature of the fracture sustained by the claimant, the Tribunal has awarded only Rs. 20,000/- towards loss of future amenities, Rs. 40,000/- towards pain and suffering, and Rs. 10,000/- towards conveyance. The Tribunal has not awarded any compensation towards attendant charges and future medical expenses. Therefore, claimant has made out a case to award reasonable compensation under the said heads.

16. After reconsidering the evidence of P.W.1 and 2, material documents Exs.P.1 to 58, the claimant is entitled to the following compensation:

Towards pain and sufferings

Rs. 60,000/-

Towards loss of future amenities

Rs. 60,000/-

Towards loss of future earning

Rs. 2,52,000/-

Towards medical expenses (as per Tribunal order)

Rs. 1,30,000/-

Towards loss of income during laid up period

Rs. 24,000/-

Towards conveyance and nourishment

Rs. 25,000/-

Towards attendant charges

Rs. 20,000/-

Towards future medical expenses

Rs. 40,000/~

Total

Rs. 6,11,000/-

Thus, in all, the claimant is entitled to Rs. 6,11,000/- with interest at 6% per annum, from the date of petition till realization.

17. In view of the aforesaid reasons, the appeal filed by the Insurance Company is allowed in part. The impugned judgment and award dated 03rd December 2014 in MVC No. 543/2012 on the file of the II Addl. MACT and Addl. District Judge, Bidar, is modified reducing the compensation from Rs. 12,48,320/- to Rs. 6,11,000/-, with interest at 6% per annum, from the date of petition till realization.

18. Out of Rs. 6,11,000/- awarded by this Court after modifying the impugned judgment and award, the claimant is entitled to withdraw 70% of the compensation and remaining 30% is ordered to be kept in fixed deposit in the name of the claimant in any nationalized bank for a period of five years and the claimant is permitted to draw the periodical interest accrued on the amount so deposited.

19. The 50% of the award amount and the statutory deposit said to have been made by the appellant/ insurance company is directed to be transmitted to the MACT, forthwith.