

(2009) 08 KAR CK 0025

In the Karnataka High Court

Case No : MFA No. 10947 of 2007 and MFA Crob No. 10 of 2008

The Manager, NEKRTC Bus Depot

APPELLANT

Vs

Bhimashankar and Another

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) ILR (Kar) 3854 : (2010) 1 KCCR 660

Hon'ble Judges : Ravi Malimath, J; N.K. Patil, J

Bench : Division Bench

Advocate : Santhosh Biradar, in MFA No. 10947/07, for the Appellant; Harshavardhan R. Malipatil, for R1 and for Cross Objector in MFA Crob No. 10/2008 and Santhosh Biradar, for R2, for the Respondent

Judgement

N.K. Patil, J.—The instant appeal and cross objection are directed against the judgment and award dated 13.06.2007 passed in MVC No. 895/05 on the file of the II Addl. Civil Judge, & Member M.A.C.T. No. VII Gulbarga (for short "the Claims Tribunal"). The Claims Tribunal by the judgment and award, awarded a sum of Rs. 4,09,000/- with interest at 6% p.a. to the claimant (respondent No. 1 in the appeal and cross objector in the cross objection).

2. The appellant-Corporation contending that the compensation awarded by the Claims Tribunal is excessive and fixing the liability fully on the part of the appellant-Corporation is not justifiable has presented the instant appeal.

3. The Cross Objector/claimant contending that the Claims Tribunal has not awarded just and reasonable compensation towards the heads, loss of future earning, loss of amenities, loss of earning during treatment, pain and suffering and praying to enhance the compensation under the above said heads by modifying the judgment and award passed by the Claims Tribunal, respectively, has presented the instant cross objection.

4. The cross objector claiming that, he is a sitting member Grama Panchayath and running the telephone booth and that, on 26.07.2005 when he along with his

friends left his village to go to Mashal on a motor bike bearing No. K.32-9148 and when they were near Jambga (J) to Mogha road near Jidaga cross, a NEKRTC bearing No. KS-32/F-714 came in a high speed and due to the rash and negligent driving of the driver of the bus, dashed the motor bike. The cross objector and his friends fell down, sustained communicated fracture of right frontal bone, fracture of right squamous temporal bone, fracture of right nasal bone and cervical cord injury and that, due to the injuries sustained in the accident, the cross objector being hale and healthy person is not in a position to discharge his work as effective he was doing prior to the accident. He has spent huge sums of money for treatment and he has been admitted as inpatient in the hospital for a period of 50 days. Having regard to his occupation, his age and nature of injury sustained, the cross objector had filed claim petition claiming a sum of Rs. 9,00,000/-. The said claim petition filed by the Cross Objector had come up for consideration before the Claims Tribunal on 13.6.2007. The Claims Tribunal after hearing the Counsel appearing on both sides, perusing the relevant material available on records, has awarded compensation of Rs. 4,09,000/- towards seven heads without awarding any amount towards the "loss of amenities" and the amount awarded under the other heads is insufficient.

5. The Learned Counsel for the Corporation, at the outset, submitted that fixing of 100% liability on the appellant - Corporation is not justifiable. To substantiate his submission he points out that respondent No. 2-insurance company has examined the driver of the bus-RW1 who has stated that the accident is a head-on-collision accident. There is a mistake on the part of the Cross Objector in coming in a rash and negligent manner and dashing against the Corporation bus. This aspect of the matter has neither looked into nor appreciated or considered by the Claims Tribunal and therefore, the judgment and award is liable to be modified by fixing just and reasonable liability on the appellant as well as the Cross Objector. However, he fairly submitted that, the amount awarded to the Cross Objector towards "pain and suffering" towards "loss of future earnings" and loss of earning during treatment period", is inadequate and the Cross Objector is entitled to just and reasonable enhancement and further, the Claims Tribunal has not awarded any amount towards Toss of amenities" to the Cross Objector. He submitted that this aspect of the matter has to be considered.

6. As against this, the Learned Counsel appearing for the Cross Objector submitted that the amount awarded by the Claims Tribunal towards "pain and suffering", loss of future earning and loss of earning during treatment period is inadequate and requires enhancement. Further, he vehemently submitted that the Claims Tribunal has not awarded any amount towards "loss of amenities" and therefore, reasonable and just compensation to be awarded under this head.

7. After having heard the Learned Counsel for the appellant and the counsel for the cross objector and after careful consideration of the submission made by the Learned Counsel for the parties, the points that arise for consideration in the instant appeal and cross objections are:

i) Whether the Tribunal justified in fastening the liability exclusively on the appellant - Corporation?

ii) Whether the Tribunal is justified in not awarding any compensation under the head "loss of amenities" and the amount of compensation awarded by the Claims Tribunal towards different heads is just and reasonable?

8. Re., point No. (i):

It is the case of the Counsel appearing for the appellant that, due to the rash and negligent act of the cross objector and his friends, head-on-collision accident has taken place and inspite of making best efforts by the driver of the bus accident could not be avoided. The Corporation examined RW1 driver of the bus wherein he has stated that there is negligence on the part of the cross objector and his friends and not on him, but the said statement has not been accepted by the Claims Tribunal as it has held that, the evidence of RW1 would in no way affect the claimant-Cross-Objector for not proving rash and negligent driving on his part; as the bus involved in the accident admittedly, is a State carriage transport bus is liable for compensation because it is an accident under "Act policy".

The Learned Counsel appearing for the claimant cross objector had produced Kx.P7-discharge summary and on consideration under the head note conditions at the time of discharge, he was conscious/oriented, moving all four limbs, walking with support, it is not in dispute that due to the accident occurred on 26.7.2005 the cross objector has sustained grievous injuries and as per the disability certificate issued as per Ex.P22, disability is assessed is 62% and the Claims Tribunal, on the basis of the reports, has taken the whole body disability 20%. In view of the valid reasons given by the Claims Tribunal in para 11 of the judgment, we do not find any force in the submission of the Learned Counsel for the appellant - Corporation. The appellant has failed to substantiate the rash and negligent driving on the part of the cross, objector and his friends. Therefore, specific ground taken by the Learned Counsel for the appellant is rejected holding that it is devoid of merits. Therefore, we hold that the Tribunal has rightly recorded its finding that there was no contributory negligence on the part of the claimant-respondent and it justified in fastening the liability to pay the compensation exclusively on the appellant - Corporation.

9. Re. Point No. (ii): It is not in dispute that in the said accident, the appellant has sustained the injuries shown as joint space uniformly and he was conscious/oriented moving all four limbs, walking with support as referred in Ex.P8 and the condition at the time of discharge is shown as "fair" and as per Ex.P22-X-Ray of left hip AP view, it is shown hip joint space reduced uniformly. As per the disability certificate issued by PW3 doctor based on the reports-Exs.P7 and P8 and P22, disclose that the disability at 62% of the injuries sustained by the cross-objector and as per Ex.P7, the cross objector at the time of discharge walked with support, however, moving all four his limbs shall be read with Ex.P22 because the support which he required on account of reduction uniformly in the

hip joint space. The total body disability is assessed by the Claims Tribunal as 20% and the cross objector is aged about 28 years as on the date of the accident but the income taken by the Claims Tribunal at Rs. 2,000/- per month cannot be sustainable. It is unreasonable. We can safely take the income of the cross objector at the rate of Rs. 3,000/- per month which is just and reasonable and he is aged about 28 years and appropriate multiplier is "17". The total amount comes to towards "loss of future earning" is Rs. 1,22,400/- (Rs. 36,000 (income) X 17 multiplier X 20%/TOO). Accordingly, we award a sum of Rs. 1,22,400/-. Thus, it takes us to the next question as to whether the Tribunal is justified in not awarding any compensation towards "loss of amenities".

10. The cross objector was an inpatient for more than 50 days in the hospital and he has suffered grievous injuries, as referred to above. The disability and discomfort are permanent in nature and it would affect throughout his life. The Claims Tribunal has committed grave error by not awarding any amount towards "loss of amenities". Accordingly, we award a sum of Rs. 40,000/- towards the head "loss of amenities. Taking these relevant factors into consideration, we are of the considered view the cross objector is entitled to just and reasonable compensation of Rs. 40,000/- towards loss of amenities.

11. The Claims Tribunal further committed error in awarding Rs. 3,000/- towards "loss of earning during treatment period". We have taken the income of the cross objector at Rs. 3,000/- per month. He was an inpatient for 50 days in the hospital. Accordingly, we award Rs. 6,000/- towards of "loss of earning during treatment period".

12. Further, the Claims Tribunal has committed error in awarding just Rs. 25,000/- towards pain and suffering. Taking into consideration the duration of treatment of 50 days as the cross objector was an inpatient taking treatment in Hyderabad and he being an young and energetic man aged about 28 years claiming to be an elected Grama Panchayath member and claims to be running a telephone booth and getting substantial income, due to the injuries sustained by him, is not in a position to do carry out his work, due to loss of his originality. Hence, taking into consideration that the objector was an inpatient for 50 days and the duration of pain and suffering undergone by him, we can safely award a sum of Rs. 40,000/- towards "pain and suffering". Accordingly, we award a sum of Rs. 40,000/- towards the head, pain and suffering.

13. Further, the amount awarded towards conveyance charges as Rs. 10,000/- is inadequate. The cross objector has examined the owner of the jeep who has taken him to Hyderabad hospital for treatment and he has produced the jeep rental receipts (Exs.P48 to 56) for a sum of Rs. 19,500/-. This aspect of the matter is not considered by the Claims Tribunal. Therefore, after careful perusal of Exhibits P48 to 56, we hold that the cross objector is entitled to a sum of Rs. 19,500/- rounded of Rs. 20,000/-. Accordingly, we award a sum of Rs. 20,000/- towards conveyance charges.

14. However, the amount awarded by the Claims Tribunal towards medical expenses, diet and nutritious food, attendant charges does not call for interference.

15. For the foregoing reasons, the appeal of the appellant-Corporation is liable to be dismissed. The cross objection filed by the claimant is liable to be allowed in part. The Cross-objector is entitled to the total compensation under the following heads:

i) Towards pain and suffering - Rs. 40,000/- ii) Towards loss of future earning - Rs. 1,22,400/- iii) Towards Medical expenses - Rs. 2,79,249/- iv) Towards conveyance charges - Rs. 20,000/- v) Towards diet and nutrition Charges - Rs. 10,000/- vi) Attendant Charges - Rs. 5,000/- vii) Loss of earning during Treatment period - Rs. 6,000/- viii) Loss of amenities - Rs. 40,000/-
----- Total Compensation - Rs. 5,22,649/- -----

Thus, we hold that the Cross-Objector is entitled to total compensation of Rs. 5,22,649/- rounded off to Rs. 5,23,000/-, as against Rs. 4,09,000/- awarded by the Claims Tribunal with interest at the rate of 6% per annum from the date of petition till the date of payment. Hence, we pass the following:

ORDER

i) The appeal MFA. No. 10947/2007 filed by the Corporation is dismissed.

if) The Cross Objection No. 10/2008 filed by the injured-claimant is allowed in part.

iii) The Compensation payable to the claimant (Cross-Objector) is enhanced from Rs. 4,09,000/- to Rs. 5,22,649/- rounded of to Rs. 5,23,000/- (Rupees Five Lakhs Twenty Three Thousand Only) with interest at 6% per annum from the date of petition till the date of payment.

iv) The appellant-North East Karnataka Road Transport Corporation is directed to pay the enhanced compensation amount with accrued interest thereon within eight weeks from the date of receipt of the certified copy of the Judgment and award.

v) Out of the enhanced compensation of Rs. 1,14,000/- including the accrued interest thereon, 50% shall be kept in a fixed deposit in any of the nationalized Bank or Scheduled Bank for a period of five years. The Cross-Objector is entitled to withdraw the accrued interest half yearly. The remaining 50% shall be released in favour of the Cross-Objector.

vi) The Registry is directed to transmit the amount in deposit before this Court to the MACT, forthwith.

Office is directed to draw the modified award accordingly.