

(2011) 11 KAR CK 0202

In the Karnataka High Court

Case No : M.F.A. No. 4335 of 2007 (MV) and M.F.A. No. 942 of 2007 (MV)

The Managing Director K.S.R.T.C.

APPELLANT

Vs

Sri Shivaprasad
 Shivaprasad Vs The Managing
Director, K.S.R.T.C., K.H. Road, Shanthinagar, Bangalore -
560 027

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 11 KAR CK 0202

Hon'ble Judges : V. Suri Appa Rao, J;N.K. Patil, J

Bench : Division Bench

Advocate : F.S. Dabali in M.F.A. No. 4335 of 2007 MV and Mr. Vasanthappa, for M/s. Purna Law Associates in M.F.A. No. 942 of 2007MV, for the Appellant; Vasanthappa, for M/s. Purna Law Associates in M.F.A. No. 4335 of 2007 (MV) and Shri. F.S. Dabali, Advocate M.F.A. No. 942 of 2007(MV), for the Respondent

Final Decision : Dismissed

Judgement

1. These two appeals respectively by the Corporation and the Claimant are directed against the same impugned judgment and award dated 5th September 2006, passed in MVC No. 7743/2005, on the file of the V Addl. MACT, Mayo Hall unit, Bangalore (SCCH. No. 20), (for short. "Tribunal"), awarding compensation of Rs. 7,03,000/- to the claimant, as against his claim for Rs. 50.00 lakhs. While the Corporation has filed the appeal on the ground that the compensation awarded by Tribunal is excessive, exorbitant and is therefore liable to be substantially reduced, the claimant has filed the appeal on the ground that the compensation awarded is inadequate and needs enhancement, by modifying the impugned judgment and award passed by Tribunal.

2. The facts in brief are that, the claimant claims to be aged about 43 years, running a travel agency, earning a sum of more than Rs. 10.000/- per month. He was hale and healthy prior to the date of accident. That at about 6:30 P.M., on

03-08-2005, when the claimant was proceeding on his Honda Activa bearing No. KA-01/Y-4417, on A.V. Road, near VRL Travels Office. Kalasipalyam, Bangalore, he met with an accident on account of rash and negligent driving by the driver of a KSRTC Bus bearing Registration No. KA-01/F-6896, due to which, he fell down and sustained grievous injuries. Immediately he was shifted to KIMS Hospital, for first aid treatment and thereafter, to Manipal Hospital, where was in-patient for nearly 76 days and underwent several surgeries. PW3 - Doctor has assessed the permanent physical disability towards lower limb at 40% and whole body disability at 15%. It is the case of the claimant that 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.

3. 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. 50,00,000/- against the Corporation. The said claim petition had come up for consideration before the Tribunal on 5th September 2006. 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. 7,03,000/- with interest at 6% per annum from the date of petition till the date of complete realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Corporation has filed by appeal for reduction of compensation by fixing contributory negligence on the part of the injured claimant and the claimant has filed this appeal, seeking enhancement of compensation.

4. Shri. F.S. Dabali, learned counsel appearing for the Corporation vehemently submits that the liability fastened on the Corporation cannot be sustained and is liable to be set aside at the threshold for the reason that, the road, i.e. East to West direction on A.V. Road, where the accident occurred, is a one way traffic and the claimant came from the opposite direction, by violating the traffic rules and regulations on the left side of the bus and in view of the same, the claimant lost control and fell down from his vehicle, which he was riding and this aspect of the matter has neither been considered nor appreciated by Tribunal. Further, he submits that the Tribunal also erred in awarding a sum of Rs. 1,17,000/- towards loss of future income, for the reason that the claimant is a business man, inasmuch as running a travel agency. His business is not affected as he can carry on the same sitting in the chambers. Therefore, the said compensation awarded by Tribunal is liable to be set aside and the impugned judgment and award passed by Tribunal is liable to be modified accordingly.

5. As against this, learned counsel appearing for claimant, inter alia contended and submitted that the compensation awarded by Tribunal is on the lower side, inasmuch as he has submitted the medical bills amounting to Rs. 5,23,171/-, whereas the Tribunal has awarded only a sum of Rs. 4,20,000/-. Further, he submits that the compensation awarded under other heads is also on the lower

side and needs to be enhanced.

So far as the contention of the learned counsel for Corporation that the claimant was driving the vehicle in the wrong side, by violating the traffic rules and regulation is concerned, he submits that, the learned counsel, except making oral submission, has not produced any documentary evidence to show that he was riding the vehicle on the wrong side nor it is his case that the Corporation has filed any complaint regarding the same. Therefore, the said submission of the learned counsel has no weight and is liable to be rejected.

So far as the contention of the learned counsel that the claimant has not lost the future income, on account of the injuries sustained, is concerned, he submits that the claimant is running a travel agency, which involves lot of skill and on account of the injuries sustained, he cannot move around easily and has to depend on other for running his business. Therefore, the said ground taken also is liable to be rejected.

6. After hearing learned counsel for the Corporation and claimant and after perusal of the judgment and award passed by Tribunal including the original records placed before us, the only point that arise for our consideration is,

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

The occurrence of accident and the resultant injuries sustained by claimant are not in dispute. After re-appreciation of the oral and documentary evidence available on file, we are of the considered view that the Tribunal is justified in awarding compensation of Rs. 30,000/- towards loss of income during treatment period; Rs. 35,000/- towards loss of amenities, discomfort and unhappiness; and Rs. 15,000/- towards future medical expenses. Hence, interference in the same is uncalled for.

7. However, so far as other heads are concerned, the Tribunal grossly erred in not awarding reasonable compensation. The claimant has sustained compound type II comminuted segmental fracture of both bones of left leg middle 1/3rd, fracture of right fibula, fracture of right pubic rami, rupture of urethra, avulsion (internal degloving) of thigh and gluteal region bilaterally. Because of the said injuries, he was in-patient for about 76 days in the Hospital and underwent many surgeries, as stated above. The Tribunal, after assessing the oral and documentary evidence available on file, has assessed 15% whole body disability. The same is just and proper and we accept the same. During the period of treatment, the claimant, being aged about 43 years, would have undergone lot of untold pain and agony. The claimant, being aged about 43 years, at the time of accident, has to pull on the life with this disability for the rest of his life and he cannot run his business as before. The claimant being a businessman running a travel agency, has to move around a lot in order to get business and convince people. The disability of 15% caused to the whole body, definitely comes in the way of his day to day discharge of duties. Further, the Tribunal is also justified in

assessing the monthly income of the claimant at Rs. 5,000/-. We accept the same. The proper multiplier applicable for the age of the claimant being 43 years, is "14" as per the decision of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Accordingly, taking into consideration all the above aspects, we re-determine compensation by awarding a sum of Rs. 70,000/- towards pain and sufferings as against Rs. 65,000/-: Rs. 30,000/- towards conveyance, nourishing food and attendant charges as against Rs. 21,000/-: and Rs. 1,26,000/- (i.e. Rs. 5,000/- x 12 x 14 x 15/100) towards loss of future income as against Rs. 1,17,000/- awarded by Tribunal.

8. Further, so far as compensation towards medical expenses is concerned, the claimant has produced the medical bills at Exs.P10-P342 along with prescriptions amounting to Rs. 5,23,171/-. The Tribunal, without any justification has awarded only Rs. 4,20,000/-. After careful perusal of the said bills and prescriptions available in the original records, learned counsel for both the parties fairly submitted that a sum of Rs. 5,00,000/- may be awarded towards medical expenses as against Rs. 4,20,000/- awarded by Tribunal. Accordingly, it is awarded.

9. So far as the contention of the learned counsel appearing for Corporation that the claimant entered A.V. Road from no-entry side and met with an accident and therefore, some percentage of contributory negligence has to be fixed on the claimant is concerned, we are of the considered view that the said submission does not hold any water for the reason that the Tribunal, after critical evaluation of the oral evidence of the driver of the offending bus and the claimant, has categorically disbelieved his statement in the" absence of any documentary evidence to that effect. The Tribunal has observed that except orally stating that the claimant entered from the no-entry side, the driver of the offending vehicle has not filed any counter complaint nor has challenged the charge sheet or the sketch. Moreover, bus being a heavy vehicle, the driver of the said vehicle must have taken due care and caution while driving and had he taken precaution, he could have very well avoided the accident, resulting in the injuries to the claimant. In the charge sheet, it is clearly stated that the driver of the offending bus drove the same in a rash and negligent manner on A.V. Road and dashed against the hind portion of the Honda Activa, driven by the claimant. The Corporation has not challenged this document nor has filed a counter complaint nor has produced any documentary evidence to show that the claimant was coming from wrong side without following the traffic rules and regulations. Therefore, in view of these lapses on the part of the Corporation, we hold that the driver of the offending bus was entirely responsible for the cause of the accident, resulting in the grievous injuries to the claimant, as stated supra. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Corporation is dismissed as devoid of merits and the appeal filed by claimant is allowed in part.

The impugned judgment and award dated 5th September 2006, passed in MVC

No. 7743/2005, by the V Addl. MACT, Mayo Hall unit, Bangalore (SCCH. No. 20), is hereby modified, awarding a sum of Rs. 8,06,000/- as against Rs. 7,03,000/- 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. 70,000/-

Towards Loss of amenities & enjoyment in life

Rs. 35,000/-

Towards Medical Expenses

Rs. 5,00,000/-

Towards conveyance, nourishing food and attendant charges

Rs. 30,000/-

Towards Loss of earning during treatment period

Rs. 30,000/-

Towards loss of future income

Rs. 1,26,000/-

Towards future medical expenses

Rs. 15,000/-

Total

Rs. 8,06,000/-

The Corporation is directed to deposit the enhanced compensation of Rs. 1,03,000/-, 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 Corporation, the same shall be released in favour of claimant, immediately.

The amount in deposit by the Corporation shall be transmitted to the concerned Tribunal, forthwith.

Office to draw award, accordingly.