
(2015) 02 KAR CK 0066

In the Karnataka High Court

Case No : MFA Nos. 30773, 30627, 30628 and 30775/2012 [MV]

The Managing Director, NWKRTC and Others

APPELLANT

Vs

Shankrappa and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0066

Hon'ble Judges : A.S. Pachhapure, J.

Bench : Single Bench

Advocate : Subhash Mallapur, Advocate, for the Appellant; Bapugouda Siddappa, Advocate, for the Respondent

Judgement

A.S. Pachhapure, J.—While the Corporation has filed two appeals i.e., MFAs 30773/2012 and 30775/2012 challenging the finding on negligence and quantum of compensation granted for the injuries sustained by the first respondent in both the appeals, the injured has filed other two appeals seeking enhancement.

2. The facts reveal that on 04.08.2009, while the injured appellants were proceeding on the motor cycle bearing registration No. KA-28/J-5709 at 1.00 p.m. on Hole Hangargi to Bellubbi PWD road, the bus bearing registration No. KA-25/F-2412 said to have been driven in a rash and negligent manner hit the motor cycle and thereby they suffered injuries. They were shifted to the hospital and after treatment, they found to have suffered disability. They made a claim for compensation in MVC Nos. 1826/2009 and 1890/2009.

The cases were clubbed, common evidence was permitted and on behalf of the injured, P.Ws. 1 to 5 were examined and in their evidence, Exs. P1 to P31 were marked. On behalf of the respondents, RW 1 was examined. On appreciation of the evidence, the Tribunal held rash and negligent act on the part of driver of the bus and assessed the disability on the basis of evidence of doctor and a sum of Rs. 57,000/- was granted as compensation in MVC No. 1826/2009 and Rs. 4,73,000/- was granted as compensation in MVC No. 1890/2009. Aggrieved by

the finding on negligence and quantum of compensation, the corporation has filed MFA 30773/2012, 30775/2012 whereas the other two appeals have been filed by the injured seeking enhancement.

3. Heard the learned Counsel for both the parties.

4. The points that arise for my consideration is:

"1. Whether there was any negligence on the part of injured in the course of accident?

2. Whether the compensation awarded needs any variation?"

5. Learned Counsel for the Corporation submits that there was no negligence on the part of RW 1 - the driver of bus. He submits that both the rider abruptly came across the road and hit the bus when it was proceeding on the proper side of the road, therefore, it is his contention that in the absence of any evidence, the driver of bus cannot be held liable for the alleged negligence. So also, he submits that assessment of compensation is on the higher side and it needs reduction.

6. On the other hand, learned Counsel for the injured supporting the judgment and award of the Tribunal submits that the quantum of compensation awarded in both the cases is on the lower side and it needs enhancement.

7. So far as the question of rash and negligent driving is concerned, it is relevant to note that immediately after the accident, a complaint (Ex. P2) was filed by the injured who was rider of the motor cycle. After the complaint, crime was registered, investigation was held and final report was submitted under Ex. P10 as against the driver of KSRTC bus. If there was any negligence on the part of rider, the driver RW 1 could have filed a complaint to the police. Till the objection statement was filed before the Tribunal, the driver at any time did not make any statement as regards the negligence on the part of rider. For the first time in the objection statement before the Tribunal, a contention was raised that the accident was due to the negligence on the part of rider of motor cycle. This version cannot be accepted.

8. That apart, P.Ws. 1 and 2 are the injured persons. They have stated in their evidence about the negligence on the part of bus driver. There is no cross examination on the question of rash and negligent driving. Though P.Ws. 1 and 2 states that there was negligence on the part of driver of the bus, even there is no suggestion to the effect that there was no negligence on the part of bus driver. Therefore, taking into consideration the oral evidence of P.Ws. 1 and 2 and the documents produced, the oral evidence of RW 1 for the first time before the Tribunal cannot be accepted. It cannot be said by any stretch of imagination that there was negligence on the part of rider of motor cycle.

IN MFA 30773/2012 AND 30627/2012 (MVC No. 1826/2009)

9. The claimant has suffered the fracture of 2nd and 3rd fingers of the right hand

and the doctor has assessed the disability at 35 to 40%. The income is assessed at Rs. 3,000/- per month. The accident is of the year 2009. It is proper to consider the income at Rs. 4,500/- per month. After adopting proper multiplier "11" the compensation payable towards loss of future earnings would be $(4500 \times 12 \times 11 \times 8/100 = \text{Rs. } 47,520/-$. Deducting the sum of Rs. 31,680/- awarded by the Tribunal, the injured is entitled to Rs. 15,840/- towards loss of future earnings.

10. A sum of Rs. 5,000/- is granted towards loss of earning during the laid up period. It would be proper to add sum of Rs. 4,000/-. Only a sum of Rs. 5,000/- is awarded for loss of amenities, an additional sum of Rs. 3,000/- would be proper. A sum of Rs. 5,000/- is granted towards medical expenses and attendant charges, spl. diet etc., an additional sum of Rs. 2,000/- would be appropriate. For pain and suffering, though the injured has suffered two fractures, only Rs. 10,000/- is granted, an additional sum of Rs. 10,000/- would be reasonable. Thereby, additional compensation payable would be:

Thereby, the appellant is entitled to Rs. 34,840/- with interest at 9% p.a.

IN MFA 30775/2012 & 30628/2012 (MVC No. 1890/2009)

11. The injured has suffered the fracture of medial malleolus of right ankle, fracture of right obstruction of ring, fracture of superior and inferior rami of right pubic bone and fracture of superior and inferior rami of left pubic bone. Ex. P9 is the injury certificate. He was treated in BLDE Hospital. PW 4 - Dr. Satich Khade of Wanless Hospital, Miraj had also treated him. The disability has been assessed by the doctor at 60% to the whole body. Anyhow, the Tribunal has accepted at 20%. The injured was present before the Court today. He was also observed. Taking into consideration the oral evidence of PW 4 and the documents produced in this regard, I do not find any material to increase the disability that has been assessed by the Tribunal.

12. So far as the income is concerned, it has to be considered at Rs. 4,500/- as in the aforesaid case. Net compensation payable towards loss of future earnings would be $(4500 \times 12 \times 17 \times 20/100) = \text{Rs. } 1,83,600/-$. Deducting the sum of Rs. 1,22,400/-, net compensation payable would be Rs. 61,200/- towards loss of future earnings. For pain, suffering and mental agony, only Rs. 20,000/- is granted, though the appellant has suffered multiple fracture, hence, a sum of Rs. 30,000/- more would be appropriate for pain, suffering and mental agony.

13. He was treated in the hospital for 53 days as an inpatient. The Tribunal has considered the loss of income during laid up period at Rs. 15,000/-. Taking Rs. 4,500/- income per month for 5 months, the sum of Rs. 22,500/- is payable. Deducting the sum awarded, he is entitled to Rs. 7,500/- towards loss of income during laid up period. He has been paid the sum of Rs. 15,000/- towards loss of amenities. Considering the nature of fracture, the disability suffered, he is entitled to an additional sum of Rs. 10,000/- under the said head.

14. The photographs of the injured have been produced before the Court below. As could be seen from the photographs and considering the disability suffered, it appears that sum of Rs. 25,000/- would be appropriate for loss of marriage prospects. Compensation under other heads relating to medical expenses, food and nourishment etc., appears to be reasonable.

Thereby, the injured is entitled to an additional sum as under:

Therefore, point No. 1 is answered in Negative and point No. 2 as per order.

15. Consequently, MFA Nos. 30773 and 30775/2012 are dismissed. MFA Nos. 30627 and 30628/2012 are allowed in part. The appellant in MFA 30627/2012 is entitled to Rs. 34,840/- and the appellant in MFA 30628/2012 is entitled to Rs. 1,33,700/- with interest @ 9% p.a. from the date of petition till its payment in addition to the compensation awarded by the Tribunal.

Out of the enhanced amount in MFA 30628/2012, a sum of Rs. 1,00,000/- shall be deposited in the name of appellant in any of the nationalized bank for a period of 5 years.

The amount in deposit be transmitted to the Tribunal.