

(2010) 09 KAR CK 0154

In the Karnataka High Court

Case No : M.F.A. No. 5890 of 2005 (MV) , C/w etc.

The New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Blossom O. Fernandes and Another

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) ACJ 1566 : (2010) ILR (Kar) 5105 : (2011) 3 KarLJ 405 : (2011) 3 TAC 517

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

Bench : Division Bench

Advocate : K. Suryanarayana Rao, in MFA No. 5890/2005, M. Ravindranath and Dayanand S. Patil, in MFA No. 8342/2005, for the Appellant; M. Ravindranath and Dayanand S. Patil for R1, R2, served and unrepresented, in MFA No. 5890/2005 and P.B. Raju, for R2, R1 Served and Unrepresented, in MFA No. 8342/2005, for the Respondent

Judgement

N.K. Patil, J.—These two appeals arise out of the same impugned judgment and award dated 26.4.2005 passed in MVC No. 5121/2003 on the file of the MACT-V, Addl. Judge, Court of Small Causes, Bangalore.

2. The Tribunal by its impugned judgment and award, awarded a sum of Rs. 11,32,500/- with interest @ 6% P.A. on account of the injuries sustained in the road traffic accident. Being aggrieved by the quantum of compensation awarded as excessive/ the insurance company has preferred MFA 5890/2005 seeking reduction of compensation and the claimant has preferred MFA 8342/2005 seeking enhancement of the compensation.

3. The brief facts of the case are that the claimant while she was travelling from Bangalore to Mangalore in car bearing No. KA-20-Z-424 on 20.5.2003 at 1.00 AM along with her family members, due to the rash and negligent driving of the driver of the said car, the car fell into a ditch at Shirady Ghat on Bangalore-Mangalore High Way. As a result of which, she sustained fracture of right hand

and injuries all over the body. The claimant has stated that during the relevant time she was a dance tutor and business woman and getting income of Rs. 15,000/- per month. She was hale and healthy prior to the accident. But, on account of the injuries sustained in the road traffic accident, she is not able to look after her family as before, so, she filed a claim petition u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 35,75,000/-. After the accident she was admitted to the hospital and had undergone treatment for a period of 25 days. The doctor has assessed the disability at 40% towards the limb and 25% to the whole body. It is the further case of the Appellant that she had to spend huge sums towards conveyance, nourishing food and attendant charges on account of which she was constrained to file the claim petition against the owner and insurer of the offending car driven by its driver. The said matter was taken up for consideration by the Tribunal and after assessing the oral and documentary evidence and other materials available on record and also taking into consideration the age, occupation and duration of the treatment undergone by the claimant, percentage of disability, allowed the same in part and awarded Rs. 11,32,500/- under different heads with interest @ 6% P.A.

4. Sri Suryanarayana Rao, Learned Counsel appearing for the insurer contended that the judgment and award passed by the Tribunal is unreasonable and the compensation awarded is disproportionate to the injuries sustained in the road traffic accident. The doctor has assessed disability of 40% towards the limb and 25% towards the whole body and the claimant has undergone treatment for a period of 25 days. The quantum of compensation awarded towards medical expenses, loss of income during laid up period, loss of amenities, future medical expenses and future attendant charges are without any basis and contrary to the evidence on record. Therefore, he seeks for setting-aside of the award of the Tribunal and reduction of compensation.

5. As against this, Learned Counsel appearing for the claimant submitted that the Tribunal has granted just and reasonable compensation after due consideration of the relevant material on record taking the income of the claimant at Rs. 15,000/- per month. But, the Tribunal was not justified in the application of multiplier. Hence, it is liable to be modified.

6. After careful consideration of the submissions of the Learned Counsel for the insurer and the Learned Counsel for the claimant for considerable length of time, after physical verification of the original records available in file after perusal of the impugned judgment and award passed by the Tribunal, it is manifest on the face of the judgment and award, that the quantum of compensation awarded by the Tribunal is on the higher side and is contrary to the evidence on record. The occurrence of the accident is not in dispute nor the injuries suffered by the claimant. She has undergone treatment for a period of more than 25 days. The doctor has assessed the disability of 40% towards limb and 25% in respect of whole body. The Tribunal after assessing the oral and documentary evidence on record and other materials on file has awarded Rs. 45,000/- towards pain and

sufferings and Rs. 50,000/- towards conveyance, nourishing food and attendant charges which does not call for interference by this Court as we feel it is just and reasonable.

7. However, the Tribunal has committed an error in awarding Rs. 2,05,000/- towards medical expenses, Rs. 4,87,500/- towards loss of future income, Rs. 40,000/- towards future medical expenses, Rs. 1,80,000/- towards future attendant charges for a period of 10 years @ Rs. 1500/- per month. There is some substance in the submission of the Learned Counsel appearing for the insurer. As a matter of fact, the Tribunal has committed grave error, resulting in serious miscarriage of justice in assessing the income @ Rs. 15,000/- per month without any document nor the claimant has produced returns, if at all submitted to the Income Tax Department in order to establish that she is the Assessee of income tax except stating that she is a dance teacher and business women, and she is getting Rs. 15,000/- per month. The Tribunal has mechanically accepted the same contrary to the evidence on record without assigning any valid reason. Therefore, assessing the income at Rs. 15,000/- per month without any supporting evidence on record cannot be sustained and is liable to be modified taking into consideration the age, occupation and nature of the injuries sustained in the road traffic accident. We can safely re-assess the income of the claimant at Rs. 6000/- per month instead of Rs. 15,000/- p.m. as assessed by the Tribunal and re-determine the compensation towards loss of income during laid-up period and loss of future income as per the medical bills Ex.P.4 (4 in number) including Ex.P.8 (2 in number). After microscopic evaluation of the original records as rightly pointed out by the Learned Counsel appearing for the insurer, the claimant is entitled for a sum of Rs. 1,11,735/- as against Rs. 2,05,000/-. Accordingly, it is modified.

8. The Tribunal has further erred in awarding Rs. 75,000/- towards loss of income during laid-up period assessing the income at Rs. 15,000/- per month. As computed above, assessing the income at Rs. 6000/- per month for the loss of income for 3 months, we award a sum of Rs. 18,000 instead of Rs. 75,000/- awarded by the Tribunal.

9. Further, Tribunal has committed an error in awarding Rs. 50,000/- towards loss of amenities, which is on the higher side. After re-appreciation of the oral and documentary evidence on record and the disability assessed by the doctor, we award Rs. 30,000/- towards loss of amenities, discomfort as against Rs. 50,000/-.

10. Further, as referred above, we have re-assessed the income of the Appellant @ Rs. 6000/- per month instead of Rs. 15,000/- p.m. As per the medical records, the claimant was aged about 45 years and taking 25% as the disability, we re-assess the loss of future income at Rs. 2,52,000/- (Rs. 6,000x12x14x 25/100) instead of Rs. 4,87,500/-.

11. The Tribunal without any basis or evidence has awarded Rs. 40,000/-

towards future medical expenses. Therefore, we modify the same and award Rs. 20,000/- under the said heading.

12. The Tribunal has awarded Rs. 1,80,000/- towards future attendant charges for a period of 10 years @ Rs. 1500/- per month. Having regard to the nature of injuries sustained by her, if at all, attendant is required and duration of treatment, she may require the assistance for a period of 5 1/2, years which would be more than sufficient. Accordingly, we award Rs. 1.00 lakh as against Rs. 1,80,000/- awarded by the Tribunal towards future attendant charges in the interest of justice.

13. Having regard to the above facts and circumstances, we award compensation as under:

- (1) Pain and sufferings Rs. 45,000/-
 - (2) Medical expenses Rs. 1,11,735/-
 - (3) Conveyance Rs. 50,000/-
 - (4) Loss of income during Laid up period (6000 x 3) Rs. 18,000/-
 - (5) Loss of amenities Rs. 30,000/-
 - (6) Loss of future income Rs. 2,52,000/-
 - (7) Future medical expenses Rs. 20,000/-
 - (8) Future attendant charges Rs. 1,00,000/-
- TOTAL Rs. 6,26,735/-

Thus, the claimant in all is entitled for Rs. 6,26,735/- as against Rs. 11,32,500/- awarded by Tribunal. The compensation is reduced by Rs. 5,05,765/-.

14. In the light of the facts and circumstances stated above, MFA 5890/2005 filed by the insurance company is allowed in part and the award amount is modified and reduced to Rs. 6,26,735/- as against Rs. 11,32,500/- awarded by Tribunal. Whereas MFA 8342/2005 filed by the claimant is dismissed as devoid of merit.

15. The Appellant/insurer is directed to deposit the remaining compensation amount deducting if any already paid with interest @ 6% P.A. from the date of the petition till realization as expeditiously as possible at any rate within a period of four weeks from the date of receipt of copy of the judgment and award.

16. The statutory amount deposited by insurer is directed to be returned to the concerned Tribunal, forthwith.

Office to draw the award accordingly.