

(2015) 09 KAR CK 0001
In the Karnataka High Court
Case No : M.F.A. No. 3918 of 2010 (MV)

The New India Assurance Co. Ltd.

APPELLANT

Vs

Neelavathi and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0001

Hon'ble Judges : N.K. Patil and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : M. Narayanappa, Advocate, for the Appellant; A. Kumaravel, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the appellant/Insurer is directed against the impugned judgment and award dated 27/11/2009, passed in MVC No. 8021/2007, by the Chief Judge, Court of Small Causes and Principal, Motor Accident Claims Tribunal, Bangalore, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 8,52,800/- under different heads with interest at 6% p.a., from the date of petition till realization as against the claim of Rs. 30,00,000/-, on account of the injuries sustained by the claimant in the road traffic accident.

3. In brief, the facts of the case are:

The injured claimant was aged about 55 years at the time of the accident. She was hale and healthy prior to the accident, home maker and also doing tailoring work and earning Rs. 5,000/- per month. That on 2.5.2007 at about 7.30 a.m. the injured claimant was going in a Maruthi van bearing reg. No. KA.41.M.2718 along with others and when they came near Arabi Kothanur gate, NH 4 road, Bangalore-Kolar road, at that time, the driver of Tata Sumo bearing Reg. No.

KA.17.M.2790 came to its extreme right side from opposite direction with high speed and in a rash and negligent manner and dashed against the Maruthi van. Due to which, claimant and others sustained severe injuries. Immediately, she was shifted to R.L. Jalappa Hospital, Tamaka Kolar and after first aid, she was shifted to Prestine Hospital, Bangalore, where she took treatment as inpatient for 13 days, underwent surgeries, implants were inserted skin grafting was done and thereafter, on the advise of the Doctor, she has taken bed rest and follow up treatment.

4. It is the further case of the claimant that, she spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the injured claimant in the said accident, she has suffered permanent disability. The Doctor has assessed the physical disability at 60% each to both lower limbs and at 40% to the whole body. Therefore, claimant has filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the insurer and owner of the offending vehicle.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 8,52,800/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realization and directed the Insurer to deposit the compensation amount.

6. Being aggrieved by the said judgment and award, the Insurer has presented this appeal.

7. During the pendency of this appeal, injured claimant has died and her LRs were brought on record as R1(a) to (f).

8. The submission of the learned counsel Sri M. Narayanappa, appearing for the insurer, at the outset submitted that, the Tribunal without any justification has awarded a sum of Rs. 6,00,000/- towards medical and incidental expenses contrary to the evidence on record and also the compensation of Rs. 1,72,800/- awarded towards loss of amenities due to disability is on the higher side and is liable to be reduced. To substantiate the said submission, he submitted placing reliance on the evidence of PW 6-Orthopedic Surgeon at Prestine Hospital that, PW 6 has assessed the disability at 60% each to both lower limbs and 40% to whole body and 1/3rd of 60% comes to 30% and therefore, the whole body disability comes to 30% and not 40% as assessed by the Tribunal and the same is liable to be re-assessed. Further, he submits regarding medical bills that, claimant has not produced any documents to show that he has spent that much amount and as per Exs. P14 and P15 the total of medical bills comes to Rs. 4,58,469/- and the Tribunal has awarded about Rs. 1,41,531/- towards conveyance, nourishing food and attendant charges which is on the higher side as the injured claimant has taken treatment as inpatient only for 14 days and therefore, it is liable to be reduced. Therefore, he submitted that the impugned

judgment and award is liable to be modified by reducing the compensation reasonably.

9. As against this, learned counsel appearing for LR's of injured claimant, inter-alia, contended that, the Tribunal after due consideration of the oral and documentary evidence available on file, has justified in awarding a sum of Rs. 30,000/- towards injury, pain and sufferings, Rs. 6,00,000/- towards medical expenses and other incidental expenses, Rs. 1,72,800/- towards loss of amenities and Rs. 50,000/- towards future medical expenses and in all Rs. 8,52,800/- and therefore, it does not call for interference.

10. After careful consideration of the submission made by learned counsel appearing for both the parties and after perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, it emerges that, the occurrence of the accident and the resultant injuries sustained by the injured claimant are not in dispute. It is also not in dispute that, injured claimant was aged about 55 years and home maker and also doing tailoring work and in the accident she has sustained grievous injuries and during the pendency of this appeal, injured claimant is dead and her LR's are brought on record. As per the evidence of PW 6, injured claimant has sustained blunt injury over chest, X-ray shows fracture of 8th, 9th and 6th rib, pain, swelling crepitation and deformity over both knees and comminuted inter condylar fracture lower end of right femur, pain, swelling and deformity over left knee and fracture of lower end of left femur. She has underwent two operations and skin grafting was done. Further, it emerges that, PW 6-Dr. H.M. Prasanna, after clinical examination of the injured claimant has deposed that, she was complaining deformity of right knee, left hip pain and decreased range of movement, left knee mild pain and she was limping and that the right inter condylar fracture femur has united well with varus with bending of implant, fracture left shaft of femur has united and left hip total hip replacement in situ and assessed the disability at 60% each to both lower limbs and 40% to whole body and the Tribunal is also justified in accepting the same. Further PW 6 has deposed that, injured claimant needs one more surgery for removal of implant in the right femur and it would approximately costs Rs. 50,000/-. The Tribunal has justified in assessing the incurred of the injured claimant at Rs. 4,000/- per month taking into consideration the age and occupation of the injured claimant and we accept the same. The Tribunal, taking into consideration the nature of injuries sustained by the injured claimant, the nature and duration of treatment taken by her, the percentage of disability suffered by her, has justified in awarding a sum of Rs. 30,000/- towards pain and sufferings, Rs. 6,00,000/- towards medical and other incidental expenses, Rs. 1,72,800/- towards loss of amenities and Rs. 50,000/- towards future medical expenses and in all Rs. 8,52,800/- with interest at 6% p.a. from the date of petition till its realization and therefore, it does not call for interference nor we find any good grounds as such made out by the Insurer to entertain the relief sought in this appeal. Hence, the appeal filed by the Insurer is liable to be dismissed as devoid of merits.

11. At this stage, learned counsel appearing for the Insurer and learned counsel appearing for LRs of the injured claimant who has died during the pendency of this appeal, submitted that, the amount awarded by the Tribunal on account of the injuries sustained by the injured claimant may be apportioned among the LRs of injured claimant and they may be permitted to withdraw the same.

12. Having regard to the facts and circumstances of the case, the appeal filed by the insurer is dismissed as devoid of merits. However, in view of the submission made by learned counsel appearing for both the parties so far as apportionment is concerned, the impugned judgment and award dated 27/11/2009, passed in MVC No. 8021/2007, by the Chief Judge, Court of Small Causes and Principal, Motor Accident Claims Tribunal, Bangalore, is hereby modified so far as apportionment of compensation holding that, out of the compensation of Rs. 8,52,800/- awarded by the Tribunal with interest at 6% p.a. from the date of petition till its realization, a sum of Rs. 3,00,000/- with proportionate interest shall be invested in the Fixed deposit in any Nationalized or Scheduled or Grameena bank in the name of the R1(a)-K. Gangi Naidu, husband of the deceased for a period of 05 years and renewable by another 05 years, with liberty reserved to him to withdraw the interest accrued on it, periodically.

Remaining sum of Rs. 5,52,800/- with proportionate interest shall be released in favour of R1(a) to (f) in equal proportion immediately.

The insurer is directed to deposit the remaining compensation amount with interest after deducting whatever amount paid by it, within a period of three weeks from the date of receipt of a copy of this judgment.

The amount deposited by the Insurer shall be transmitted to the jurisdictional Tribunal, forthwith.

Draw the award, accordingly.