(2015) 07 KAR CK 0029

In the Karnataka High Court

Case No : M.F.A. No. 1814 of 2014 (MV)

Vani APPELLANT

Vs

Royal Sundaram Allianz General Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 07 KAR CK 0029

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : K.R. Murali Krishna, Advocate, for the Appellant; O. Mahesh, Advocate, for the Respondent

Judgement

N.K. Patil, J.—This appeal is filed by the claimant against the impugned common judgment and award dated 08.01.2014 passed in MVC No. 6190/2012 on the file of the XXII Additional Small Causes Judge & Member MACT, Court of Small Causes, Bangalore (hereinafter referred to as ''Tribunal'' for brevity) awarding compensation of Rs. 4,59,948/- with interest at 6% p.a. (excluding the interest on future medical expenses of Rs. 25,000/-), on account of the injuries suffered in a road traffic accident.

2. The brief facts of the case are:

"The appellant was aged about 27 years as on the date of the accident. She was working as helper in medical stores and earning Rs. 7,000/- p.m. She was hale and healthy prior to the accident. Be that as it may, that on, 10/11.06.2012 at about 7.00 p.m., when the appellant along with another lady left Murthinayanapalli, Chittoor District (A.P.) to Bangalore in Maruthi Omni Vehicle bearing registration No. KA-41/M-5347, near Chunchadevanahalli Gate, NH-4 road i.e., Kolar - Bangalore road, the driver of the said vehicle drove the same in a rash and negligent manner, with high speed and dashed the road side ditch. Due to the impact, the appellant sustained grievous injuries. She was shifted to

R.L. Jalappa Hospital, Kolar and after first aid treatment, she was shifted to Manipal Hospital, Bangalore and treated as an inpatient from 11.06.2012 to 27.06.2012. As per wound certificate Ex. P.16, she has sustained fracture of lower end of humerus left side, abrasion over the face and fore head, communited fracture of lower end of humerus, C2 type odontoid fracture and L2 - L3 wedge fracture. Injuries No. 1, 3, 4 and 5 are grievous in nature and injury No. 2 is simple in nature. She was treated as an inpatient for 13 days in the hospital on different occasions. She has examined the doctors - PW.4 and PW.5. They have assessed the disability at 15.4% to the whole body for humerus injury and 34.7% for spinal injury. She has taken bed rest for a period of three months as per the advise of the doctor and has undergone discomforts, unhappiness and has to suffer permanent disability throughout her life. She has suffered mental pain and agony during the treatment period. She has spent huge amount towards conveyance, nourishing food and attendant charges and medical expenses. On account of the injuries sustained, the appellant was constrained to file a claim petition under Section 166 of the M.V. Act before the Tribunal seeking reasonable compensation against the respondents. The Tribunal after assessing the oral and documentary evidence and other relevant material available on file allowed the claim petition in part, fixing liability jointly and severally on respondent Nos. 1 and 2, awarding compensation of Rs. 4,59,948/- with interest at 6% p.a. (excluding the interest on future medical expenses of Rs. 25,000/-), from the date of claim petition till the date of deposit. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has presented the instant appeal seeking enhancement contending that the compensation awarded by the Tribunal and the rate of interest is inadequate."

3. We have heard the learned Counsel appearing for the appellant and learned Counsel appearing for the first respondent -Insurance Company.

4. Sri K.R. Muralikrishna, learned Counsel for the appellant submits that the Tribunal has erred in accepting the percentage of disability at 15% to the whole body assessed by doctor, instead of 51% to the whole body as the doctor has assessed disability to the spinal at 34.7%. Therefore, disability to the whole body may be re-assessed at 51% The tribunal has also erred in assessing the income at only Rs. 3,000/- p.m. The appellant was working in Medical Store and earning Rs. 7,000/- p.m. She has spent reasonable amount towards conveyance, nourishing food and attendant charges and has taken up rest and follow up treatment for 6 months. The appellant has suffered pain and sufferings and has to suffer unhappiness and discomforts throughout his life. She further submitted that the rate of interest at 6% p.a. awarded by the Tribunal is also on the lower side. As per the catena of judgments of the Apex Court and this Court, the rate of interest may be modified and atleast interest at the rate of 9% or 10% p.a. may be awarded. Therefore, he prays that the claimant may be awarded just and reasonable compensation by modifying the impugned judgment and award passed by the tribunal.

5. Per contra, learned Counsel for the insurance company inter alia submitted that the impugned judgment and award passed by the tribunal is after appreciating oral and documentary evidence on record. He fairly submitted that the tribunal has considered the evidence of the orthopedic and spinal expert and wound certificate, nature of the injuries suffered by the appellant and the medical condition, disability assessed by the tribunal at 15% to the whole body is just and proper and interference by this Court is uncalled for.

6. After critical evaluation of the oral and documentary evidence available on record and considering the submissions made by the learned Counsel for both parties and after perusal of the impugned judgment and award, the only point that arises for our consideration is:

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

7. The occurrence of the accident and the injuries sustained by the appellant are not in dispute. She was aged 27 years, working as an helper in a medical store and earning Rs. 7,000/- p.m. She has not produced any credible document to make out that she was earning Rs. 7,500/- p.m. She has undergone treatment for a period of 13 days as inpatient on different dates. The doctor has assessed the permanent disability at 34.7% to the spinal. But the tribunal has assessed the disability at 15% to the whole body. It is the case of the appellant that she has spent huge sum towards medical expenses, conveyance, nourishing food and attendant charges. Having regard to the age, avocation and the year of the accident, being 2012, we can safely re-assess the income at Rs. 6,500/- p.m. as against Rs. 3,000/- assessed by the tribunal and assess the permanent disability at 25% to the whole body as against 15% assessed by the Tribunal, to meet the ends of justice. The appellant has sustained fracture of lower end of humerus left side, abrasion over the face and fore head, communited fracture of lower end of humerus, C2 type odontoid fracture and L2 - L3 wedge fracture. The doctor who treated the appellant has stated that injuries No. 1, 3, 4 and 5 are grievous in nature and injury No. 2 is simple in nature. He has taken treatment, bed rest and follow up treatment for a period of three months as per the advice of the doctor. Taking all these factors into consideration, we deem it fit to award Rs. 19,500/- (Rs. 6,500/- x 3 months) towards loss of income during laid up period to meet the ends of justice.

8. The tribunal has rightly awarded reasonable compensation towards medical expenses of the claimant. Exs. P.8 and P.17 are the medical bills. The compensation of Rs. 2,80,148/- awarded towards medical expenses is just and proper and does not call for interference.

9. However, the tribunal has erred in not awarding reasonable compensation towards loss of future income. The Tribunal has adopted the suitable multiplier ''17'' as per the age of the appellant. Having regard to the facts and circumstances discussed above, a sum of Rs. 3,31,500/- i.e., (Rs. 6,500/- x 12 x

17 x 25/100) is awarded towards loss of future income as against Rs. 91,800/- awarded by the tribunal, taking her income as Rs. 6,500/- per month, adopting multiplier ''17'' and re-assessing the whole body disability at 25%.

10. The Tribunal has erred in awarding compensation of only Rs. 30,000/- towards pain and sufferings and Rs. 25,000/- towards loss of amenities, discomforts and unhappiness in life. The appellant was aged about 27 years and she has taken treatment and bed rest as per the advice of the doctor. She might have suffered pain and agony during treatment period and she has to undergo discomforts and unhappiness throughout her life and also spent reasonable amount towards conveyance, nourishment and attendant charges during the treatment period. Therefore, we award Rs. 1,00,000/- towards pain and sufferings, Rs. 10,000/- towards conveyance, nourishment and attendant charges and Rs. 75,000/- towards loss of amenities, discomforts and unhappiness to meet the ends of justice.

11. As rightly pointed out by the learned Counsel for the appellant, the rate of interest at 6% p.a. awarded by the tribunal is on the lower side. As per catena of judgments rendered by the Apex Court and this Court, we deem it fit to award the interest at the rate of 9% p.a. on the enhanced compensation.

12. In the light of the facts and circumstances of the case, as stated above, the instant appeal filed by the appellant is allowed in part. The judgment and award dated 08.01.2014 passed in MVC No. 6190/2012 on the file of the XXII Additional Small Causes Judge & Member MACT, Court of Small Causes, Bangalore, is hereby modified. The break up is as follows:

The appellant is entitled for an additional compensation of Rs. 3,56,200/- with interest at 9% p.a. from the date of petition till the date of realization.

The Respondent No. 1 - Insurance Company is directed to deposit the enhanced compensation of Rs. 3,56,200/- together with interest, within a period of three weeks from the date of receipt of copy of the judgment.

Out of the enhanced compensation of Rs. 3,56,200/-, a sum of Rs. 2,00,000/- with proportionate interest shall be invested in F.D. in the name of appellant, in any Nationalised or Scheduled or Grameena bank for a period of 10 years and renewable for 10 years, with liberty to withdraw the interest periodically.

Remaining Rs. 1,56,200/- with proportionate interest shall be released in favour of the appellant immediately on deposit by R1-Insurance Company.

Office to draw the award, accordingly.