

(2016) 11 KAR CK 0062
In the Karnataka High Court
Case No : MFA No. 202114 of 2014

Yallamma

APPELLANT

Vs

Gaffar

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) AAC 538

Hon'ble Judges : Mr. S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Sri Sanganagoucla V. Biradar, Advocate, for the Appellant in MFA No. 202114 of 2014; Smt. Anuradha M. Desai, Advocate, for the Respondent No. 2 in MFA No. 202114 of 2014; Sri Sudhirsingh Ft. Vijapur, Advocate, for the Respondent No. 3 in MFA No. 202114 of

Final Decision : Allowed

Judgement

Mr. S.N. Satyanarayana, J.—These two appeals are filed by claimants in MVC Nos. 220 and 211/2009 on the die of MACT-VII, Bijapur seeking enhancement of compensation. Appeal in MFA No. 202113/2014 is by claimant in MVC No. 211/2009 and appeal in MFA No. 202114/2014 is by claimant in MVC No. 220/2009.

2. Though these appeals are coming for orders, at the request of learned counsel for parties, they are taken up for final disposal.

3. Admittedly both appellants are daughter and mother respectively and are claimants in the Court below seeking compensation for the injuries suffered in a road traffic accident dated 16.07.2008. Fact that claimants in both claim petitions were inmates of truck bearing No. MH-24/F-7341 and said truck was hit by another truck bearing No. MH-26/H-5217 is not in dispute. It is also stated one more KSRTC bus bearing No. KA-38/F-454 was also involved in accident, which came from opposite direction and dashed against truck bearing No. MH-24/F-7341 and claimants have suffered injuries which are basically in the nature of

fractures. Claimant Laxmibai has suffered fracture to both legs whereas claimant Yallamma has suffered fracture to only right leg. Records would disclose that truck in which claimants were travelling is charge sheeted for rash and negligent driving, which is not challenged.

4. In the proceeding before Tribunal, after recording evidence of claimants, doctor who is said to have issued disability certificate is examined as PW.3. On the basis of material available on record, both claim petitions came to be allowed awarding compensation in a sum of Rs. 53,350/- in MVC No. 211/2009 and a sum of Rs. 80,480/- in MVC No. 220/2009. Being aggrieved by quantum, these two appeals are filed.

5. Though, liability to pay compensation is saddled on respondent No. 6 in the Court below, i.e., insurer of truck in which claimants were travelling they have not challenged the same and deposited the compensation amount. Admittedly, claim petitions are filed under Section 163 (A) of M.V. Act and in the absence of challenge to judgment by respondent No. 6 - The Branch Manager, Bajaj Allianz General Insurance Company Ltd., correctness or otherwise of saddling liability to pay compensation on the said truck does not arise for consideration in these two appeals inasmuch, insurance company has accepted its liability and deposited compensation amount. Therefore, these two appeals are required to be considered for enhancement of compensation.

6. Heard learned counsel for appellant in both appeals and as well as contesting respondents, perused the records which are summoned. Records would disclose that claimant - Laxmibai has suffered serious injuries as compared to injuries suffered by her mother - Yallamma. As could be seen from Ex.P9 - Photographs, which are eleven in number and same disclose that right foot of Laxmibai was fractured. The age of girl is shown as 18 years in cause title of claim petition instead of 16 years as stated in the wound certificate for the purpose of stating that she is gainfully employed. Considering her age and injuries suffered, appeal filed in MFA No. 202113/2014 is considered for enhancement and appeal in MFA No. 202114/2014 filed by claimant in MVC No. 220/2014 is dismissed as compensation awarded by Tribunal is just and proper.

7. Appeal in MFA No. 202113/2014 filed by claimant in MVC No. 211 /2009 is taken up for enhancement. Documents at Exs.P5 to P11 are with reference to injuries suffered by claimant in MVC No. 211/2009 wherein, it is sated that she has suffered fracture of right leg, fracture of left leg, injury to light thigh and fracture to back bone and also other injuries to whole body. The medical records would disclose that she has taken treatment in Pyramid Hospital, Pune and District Hospital, Gulbarga. Though actual number of days of her stay in these hospitals as inpatient is not properly established, there are sufficient documents to demonstrate that she has suffered serious injuries in the aforesaid accident. Considering nature of injuries and medical expenses incurred, compensation awarded by Tribunal is on lower side and same is reassessed as under:

Towards pain and suffering

Rs. 50,000/-

Towards medical Expenses

Rs. 30,000/-

Attendant, food and nourishment Charges

Rs. 20,000/-

Towards disfiguration

Rs. 50,000/-

Towards marital prospects

Rs. 50,000/-

Towards loss of amenities

Rs. 50,000/-

Total

Rs.2,50,000/-

8. With this appellant in MFA No. 202113/2014 is entitled to total compensation of Rs. 2,50,000/- as against Rs. 53,350/- awarded by Tribunal. Accordingly, appeal filed by appellant in MPA No 202113/2014 is allowed in part directing Insurance Company to deposit enhanced amount of Rs. 1,96,630/- within six weeks from the date of receipt of copy of this order with interest at 6% per annum from the date of petition till date of deposit of entire amount.

9. Out of the enhanced compensation and interest to be deposited, 90% is ordered to be kept in fixed deposit for a period of five years in the name of claimant with right to receive interest periodically. Balance 10% to be released her favour of to meet immediate finance need of claimant.