

(2014) 09 KAR CK 0200

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 795/2013 (MV)

Yashodhamma

APPELLANT

Vs

The Manager The United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173(1)

Citation : (2014) 09 KAR CK 0200

Hon'ble Judges : P.D. Waingankar, J

Bench : Single Bench

Advocate : Girish B. Baladare, Advocate for the Appellant; C. Shankar Reddy, Advocate for the Respondent

Judgement

P.D. Waingankar, J.—This appeal under Section 173(1) of Motor Vehicles Act is directed against the judgment and award dated 08.11.2012 in MVC No. 598/2012 on the file of Additional MACT, Hassan, whereby the Tribunal has awarded a sum of Rs. 70,000/- as compensation to the claimant together with 6% interest thereon from the date of petition till the date of realisation from respondent Nos. 1 and 2 jointly and severally.

2. Brief facts which gave rise to this appeal are as under:

On 17.01.2012, at about 2.00 a.m., the appellant-claimant was waiting for a bus at Kandali Bus Stand. At that time, a motorcycle bearing registration No. KA-44-M-9964 belonging to respondent No. 2 insured with respondent No. 1 came in a rash and negligent manner from Sakaleshapura side and dashed against the claimant, as a result, she sustained grievous injuries for which she was treated as inpatient in Government Hospital. She spent about Rs. 25,000/- towards medical treatment. She filed Claim Petition under Section 166 of Motor Vehicles Act claiming compensation of Rs. 5,00,000/- from respondent Nos. 1 and 2 owner and insurer of the motorcycle. Claim Petition was opposed by the respondent No. 1-United India Insurance Co. Ltd., denying all the material averments made out in the claim petition including the negligence attributed on

the rider of the motorcycle. The claim petition came up for consideration before the Tribunal and the Tribunal by impugned judgment and award, awarded a total compensation of Rs. 70,000/- together with 6% interest thereon.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, this appeal is preferred by the appellant/claimant contending that the compensation awarded by the Tribunal under all heads is on the lower side and it is not in conformity with the gravity of the injuries sustained by the claimant.

4. I have heard both learned counsel appearing for the appellant/claimant and respondent No. 1/insurance company. Perused the records.

5. Learned counsel appearing for the appellant/claimant would submit that the compensation awarded by the Tribunal on all heads is on the lower side and that the Tribunal has not at all awarded compensation under the head loss of amenities.

6. On the other hand, learned counsel for the insurance company has argued in support of the judgment and award passed by the Tribunal, which according to him is just and reasonable compensation and hence, he sought for dismissal of the appeal.

7. Having heard the submission made by both the learned counsel and upon consideration of the entire material on record, the only point that arises for my determinations as under:

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

8. So far as issue of negligence is concerned, there is no dispute between the parties. Meaning thereby that the accident and the resultant injury sustained by the claimant are on account of rash and negligent driving of the motorcycle by its rider-respondent No. 2. So far as the quantum of compensation awarded by the Tribunal is concerned, it is seen from the summary sheet issued by the Sri. Chamarajendra Hospital, Hassan, where the claimant was treated that she sustained fracture of right radius for which she was treated as inpatient for 2 days for which the Tribunal has awarded a sum of Rs. 16,000/- as compensation under the head injury, pain and sufferings, which in my view is on the lower side. Having regard to the nature of injuries, nature of treatment and period of hospitalization, an amount of Rs. 25,000/- would be just compensation as against Rs. 16,000/- awarded by the Tribunal under the head injury, pain and sufferings.

9. It has come in the evidence of the claimant that inspite of best treatment, she has suffered disability. In order to prove the disability, she has examined Dr. Sriranga N. as PW-2, who inturn has spoken that she has suffered 23% of the disability to that particular limb and when it comes to the whole body, the disability would come to 8%. The Tribunal has taken the income of the claimant, aged about 45 years lady as Rs. 4,000/- per month. The accident occurred in the year 2012. Therefore, I propose to take monthly income of the claimant as Rs.

5,000/-. By taking monthly income of the claimant as Rs. 5,000/- and 8% disability to the whole body, the total future loss of income on account of disability comes to Rs. 67,200/- (Rs. 5,000/- x 12 x 14 x 8/100) as against Rs. 40,000/- awarded by the Tribunal. So, an amount of Rs. 67,200/- is awarded to the claimant under the head loss of future income on account of disability. Further, the Tribunal has awarded a meager amount of Rs. 2,000/- towards loss of income during the period of treatment. Since she sustained fracture of radius, she must have been incapacitated from attending to her work for a period of two months. So, an amount of Rs. 10,000/- is awarded towards loss of income during the period of treatment as against Rs. 2,000/- awarded by the Tribunal. Further, the Tribunal has not awarded any amount under the head loss of amenities. It goes without saying that the disability suffered by her would cause inconvenience in her future life and as such, I deem it just and proper to award a sum of Rs. 10,000/- under the head loss of amenities. Thus, the claimant is awarded a total compensation of Rs. 1,24,200/- under various heads as under:

There shall be an enhancement of Rs. 54,200/- (Rs. 1,24,200/- - Rs. 70,000/-) together with interest thereon from the date of petition till the date of realization.

Appeal is partly allowed. The appellant/claimant is awarded an enhanced compensation of Rs. 54,200/- over and above the compensation awarded by the Tribunal together with 6% interest thereon from the date of petition till the date of realisation from respondent Nos. 1 and 2 jointly and severally. Respondent No. 1 shall deposit the enhanced compensation amount together with interest thereon within a period of 30 days from the date of receipt of copy of this judgment.

The Registry is directed to send the records forthwith to the Tribunal.