
(2015) 10 KAR CK 0153

In the Karnataka High Court

Case No : M.F.A. Nos. 8599 and 9269 of 2012 (MV)

Zubaida and Others

APPELLANT

Vs

S.S. Ganesh and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 10 KAR CK 0153

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : H. Pavana Chandra Shetty, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

N.K. Patil, J.—These two appeals are by the claimant and insurer being aggrieved by the impugned common judgment and award dated 18.06.2012 passed in MVC No. 168/2011 on the file of the Presiding Officer, Fast Track Court and Motor Vehicle Accidents Claims Tribunal at Kundapura, (hereinafter referred to as "Tribunal" for short), for enhancement and reduction of compensation respectively.

2. By its judgment and award, the Tribunal has awarded a sum of Rs. 7,48,350/- with interest at 6% p.a., from the date of petition till its realization as against the claim made by the claimant on account of grievous injuries sustained by her in the road traffic accident. The claimant contends that the quantum of compensation awarded is inadequate and requires enhancement, whereas the insurer contends that the quantum of compensation awarded by the Tribunal is disproportionate to the source of income of the claimant and it is liable to be reduced. Being aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has presented MFA No. 8599/2012 and insurer has presented MFA No. 9269/2012.

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

"The claimant was aged about 38 years as on the date of accident, hale and healthy and a home maker. Be that as it may, on 18.08.2010 at about 21.00 hours on Hosanagar, Shimoga Road, M. Guddekoppa Village, near Jayachandra House, Hosanagara Taluk, when the claimant was traveling as a pillion rider in Honda Activa bearing registration No. KA-14-X-6247 from Hosanagara towards Kodooru side, at that time, the driver of the lorry bearing registration No. KA-17-4935 drove the same from Kodooru side towards Hosanagara side in a high speed and rash and negligent manner and due to over speed, the driver of the lorry lost control over it and came to the extreme wrong side of the road and dashed against the Honda Activa, on account of which the claimant sustained grievous injuries. Due to the accidental injuries, she took treatment for more than 82 days at KMC Hospital, Manipal and also undergone surgeries. It is further case of the claimant that PW.2-Dr. Kiran K.V. Acharya, on clinical examination assessed the permanent disability at 32% to the left lower limb and 8% to right lower limb. As per Ex. P13 disability certificate, the claimant has sustained dislocation of left knee, segmental fracture of left fibula, bimalleolar injury of left lower limb. PW.2 doctor opined that the claimant is not able to stand and walk independently and she may require assistance of other person to walk. She attended the court with the help of walker and gave evidence standing in the witness box. Further, it is the case of the claimant that she has spent huge amount towards treatment, conveyance, nourishing food and attendant charges. Therefore, she filed a claim petition under Section 166 of MVC Act before the Tribunal claiming compensation against the respondents. The said claim petition had come up for consideration before the Tribunal. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 7,48,350/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant and insurer have presented these two appeals respectively."

4. Sri. H. Pavana Chandra Shetty, learned counsel appearing for the claimant, at the outset, submitted that the Tribunal has committed miscarriage of justice in assessing the income of the claimant at Rs. 40,000/- per annum. The accident occurred in the year 2010. She is a home maker, aged about 38 years and by avocation she is a tailor and she suffered 100% permanent disability to the left lower limb. This aspect has not been considered by the Tribunal while assessing reasonable income of the claimant. Therefore, he submitted that income of the claimant may be reassessed and reasonable compensation may be awarded by modifying the judgment and award passed by the Tribunal.

5. Per contra, Sri. P.B. Raju, learned counsel appearing for insurer, inter alia, contended that the Tribunal has erred in not awarding reasonable compensation towards pain and sufferings, loss of amenities and future medical expenses. It is disproportionate to the source of income. Therefore, the compensation is liable to be reduced by modifying the judgment and award passed by the Tribunal.

Further, he is quick to point out that PW.2-Doctor has assessed the disability at 32% to the left lower limb and 8% to the right lower limb. But the Tribunal without any justification, has taken 20% permanent disability to the whole body, contrary to the records. The claimant has not produced any credible evidence to show that she was doing tailoring work. Except oral evidence, nothing has been produced to substantiate that she was working as tailor. Therefore, whatever amount awarded towards loss of future income is just and proper and does not call for interference by this Court.

6. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, what emerges is that, the occurrence of accident and resultant grievous injuries sustained by the claimant are not in dispute. On account of accidental injuries, the claimant has undergone treatment for a period of 82 days in the Hospital. She was aged about 38 years and a home maker. She has not produced any credible evidence except certificate issued by Panchayat Development Officer to show that she was doing tailoring work. Income taken by the Tribunal is on the lower side. After careful consideration of the submission and after perusal of the evidence of Doctor, what emerges is that the claimant suffered permanent disability of 32% to the left lower limb and 8% to the right lower limb. The Tribunal has taken 20% permanent disability to the whole body and assessed the income at Rs. 40,000/- per annum. Accident has occurred in the year 2010 and having regard to the avocation and taking into consideration the discomfort and nature of injuries sustained, the amount spent towards medical expenses and also taking judicial note, we are of the view that the Tribunal is justified in awarding a sum of Rs. 90,000/- towards pain and sufferings, Rs. 3,30,000/- towards medical expenses, conveyance, special diet, nourishment and attendant charges, Rs. 33,333.33 towards loss of income during treatment period, Rs. 1,20,000/- towards future loss of income, Rs. 1,00,000/- towards loss of amenities and Rs. 75,000/- towards future attendant charges. In all, the Tribunal has awarded a compensation of Rs. 7,48,350/- with interest at 6% per annum from the date of petition till realization. The compensation awarded by the Tribunal is just and reasonable. We do not find any error in the judgment and award passed by the Tribunal nor do we find any good ground as such made out either by the claimant or by the insurer to interfere in the impugned judgment and award to consider their respective reliefs.

Hence, both the appeals are dismissed as being devoid of merits.

The insurer is directed to deposit the compensation amount, after deducting the amount if any, already deposited by it, with interest at 6% per annum from the date of petition till realisation before the Tribunal within three weeks from the date of receipt of a copy of this judgment.

The amount in deposit by the insurer in M.F.A. No. 9269/2012 shall be transmitted to the jurisdictional Tribunal forthwith.