

(2016) 07 KAR CK 0084

KARNATAKA HIGH COURT

Case No: MFA No. 2848 of 2014 (MV)

Smt. P. Kalyanamma

APPELLANT

Vs

Karnataka Government,
Insurance Department Office

RESPONDENT

Date of Decision: July 21, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 168

Citation: (2016) AAC 2091

Hon'ble Judges: B. Manohar, J.

Bench: Single Bench

Advocate: K.V. Naik for Shripad V. Shastri, Advocates, for the Petitioners; Munigangappa, HCGP, for the Respondents No. 1; Notice D/WV/C/O DTD 02.03.15, for the Respondents No. 2

Final Decision: Partly Allowed

Judgement

B. Manohar, J.—The appellant is the claimant. Being not satisfied with the quantum of compensation awarded in judgment and award dated 13th February, 2014 made in MVC No. 5020 of 2012 by the Motor Accident Claims Tribunal, Bengaluru (for short ♦Tribunal♦), she has filed this appeal.

2. In the claim petition, the appellant has contended that on 13.4.2012 at about 10:00 a.m., while she was proceeding as a pillion rider on motor cycle bearing Regn. No. KA-51-E-5609 on the left side of the road, near Military Dairy Gate, Kempapura Cross, BB Road, Bangalore, a Bolero Jeep bearing Regn. No. KA-01-G-5207 driven by its driver in a rash and negligent manner dashed against the motor cycle from behind. Due to that, the claimant fell down and sustained grievous injuries all over the body. She was shifted to Colombia Asia Hospital. After the first aid, she was shifted to Hosmat Hospital Bangalore. She took treatment as inpatient for a period of four days. She has sustained fracture of both bones of right forearm and

comminuted fracture of distal radius. She claimed that she has spent more than Rs. 2,00,000/- towards treatment. The offending vehicle, Bolero Jeep, was insured with the 1st respondent. Hence, both the respondents are liable to compensate the claimant and sought for compensation of Rs. 12,00,000/-.

3. In pursuance of the notice issued by the Tribunal, the 1st respondent filed written statement denying the entire averments made in the claim petition and also rash and negligent driving of Bolero Jeep. On the other hand, it was contended that due to rash and negligent riding of the motor cycle by the husband of the claimant by applying sudden brake, the claimant fell down. Further, rider of the motorcycle did not possess valid and effective driving license as on the date of accident. Hence, the 1st respondent is not liable to compensate the claimant and sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The claimant in order to prove her case got examined herself as PW1 and got marked the documents as Exs. P1 to P14. The doctor, who treated the claimant was examined as PW2. On behalf of respondents, none of the witnesses were examined nor any document was marked.

6. The Tribunal after appreciating the oral and documentary evidence let in by the parties and taking into consideration the IMV report, spot sketch, panchanama, copy of complaint and charge-sheet held that due to rash and negligent driving of Bolero Jeep, the accident had occurred. Hence, the claimant is entitled for compensation. With regard to quantum of compensation is concerned, though the claimant claimed that she was earning a sum of Rs. 9,000/- p.m. as a tutor, no document has been produced to establish the same. Hence, the Tribunal has taken the income of the claimant as Rs. 5,000/- p.m. The doctor, who treated the claimant has assessed the disability to an extent of 14% to the whole body. The claimant was aged about 42 years as on the date of accident. The Tribunal taking into consideration the income of the claimant as Rs. 5,000/- p.m., taking the disability to any extent of 14% and applying the multiplier 14 awarded a sum of Rs. 1,17,600/- towards disability, Rs. 24,000/- towards pain and suffering, Rs. 1,200/- towards inpatient and Rs. 5,000/- towards loss of income, in all, a sum of Rs. 1,47,800/- with interest at 6% p.a. The claimant being not satisfied with the quantum of compensation has filed this appeal.

7. Sri. K.V. Naik, learned Advocate for Sri. Shripad V. Shastry, learned Advocate appearing for the appellant contended that the quantum of compensation awarded by the Tribunal for the injuries sustained is on the lower side. In the accident, she has sustained fracture of both bones of right forearm and comminuted fracture of distal radius. The doctor, who treated the claimant in his evidence deposed that the claimant has undergone open reduction of internal fixation with dynamic compression plating with right radius and ulna was done. Further ♦K♦ wire for the

right distal reduction was done. The claimant has sustained disability to an extent of 14% and she has to undergo one more operation for removal of implants. No compensation has been awarded for future medical expenses. Further, the claimant has sustained disability to an extent of 44% to the upper limb. No compensation has been awarded towards loss of amenities in life. Further, the Tribunal has failed to award any compensation towards loss of income during the laid up period. Taking the income as Rs. 5,000/- p.m. by the Tribunal while assessing the loss of income is contrary to law. The accident had occurred in the year 2012. Even for the daily wage employees working in various departments the income is being taken more than Rs. 6,500/- p.m. Therefore, the income of Rs. 5,000/- p.m. taken by the Tribunal is on the lower side and sought for enhancement of compensation.

8. On the other hand, learned Government Pleader appearing for the 1st respondent argued in support of the judgment and award passed by the Tribunal and contended that for the injuries sustained and suffering undergone, the Tribunal has awarded just and fair compensation. No document has been produced to establish the income. Hence, sought for dismissal of the appeal.

9. I have carefully considered the arguments addressed by the learned counsel appearing for the parties and perused the judgment and award and oral and documentary evidence.

10. The occurrence of accident and injuries sustained by the claimant due to actionable negligence on the part of driver of Bolero Jeep is not in dispute. The dispute is only with regard to the quantum of compensation is concerned. In the accident, the claimant has sustained fracture of both bones of right forearm and comminuted fracture of distal radius. She has undergone surgery. The doctor assessed the disability to an extent of 44% to the upper limb and 14% to the whole body. Looking to the injuries sustained and suffering undergone, the assessment of disability by the doctor is in accordance with law. However, the doctor in his evidence clearly deposed that the claimant has to undergo one more operation for removal of implants. The Tribunal has not awarded any compensation towards future medical expenses. Further, no compensation is awarded towards loss of income during the laid up period. In view of fracture of both bones of forearm and distal radius, she was out of work for more than two months. Admittedly, the accident had occurred in the year 2012. The income of Rs. 5,000/- p.m. taken by the Tribunal is on the lower side. Even for a daily wage employee working in various Government Department the income is being taken as Rs. 6,500/- p.m. Taking into consideration the income of the claimant as Rs. 6,500/- p.m., taking the disability to an extent of 14%, considering the age of the claimant as 42 years as on the date of accident, applying the multiplier 14, she is entitled for compensation of Rs. 1,52,880/- as against a sum of Rs. 1,17,600/- towards disability. Further, the claimant has to lead her remaining life with 14% disability. Hence, she is entitled for compensation of Rs. 20,000/- towards loss of amenities in life. Further, as stated

above, the claimant has to undergo one more operation for removal of implants. Hence, she is entitled for a sum of Rs. 20,000/- towards future medical expenses. Since the claimant was out of employment for a period of more than two months, she is entitled for compensation of Rs. 13,000/- towards loss of income during the laid up period. Hence, the claimant is entitled for enhancement of compensation of Rs. 88,280/-, which is rounded off to Rs. 88,500/- with interest at 6% p.a. Accordingly, I pass the following:

ORDER

11. Appeal is allowed in pair. The judgment and award dated 13th February, 2014 made in MVC No. 5020 of 2012 by the Motor Accident Claims Tribunal, Bengaluru is modified. The claimant is entitled for enhancement of compensation of Rs. 88,500/- with interest at 6% p.a.