

(2016) 03 KAR CK 0381

KARNATAKA HIGH COURT

Case No: Miscellaneous First Appeal No. 4977 of 2014 (MV).

Smt. Thulasi - Appellant @HASH
Divisional Controller, Karnataka
State Road Transport
Corporation, Chikmagalur,
Hassan District

APPELLANT

Vs

RESPONDENT

Date of Decision: March 29, 2016

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166

Citation: (2016) 4 KantLJ 179

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

Bench: Division Bench

Advocate: Sri Abijith M.M. for M/s. Abijith M.M. and Associates, for the Appellant; Sri G. Shankar Goud, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. N.K. Patil, J. - Though this matter is posted today for orders, with the consent of learned Counsel appearing for both the parties, the same is taken up for final disposal.

This appeal by the claimant-appellant for enhancement of compensation is directed against the impugned judgment and award dated 11-9-2013, passed in MVC No. 150 of 2012, by the Senior Civil Judge and Judicial Magistrate First Class and Motor Accident Claims Tribunal, Sakaleshpur, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal, by its judgment and award has awarded a sum of Rs. 2,05,284/- under different heads with interest at 6% p.a., from the date of petition till realisation as against the claim of Rs. 20,00,000/-, on account of the injuries

sustained by her in the road traffic accident.

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

The appellant claims to be aged between 41 to 45 years at the time of the accident. She was hale and healthy prior to the accident, doing coolie work and earning Rs. 6,000/- per month. That on 7-10-2011 at about 11.00 a.m. she boarded KSRTC Bus bearing Reg. No. KA.09.F.3324 at Kirugundha bus stop to go to her Village Biradahalli and when the said bus came near Hurudi Border on Hanbal-Hurudi Road, at that time, the driver of the said bus drove the same in a rash and negligent manner and all of a sudden, he moved the bus and jumped on the big ditch. Due to which, appellant who was sitting on the back seat jumped and fell down in the said bus, due to which, the rod of the bus seat hit to her back and other parts of the body. Immediately, her brother-in-law shifted her to Crawford Hospital, Sakaleshpur through the said bus, wherein she took treatment for 8 days and then she had been shifted to Father Muller Hospital, Mangalore, where she took treatment as inpatient and thereafter, on the advise of the Doctor, she has taken bed rest and follow up treatment.

4. It is the further case of the appellant that, she spent considerable amount towards medical expenses, conveyance and other incidental charges. On account of the injuries sustained by the appellant in the said accident, she has suffered permanent disability. The Doctor has assessed the permanent disability at 25%. Therefore, appellant has filed a claim petition before the Tribunal under Section 166 of Motor Vehicles Act, 1988, claiming compensation against the respondents.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 2,05,284/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realisation.

6. Being dissatisfied with the quantum of compensation and the rate of interest awarded by the Tribunal, the appellant has presented this appeal.

7. The submission of the learned Counsel Sri Abijith M.M. appearing for appellant, at the outset is that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and suffering, towards conveyance, nourishing food and attendant charges, towards loss of future earnings and towards and towards future medical expenses and what is awarded is inadequate and it requires to be enhanced reasonably. Further, he submits that, the Tribunal has erred in not awarding any compensation towards loss of income during treatment period and towards loss of amenities, discomforts and unhappiness. Further, he submits that the income of the appellant assessed by the Tribunal is on the lower side on the ground that, she was aged between 41 to 45 years working as Coolie and earning Rs. 6,000/- per month, but the Tribunal has assessed the income at Rs. 3,750/- per month and the same has

to be reassessed reasonably. Further, he submits that, on account of grievous injuries sustained by the appellant in the accident, she has taken treatment as inpatient for 15 days in different hospitals and the injuries sustained by her resulted in permanent disability. To prove the same, she has examined the Doctor as P.W. 2, who has assessed the permanent disability at 25%, due to which she has suffered mental pain and agony, spent reasonable amount towards medical expenses, conveyance and other incidental expenses, taken bed rest and follow up treatment at least for six months, discomforts and unhappiness persists through out her life, it would affect her earning capacity and now she is not in a position to do her work as she was doing earlier and she requires some amount towards future medical and other incidental expenses on the ground that, as per the evidence of the Doctor, she has to undergo one more surgery. But these aspects of the matter have not been considered or appreciated by the Tribunal while awarding compensation under different heads. She further submits that the rate of interest awarded by the Tribunal is on the lower side and is liable to be enhanced at least between 8 to 9% in the light of the judgments of the Apex Court and this Court since the accident has occurred in the year 2011. Therefore, he submitted that the impugned judgment and award is liable to be modified.

8. Per contra, learned Counsel appearing for respondent-Corporation sought to substantiate that, the compensation awarded by the Tribunal is just and reasonable and after due appreciation of the oral and documentary evidence available on file. Further he submits that appellant was aged between 41 to 45 years and therefore, the appropriate multiplier applicable is "14" instead of "15" adopted by the Tribunal and therefore, interference by this Court in the compensation awarded is not called for.

9. After careful consideration of the submission made by learned Counsel appearing for the appellant and learned Counsel appearing for respondent and after perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

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

10. The occurrence of the accident and the resultant injuries sustained by the appellant as per Ex. P. 7-wound certificate are not in dispute. It is also not in dispute that, appellant was aged between 41 to 45 years and home maker by profession and she met with an accident and sustained anterior wedge compression fracture of T12 vertebrae. To prove the same, she examined the Doctor as P.W. 2, who has deposed that appellant suffered 25% permanent disability. The Tribunal has assessed the permanent disability at 20% and we accept the same. Further, it is the case of the appellant that, she was doing coolie work and earning Rs. 6,000/- per month. But to prove the same, she has not produced any documents. The Tribunal has assessed the income at Rs. 3,750/- per month which is on the lower side and is liable to be enhanced reasonably. Having regard to the age and occupation of the appellant and

the year of accident, we reassess her income at Rs. 6,000/- per month to meet the ends of justice. On account of fracture of T12 vertebra and other injuries suffered by her in the accident, appellant has taken treatment as inpatient for 15 days in different hospitals. During the said period, she must have undergone lot of pain and agony, must have spent considerable amount towards medical expenses, conveyance and other incidental expenses and as per the advise of the Doctor she might have taken bed rest and follow-up treatment at least for six months, during the said period, she might have incurred financial loss as she could not have attended her work regularly. Discomforts and unhappiness persists through out his life and it would affect her happiness in future life and also affects her earning capacity. As per the evidence of the Doctor, appellant has to undergo one more surgery and for that, she may require some reasonable amount towards medical and incidental expenses. Therefore, the appellant has to be compensated reasonably. The proper multiplier applicable is "14" since appellant was aged between 41 to 45 years as on the date of the accident instead of "15" adopted by the Tribunal. Taking all these aspects into consideration, we award a sum of Rs. 30,000/- towards injury, pain and suffering as against Rs. 15,000/-, Rs. 10,000/- towards conveyance, nourishing food and attendant charges as against Rs. 3,000/-, Rs. 36,000/- towards loss of income during the treatment period at the rate of Rs. 6,000/- per month for six months, Rs. 2,01,600/- (Rs. 6,000/- x 12 x 14 x 20%) towards loss of future earnings as against Rs. 1,35,000/-, Rs. 20,000/- towards loss of amenities, discomforts and unhappiness and Rs. 40,000/- towards future medical expenses as against Rs. 10,000/-.

11. The Tribunal after due appreciation of the oral and documentary evidence available on file has justified in awarding a sum of Rs. 42,284/- towards medical expenses as per medical bills produced and therefore, it does not call for interference.

In all, the appellant is entitled to the total compensation of Rs. 3,79,884/-instead of Rs. 2,05,284/- and the break-up is as follows:

Towards injury, pain and sufferings	Rs. 30,000/-
Towards medical expenses	Rs. 42,284/-
Towards conveyance, nourishing food and attendant charges	Rs. 10,000/-
Towards loss of income during the period of treatment	Rs. 36,000/-

Towards loss of amenities	Rs. 20,000/-
Towards loss of future earnings	Rs. 2,01,600/-
Towards future medical expenses	Rs. 40,000/-
Total	Rs. 3,79,884/-

12. Regarding rate of interest, as rightly pointed out by the learned Counsel appearing for the appellant, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2011. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

13. Having regard to the facts and circumstances of the case, the appeal filed by the appellant is allowed in part. The impugned judgment and award dated 11-9-2013, passed in MVC No. 150 of 2012, by the Senior Civil Judge and Judicial Magistrate First Class and Motor Accident Claims Tribunal, Sakaleshpur, stands modified, awarding the compensation of Rs. 3,79,884/- instead of Rs. 2,05,284/- as awarded by the Tribunal. There would be an enhancement of Rs. 1,74,600/- with interest at 9% p.a., from the date of petition till its realisation excluding interest for the delayed period of 225 days in filing the appeal.

14. The respondent-Corporation is directed to deposit the enhanced compensation of Rs. 1,74,600/- with interest at 9% p.a., excluding interest for the delayed period of 225 days in filing the appeal, from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment and award.

15. Immediately on such deposit by the respondent-Corporation, out of the enhanced compensation of Rs. 1,74,600/-, a sum of Rs. 1,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of the appellant in any Nationalised or Scheduled or Grameena Bank, for a period of 5 years and renewable by another 5 years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

16. The remaining sum of Rs. 74,600/- with proportionate interest shall be released in favour of the appellant immediately.

17. Draw the award, accordingly.