

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2017

BEFORE

THE HON'BLE MR. JUSTICE B. SREENIVASE GOWDA

MFA No.1191/2013 (MV)

C/w MFA No.1651/2013 (MV)

MFA No.1191/2013 :

BETWEEN:

Kumari Sharlina M.,
D/o Mani C.
Aged about 22 years,
r/at No.59, Tamil Sangam,
A.S.M.Road, Bharathi Nagar,
Bangalore-560 001. .. Appellant

(By Sri T.Parameshwarappa &
Sri Rajashekhar, Advocates)

AND:

1. M/s. Travels World,
Sriram Mansion,
No.9, 4th Main,
Subramanya Temple Street,
Kumara Park West,
Bangalore-560 020.

2. Manager,
Bajaj Alliance General
Insurance Company Limited,
No.105-A, 1st Floor,
Cears Plaza-136,
Residency Road,
Bangalore-560 025. .. Respondents

(By Sri Phaniraj Kashyap, Advocate for R-2,
Notice to R-1 is dispensed with)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 25.10.2012 passed in MVC No.1955/2011 on the file of the VII Addl.Judge, Member, MACT-3, Court of Small Causes, Bangalore, partly allowing the claim petition for compensation and seeking enhancement of compensation.

MFA No.1651/2013 :

BETWEEN;

Bajaj Allianz General Insurance Co. Ltd.,
No.31, TBR Tower, I Cross,
New Mission Road,
Adjacent to Jain college
& Bangalore Stock Exchange,
Bangalore-560 002. .. Appellant

(By Sri Phaniraj Kashyap, Advocate)

AND:

1. Ms.Sharline M.,
Aged 22 years,
D/o Mani C.,
R/o No.59, Tamil Sangam,
A.S.M.Road, Bharathi Nagar,
Bangalore-560 025.
2. M/s. Travels World,
Sriram Mansion,
No.9, 4th Main,
Subramanya Temple Street,
Kumara Park West,
Bangalore-30. .. Respondents

(By Sri T.Parameshwarappa, Advocate for R-1)

This MFA is filed under Section 173(1) of MV Act against the judgment and award dated 25.10.2012 passed in MVC No.1955/2011 on the file of the VII Addl.Judge, Member, MACT-3, Court of Small Causes, Bangalore, awarding a compensation of Rs.2,17,600/- with interest @ 6% p.a. from the date of petition till realization.

These Appeals coming on for Admission, this day, the Court delivered the following:-

JUDGMENT

MFA No.1191/2013 is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal. Whereas, MFA.No.1651/2013 is filed by the Insurer of Indica Car bearing Regn. No.KA-04/C-6661 challenging the judgment and award passed by the Tribunal on the ground of negligence, liability and quantum.

2. As both the appeals have arisen out of a common judgment and award of the Tribunal, with the consent of the learned counsel appearing for the parties, they were heard together and disposed of finally by this common judgment. Perused the judgment and award passed by the Tribunal.

3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 4.1.2011, the points that arise for consideration in these appeals are:

1) Whether finding of the Tribunal on negligence in holding that the claimant had sustained injuries in the road traffic accident that occurred on 4.1.2011 due to rash and negligent driving of the Indica Car bearing registration No.KA-04/C-6661 by its driver is just and proper?

2) Whether the Tribunal was justified in fastening the liability on the insurer of Indica Car?

3) Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?"

4. Sri Phaniraj Kashyap, the learned counsel appearing for the insurer of Indica Car submits that though the driver of Indica car was driving the car slowly and carefully on the left side of the road by observing traffic rules, accident occurred due to negligent crossing of the road by the claimant herself without observing the traffic rules.

The Tribunal without considering the same has committed

an error in holding that the accident had occurred due to rash and negligent driving of the driver of the Indica Car.

Regarding liability, the learned counsel for the insurer submits that the driver of the car did not possess a valid and effective driving licence to drive the car at the time of the accident. The Tribunal without considering the same, has committed an error in fastening the liability on the insurer of the car.

Regarding quantum, learned counsel submits that the compensation awarded by the Tribunal is on the higher side and therefore, he prays for allowing the appeal preferred by the Insurer of Indica Car and dismissing the appeal filed by the claimant.

5. Sri Srinath for Sri T.Parameshwarappa, the learned counsel appearing for the claimant submits that when claimant was waiting for a bus, the driver of the offending car drove the car in a rash and negligent manner and dashed against her, as a result she sustained injuries. The charge sheet has been filed against the driver of the

Indica car. Therefore, the Tribunal considering the oral and documentary evidence on record was justified in holding that the accident had occurred due to rash and negligent driving of the driver of the Indica car.

Regarding liability, the learned counsel submits that the driver of the offending car had possessed a valid and effective driving licence to drive the car as on the date of the accident. The Tribunal considering this material aspect of the matter was justified in fastening the liability on the insurer of the car.

Regarding quantum, the learned counsel submits that the claimant by working as a Customer Executive at Sparsh BPO Centre, Bengaluru, was earning a sum of Rs.7,000/- per month and on account of the injuries sustained in the accident and the disability suffered by her, she had discontinued her job and the Tribunal ought to have awarded compensation towards loss of future income by considering the disability caused to the whole body at 100%. He further submits that the compensation amount awarded

by the Tribunal under other heads is also on the lower side. Therefore, he prays for allowing the appeal filed by the claimant and dismissing the appeal preferred by the insurer.

6. Immediately after the accident a complaint was lodged by the mother of claimant with the jurisdictional police stating that when her daughter was waiting for a bus at ASM Tamil Sangham Gate, the driver of the Indica car drove the car in a rash and negligent manner with high speed and dashed against her, as a result of which, she sustained injuries. The police after investigating the complaint, have filed the charge sheet against the driver of the Indica car. The insurer of the car though contends that the accident had occurred on account of negligent crossing of the road by the claimant, did not choose to examine either the driver of the car or any eyewitness to the accident. The claimant has not chosen to examine her mother who lodged the complaint with the police and substantiated the contents of the complaint. The claimant in her cross-examination, has admitted that there is no zebra crossing at the spot of the accident. She admitted that at the spot of the accident,

there is two way. She has further admitted that the offending car dashed against her from her right side while she was crossing the road. The sketch produced by the claimant and marked as Ex.P-2, would also show that the offending car was proceeding on the left side of the road from South towards North and the claimant was crossing the road from West to East and accident had occurred at the distance of 10 ft. from the western edge of the road. The total width of the road is 38 ft. and there is two way and each side of the road measures 19 ft. The accident had occurred at the distance of 10 ft. from the western edge of the road i.e., almost in the middle of the one way road. This falsifies the case of the claimant that she was standing by the side of the road and waiting for a bus. The sketch further reveals that the driver of the offending car was not proceeding on the extreme left side of the road as contented. As already pointed out, there is 10 ft. distance from the place of the accident towards the left side of the road. At the same time, we have to notice that the accident had taken place in front of Tamil Sangham Gate, in Shivaji Nagar,

which is a busy road. Vehiculers are also expected to drive their vehicles slowly and carefully by observing traffic rules. Considering the nature of the accident and also the oral and documentary evidence on record, it has to be held that the accident had occurred due to contributory negligence of the claimant as well as, the driver of the offending car. The material on record would show that negligence contributed by the driver of the Indica car is heavy and more than that of the claimant and it should be at the ratio of 80:20 respectively. Hence, finding of the Tribunal on negligence is modified holding that accident occurred due to contributory negligence of the claimant as well as the driver of the car at the ratio of 20% and 80% respectively. Point No.1 is answered accordingly.

Re. Liability

The insurer in support of its contentions that the driver of the offending car did not possess a valid and effective driving license as on the date of accident, did not choose to examine either the driver or the owner of the offending car. It is the duty of the insurer to establish that

the driver of the offending vehicle did not possess a valid and effective driving licence at the time of the accident, which exercise has not been done by the insurer. It is not the case of the insurer that the vehicle was not insured and policy was not in force at the time of the accident. Considering this, the Tribunal was justified in fastening the liability on the insurer of the car. Hence, the finding of the Tribunal on liability is confirmed and Point No.2 is answered accordingly.

Re. Quantum :

As per Ex.P-6, Wound Certificate, the claimant had sustained comminuted fracture of right humerus mid third level. The injuries sustained and treatment underwent by the claimant are corroborated by Ex.P-7, Discharge Summary, Ex.P-12, medical bills, Ex.P-13, prescriptions, Ex.P-14, two photographs with negatives, Exs.P-15 and 17, X-ray films, Ex.P-16, and the oral evidence of the claimant and the doctor examined as PWs.1 and 3 respectively.

7. Considering the nature of injuries sustained by the claimant a sum of **Rs.40,000/-** is awarded towards 'pain and suffering' as against Rs.30,000/- awarded by the Tribunal.

8. The Tribunal has awarded Rs.35,000/- towards 'medical expenses' as per the medical bills produced by the claimant, which is just and proper and there is no scope of enhancement.

9. The claimant was treated as inpatient for a period of five days at Lakeside Medical Centre and Hospital, Bangalore. Considering the duration of treatment, the amount of Rs.11,500/- awarded by the Tribunal towards 'incidental expenses', such as conveyance, food, nourishment and attendant charges, is just and proper and there is no scope of enhancement.

10. The claimant claims that she was working as Customer Executive in Sparsh BPO Service Ltd., Bangalore, and drawing a salary of Rs.7,000/- per month and was also working as Beautician, and has produced a certificate issued

by the employer at Ex.P-8 to show that she was working as Customer Executive in Sparsh BPO Service Ltd., The nature of injuries shows that she must have been under treatment and rest for a period of three months. Therefore, a sum of **Rs.18,000/-** is awarded towards 'loss of income during the laid up period' as against Rs.6,000/- awarded by the Tribunal.

11. The doctor has stated that the claimant has suffered 17% permanent disability, but he has not stated the percentage of disability caused to the whole body. In the absence of the same, the Tribunal was justified in taking the disability caused to the whole body at 10%.

The Tribunal by assessing the income of the claimant at Rs.6,000/- per month, applying the multiplier of '18', and considering the disability caused to the whole body at 10%, was justified in awarding Rs.1,29,600/- towards 'loss of future income' and it is just and proper and does not call for interference.

12. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of **Rs.20,000/-** is awarded towards 'loss of amenities' as against Rs.10,000/- awarded by the Tribunal.

13. Thus, the claimant is entitled for the following compensation:-

	HEADS	AMOUT (Rs.)
1	Pain and sufferings	40,000
2	Medical Expenses	35,000
3	Incidental expenses	11,500
4	Loss of income during laid up period	18,000
5	Permanent disability	1,29,600
6	Loss of amenities	20,000
	TOTAL	2,54,100

Out of the aforesaid compensation amount of Rs.2,54,100/-, 20% has to be deducted towards contributory negligence on the part of the claimant while crossing the road. If that is deducted, the claimant is entitled for a total compensation of Rs.2,03,280/- (80% of Rs.2,54,100/-).

Accordingly, both the Appeals are allowed in part. The judgment and award dated 25.10.2012 in MVC No.1955/2011 passed by the MACT, Court of Small Causes (SCCH-3), Bengaluru, is modified to the extent stated herein above. The claimant is entitled for total compensation of Rs.2,03,280/- with interest at 6% p.a. from the date of claim petition till the date of realization. The Insurance Company is directed to deposit the compensation amount together with interest within two months from the date of receipt of a copy of this judgment.

The Statutory deposit made in the appeal of the Insurance Company of the Indica car is ordered to be transferred to the Tribunal for disbursement in favour of the claimant in terms of the award of the Tribunal.

No order as to costs.

Sd/-
JUDGE

*bk/-