

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE MRS. JUSTICE S. SUJATHA

AND

THE HON'BLE MR. JUSTICE E.S. INDIRESH

MISCELLANEOUS FIRST APPEAL NO.6862 OF 2013 (MV)

Sri Ramachandranaiik
S/o Kuppaswamyanaik
Aged about 22 years
R/at Door No.6, Hosakerehalli
Veerabhadra Nagar
Ward No.54
Opp: To PES College
Bengaluru-560 085.

...Appellant

(By Smt. Suguna R Reddy, Advocate)

AND

1. Sri Harisubramanayamkatari
S/o K Venkataramaiah
Major in age
R/at Parikidona Village and post
Chowdepalli Mandalam
Chittor District
Andrapradesh – 517 257.
2. The Branch Manager
New India Assurance Co. Ltd.
Regional Office
Unity Building Annexe

Mission Road
Bengaluru-560 012.

...Respondents

(by Shri B K Chandrashekar, Advocate for R-1;
Shri A M Venkatesh, Advocate for R-2)

This Miscellaneous First Appeal is filed under Section 173(1) of Motor Vehicles Act, 1988 against the judgment and award dated 17th April, 2013 passed in MVC No.2059 of 2011 on the file of the IV Additional Judge, Member, MACT, Court of Small Causes, Bengaluru, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This Miscellaneous First appeal coming on for hearing, this day, INDIRESH J., delivered the following:

J U D G M E N T

This appeal is directed against the judgment and award dated 17th April, 2013 passed in MVC No.2059 of 2011 by the Motor Accident Claims Tribunal, Bangalore (for short, hereinafter referred to as 'the Tribunal').

2. For the sake of convenience, the parties in this appeal are referred to as per their rank before the Tribunal.

3. It is the case of the claimant, that on 24th December, 2010, he was riding motorcycle bearing registration No.KA-41-H-7386 from Ramapuram Thanda, Ramakuppam Mandalam, Kuppam, Chittoor Taluk, Andhra Pradesh to Palamner town at

about 5.00 pm near Kasturi Nagar on V.Kota road, a jeep bearing registration No.AP-03-U-7936 came from opposite direction, dashed to the motorcycle of the claimant and as a result of the said accident, the claimant as well as pillion sustained injuries. It is stated in the claim petition that he has spent Rs.5,00,000/- towards medicine and other expenses and he had taken treatment at PES Medical College Hospital, Kuppam and thereafter referred to Sparsh Hospital at Bangalore and he was inpatient for two days. He further submitted that infurtherence to the accident, FIR in Crime No.154 of 2010 came to be registered by V.Kota Police Station against the driver of the offending vehicle for the offences punishable under Section 337 and 279 of Indian Penal Code. Hence, the claimant filed claim petition before the Tribunal for the injuries sustained in the road traffic accident seeking compensation of Rs.45,00,000/- with cost and interest.

4. Pursuant to notice issued by the Tribunal, Respondent No.1-Owner of the offending vehicle did not appear before the Tribunal and accordingly, he was placed ex-parte. Respondent No.2-Insurance Company had appeared before the

Tribunal and filed detailed statement of objections contending that the averments made in the claim petition are false and baseless. It is the contention of the Insurance Company that though the Policy is in force as on the date of the accident, however, the same is subject to terms and conditions of the policy. The Insurance Company further stated that the claimant has also contributed towards the alleged accident and the liability is subject to the valid and effective driving licence of the driver of the offending vehicle. Based on the above pleadings, the Tribunal has framed issues for its consideration. The claimant was examined himself as PW1 and got marked documents as Exhibits P1 to P14. He also examined Doctor as PW3 to prove his disability and got marked Exhibits P16 and P17. He has also examined Shri Bhaskar Naik as PW4 to prove the employment and avocation and marked document Exhibit P8. The Insurance Company has tendered evidence through its officer as RW1 and marked Exhibits R1 to R8. The Tribunal, after considering the material on record, by its judgment and award dated 17th April, 2013 has allowed the claim petition and awarded the compensation of Rs.8,02,264/- with interest at 6%

per annum from the date of petition till the date of its realisation. Further, the Tribunal, having considered fact that the driver of the offending vehicle did not possess the valid and effective driving licence as on the date of accident, directed the Respondent No.1-Owner to deposit the amount and accordingly exonerated the Insurance Company. Being aggrieved by the compensation awarded as inadequate, the claimant has filed the instant appeal seeking enhancement of compensation.

5. We have heard Smt. Suguna R. Reddy, learned counsel for the claimant; Shri B.K. Chandra shekar, learned counsel appearing for respondent No.1-Owner; and Shri A.M. Venkatesh, learned counsel appearing for the respondent No.2-Insurance Company.

6. It is the submission of Smt. Suguna R. Reddy, learned counsel appearing for the claimant that the claimant has sustained five fractures, however, the Tribunal has awarded lesser compensation of Rs.1,15,000/- towards pain and suffering. She also submitted that the compensation awarded by the Tribunal under other heads are also on lower side and require enhancement in this appeal. She further submitted that

the Tribunal had taken the age of the claimant as 27 despite the fact that the claimant was a student pursuing II year BAMS course and accordingly, she contended that the compensation be enhanced suitably.

7. Per contra, learned counsel appearing for the respondents contended that the award made by the Tribunal is just and proper and do not call for any interference in this appeal. Shri B.K. Chandreshekar, learned counsel appearing for the respondent No.1-Owner submitted that fastening of liability on respondent No.1 is without authority under law and accordingly, he sought for modification of the award with regard to fastening of liability on respondent No.1. Sri A.M. Venkatesh, learned counsel appearing for the respondent No.2-Insurance Company submitted that the award made by the Tribunal is on the higher side and the same do not call for any interference in this appeal. Accordingly, both the learned counsel sought to dismiss the appeal.

8. We have carefully examined the original records as well as the impugned judgment and award passed by the Tribunal. The perusal of Exhibit P1-FIR, Exhibit P5-Sketch and

Exhibit P6-Charge sheet would clearly establish the fact that the alleged accident was occurred on 24th December, 2010 due to negligence on the part of the driver of the offending vehicle jeep and as such the finding recorded by the Tribunal on issue No.1 is just and proper.

9. It is the case of the claimant that the Tribunal had directed the owner of the vehicle to pay the compensation on the ground that the driver of the jeep did not possess valid and effective driving licence as on the date of accident. In this regard, we have perused the reasons assigned by the Tribunal at paragraph 24 of the judgment. The perusal of documents and the evidence of RW1, would indicate that the vehicle involved in the accident is Light Motor Vehicle-Transport and the driver of the said vehicle ought to have possessed Driving Licence for LMV-Transport vehicle and as such, on examination of Exhibit R8 produced by the Insurance Company would indicate that the driver of the offending vehicle was not having valid and effective driving licence to drive a light motor vehicle-Transport and accordingly, the Tribunal has rightly fastened the liability on the owner of the offending vehicle in question. Though the said

finding recorded by the Tribunal is just and proper, however, in view of the law declared by the Hon'ble Supreme Court in the case of MUKUND DEWANGAN V. ORIENTAL INSURANCE COMPANY LIMITED reported in AIR 2017 SC 3668 the claimants are entitled for compensation from Respondent No.2-Insurance Company and thereafter, the Insurance Company shall recover the same from Respondent No.1-owner of the vehicle. Accordingly, having followed the doctrine evolved by the Hon'ble Supreme Court in the aforesaid case with respect to pay and recovery which is aptly applicable to the case on hand, we hold that the insurance company shall indemnify the owner of the offending vehicle and thereafter, recover the same.

10. Insofar as awarding compensation is concerned, it is seen that PW1-Claimant has sustained injuries as enumerated at Exhibit P4 and the perusal of Exhibits P7 and P8-Discharge summary issued by the hospitals would establish the fact that the claimant has sustained grievous injuries. In this regard, the claimant has adduced evidence through Doctor-PW3 and it was elicited during the evidence that the claimant has suffered disability at 25% to the whole body. However, the Tribunal,

considering the cross-examination of PW3, observed that the fractured injuries are properly united, and accordingly taken the disability at 10% to the whole body for the purpose of assessing compensation. Having considered the nature of injuries sustained by the claimant referred to in Exhibits P4 and P8 and also the evidence of Doctor-PW3, it is just and proper to take the disability at 20% to the whole body. Further, perusal of the documents would indicate that the claimant was pursuing second year BAMS at Sri Venkateshwara University, Tirupati, Andhra Pradesh and the age of the claimant as on the date of accident is 27. Hence, taking the income of the claimant at Rs.5,000/- per month, and applying multiplier 17, the compensation towards disability would be $\text{Rs.5,000/-} \times 12 \times 17 \times 20/100 = \text{Rs.2,04,000/-}$. The compensation awarded by the Tribunal at Rs.1,15,000/- towards pain and suffering; and Rs.6,11,764/- towards medical expenses is just and proper and do not require any modification in this appeal.

11. Having considered the fact that the injured-appellant has sustained five fractures and as such, the claimant is entitled for Rs.30,000/- towards loss of amenities. The Tribunal has

awarded Rs.10,000/- towards attendant, food and nourishment, however, the same is enhanced to Rs.15,000/-. Having considered the evidence of PW3-Doctor, no enhancement is made with regard to future medical expenses. In the result, the claimant is entitled for the compensation as follows:

Head	Amount (Rs.)
Towards disability	2,04,000.00
Towards Pain and suffering	1,15,000.00
Medical expenses	6,11,764.00
Food, nourishment and attendant charges	15,000.00
Loss of amenities	30,000.00
Total	9,75,764.00

12. In the result, we pass the following:

ORDER

1. Appeal is allowed in part;
2. The Judgment and Award dated 17th April, 2013 passed in MVC No.2059 of 2011 by the Tribunal is modified and the compensation is enhanced to Rs.9,75,764/- in lieu of Rs.8,02,264/- awarded by the Tribunal;

3. The compensation shall carry interest at the rate of 6% per annum from the date of petition till the date of deposit of the compensation;
4. The portion of the order of the Tribunal inasmuch as apportionment and disbursement, remains intact;
5. Respondent No.2-Insurance Company is directed to satisfy the award and recover the same from the respondent No.1 (Owner);
6. Registry to draw modified award accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Inn