

Karnataka High Court
Jayalakshmi vs M/S Transystem Logistics on 11 June, 2021
Author: H.P.Sandesh

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

M.F.A.NO.11468/2011 (MV)

C/W.

M.F.A.NO.11467/2011 (MV)

IN MFA NO.11468/2011:

BETWEEN:

JAYALAKSHMI
W/O SREEDHAR
AGED 49 YEARS
R/AT NO.737, 58TH CROSS
K.S.LAYOUT, 15 'F' LAST BUS STOP
BENGALURU-70.

... APPELLANT

(BY SRI R.CHANDRASHEKAR, ADVOCATE)

AND:

1. M/s. TRANSYSTEM LOGISTICS
INTERNATIONAL (P) LTD.,
NO.20, TOYATA TECHNO PARK
BIDADI INDUSTRIAL AREA
RAMANAGARAM TALUK (DISTRICT)
KARNATAKA-562 109

2. THE NEW INDIA ASSURANCE CO. LTD.,
NO.19/2, MAHALAKSHMI CHAMBERS
M.G.ROAD, BENGALURU-560 001
REP. BY ITS BRANCH MANAGER.

... RESPONDENTS

(BY SRI S.V.SUDHAKAR REDDY, ADVOCATE FOR R2;
VIDE COURT ORDER DATED 13.11.2013 NOTICE TO R1 IS
DISPENSED WITH)

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THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT

AGAINST THE JUDGMENT AND AWARD DATED 17.03.2010
PASSED IN MVC.NO.2351/2008 ON THE FILE OF VII
ADDITIONAL JUDGE, MEMBER MACT-3, COURT OF SMALL
CAUSES (SCCH-3), BENGALURU, PARTLY ALLOWING THE CLAIM
PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT
OF COMPENSATION.

IN MFA NO.11467/2011:

BETWEEN:

VENUGOPAL
W/O SRI C.SREEDHAR
AGED 24 YEARS
R/AT NO.737, 58TH CROSS
K.S.LAYOUT, 15 'F' LAST BUS STOP
BENGALURU-70. ... APPELLANT

(BY SRI R.CHANDRASHEKAR, ADVOCATE)

AND:

1. M/s. TRANSYSTEM LOGISTICS
INTERNATIONAL (P) LTD.,
NO.20, TOYATA TECHNO PARK,
BIDADI INDUSTRIAL AREA
RAMANAGARAM TALUK (DISTRICT)
KARNATAKA-562 109
2. THE NEW INDIA ASSURANCE CO. LTD.,
NO.19/2, MAHALAKSHMI CHAMBERS
M.G.ROAD, BENGALURU-560001
REP. BY ITS BRANCH MANAGER. ... RESPONDENTS

(BY SRI S.V.SUDHAKAR REDDY, ADVOCATE FOR R2)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT
AGAINST THE JUDGMENT AND AWARD DATED 17.03.2010
PASSED IN MVC.NO.2350/2008 ON THE FILE OF VII
ADDITIONAL JUDGE, MEMBER MACT-3, BENGALURU, PARTLY
ALLOWING THE CLAIM PETITION FOR COMPENSATION AND
SEEKING ENHANCEMENT OF COMPENSATION.

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THESE MFAs' COMING ON FOR ADMISSION THROUGH
'VIDEO CONFERENCE' THIS DAY, THE COURT DELIVERED THE
FOLLOWING:

JUDGMENT

Though these appeals are listed for admission today, with the consent of learned counsel appearing for both the parties, the same are taken up for final disposal.

2. These two appeals are filed by the appellants/claimants challenging the Judgment and Award dated 17.03.2010 passed in M.V.C.Nos.2350 & 2351/2008 on the file of Motor Accident Claims Tribunal, Bengaluru, Court of Small Causes (SCCH-3) ('the Tribunal' for short), questioning the quantum of compensation awarded by the Tribunal in both the appeals and apportioning 40% negligence on the appellant in MFA No.11467/2011.

3. The parties are referred to as per their original rankings before the Tribunal to avoid confusion and for the convenience of the Court.

4. The factual matrix of the case is that these claimants were proceeding on 11.03.2008 at about 1:00 p.m, on the motorcycle bearing registration No.KA-04-EK-9096 as rider and pillion rider respectively, near 15th Cross, J.P.Nagar Ring Road, Bengaluru, at that time, a Lorry bearing registration No.KA-02- C-9776 came with high speed in a rash and negligent manner and dashed against the claimants' vehicle. As a result, both of them fell down and sustained grievous injuries and suffered permanent disability.

5. The Insurance Company appeared through the Counsel and filed a detailed objection statement denying the averments made in the claim petitions contending that the liability subject to the terms and conditions of the policy and also denied the age, income and avocation of the claimants and so also denied the nature of injuries sustained by them. It is further contended that sketch of the accident reveals that the rider of the motorcycle was overtaken the lorry from its left hand side, in order to enter the 24th main road towards south-ward direction, in the process taking turn, he had hit the front portion of the Lorry in the middle of the road-junction and thereby the accident was occurred and no negligence on the part of the driver of the offending vehicle.

6. The claimants in order to substantiate their claim, they have examined themselves as P.W.1, respectively, and examined the Doctor as P.W.2 and got marked the documents as Exs.P1 to 10 in MVC No.2350/2008 and Exs.P1 to 12 in MVC No.2351/2008. The respondents have not examined any witnesses and they have not placed any documentary evidence before the Tribunal.

7. The Tribunal, after considering both oral and documentary evidence available on record, allowed the claim petitions of the petitioners in part granting compensation of Rs.84,015/- in MVC No.2350/2008 in respect of the rider and Rs.1,74,450/- in MVC No.2351/2008 in respect of the pillion rider with 6% interest per annum from the date of petition. The negligence of rider was taken as 40% and after deducting the same, an amount of Rs.84,015/- had been allowed in favour of the petitioner in MVC No.2350/2008. Hence, these two appeals are filed by the claimants questioning the quantum of compensation and also the negligence assessed at 40%.

8. The learned counsel appearing for the appellants would vehemently contend that the Tribunal has committed an error in considering Ex.P3-sketch and Ex.P5-IMV report. In the absence of any rebuttal evidence, the driver of the Lorry has not been examined. When there is no rebuttal evidence and the driver also has not been examined, the Tribunal ought not to have taken the negligence on the part of the rider of the motorcycle. The Tribunal committed an error in apportioning 40% negligence in respect of the rider of the motorcycle. Hence, it requires an interference of this Court.

9. The learned counsel for the appellants would vehemently contend that in both the claim petitions the Tribunal has committed an error in not awarding the just and reasonable compensation. Particularly, the income taken was on the lower side and the compensation awarded on all the heads also very meager. Hence, it requires an interference of this Court.

10. Per contra, learned counsel appearing for the second respondent/Insurance Company would vehemently contend that the Tribunal appreciated the documentary evidence of Exs.P3 and P5 and the claimants have not disputed the contents of Exs.P3 and P5 and the same have been admitted during the course of cross-examination. When the admission elicited from the mouth of the claimants even in the absence of the evidence of the driver of the offending vehicle, the Tribunal rightly assessed the negligence on the part of the driver to the extent of 40% and there is no any merit in the appeals.

11. Having heard the arguments of learned counsel appearing for the appellant in both the appeals and learned counsel appearing for the second respondent-Insurance Company and on perusal of the grounds urged in the appeal and the materials available on record, the points that would arise for consideration of this Court are:

(i) Whether the Tribunal has committed an error in apportioning the negligence on the part of the rider of the motorcycle is 40% and whether it requires an interference of this Court?

(ii) Whether the Tribunal has committed an error in not awarding the just and reasonable compensation in both the claim petitions and whether it requires an interference of this Court?

(iii) What order?

Point No.(i) :

12. Having heard the respective counsel and on perusal of the material available on record, it is not in dispute with regard to the accident and only dispute is with regard to the negligence is concerned. The Tribunal has taken note of Exs.P3 and P5 i.e., sketch and IMV report. No doubt, in the cross-examination of P.W.1, he denies that he tried to overtake the lorry from its left hand side and took the motorcycle towards 24th main road. But, he has not denied the sketch - Ex.P3 and IMV report - Ex.P5. The Tribunal has taken note of Ex.P3, in which it clearly depicts that the claimant-rider was taking the motorcycle towards the 24th main road and the Lorry was proceeding in the straight direction and no doubt, the driver of the vehicle has not been examined. There is a force in the contention of the learned counsel for the claimants that in the absence of rebuttal evidence, the Tribunal ought not to have taken the negligence at 40% but the fact that Exs.P3 and P5 clearly disclose that though the claimants contend that the Lorry came behind and hit the rear portion of the motorcycle. It is rightly pointed out by the learned counsel appearing for the second respondent/Insurance Company that there are no damages to the rear portion of the motorcycle. It is also clear that the IMV report clearly discloses that the damages caused to the petrol tanker and

also the front portion of the motorcycle and the very damages indicate that while taking the right turn, the accident was taken place and the fact that the sketch also discloses that the motor cyclist went on the left side of the Lorry and an accident was taken place. However, taking into note of the material on record, particularly, Exs.P3 and P5, it is clear that the claimant-rider also contributed to the accident and also it is not in dispute that the driver of the Lorry also proceeding in the straight direction and the Insurance Company ought to have examined the driver of the Lorry to prove the negligence on the part of the claimant-rider and the same has not been done. But the apportionment made by the Tribunal to the extent of 40% on the part of the motor cyclist appears to be on higher side in the absence of the evidence of the driver of the Lorry. The Tribunal only inferred based on the sketch - Ex.P3, assessed 40% negligence. Hence, I am of the opinion that it requires to be modified to the extent of 25% as against 40% assessed by the Tribunal. Hence, I answered point No.(i) as 'partly affirmative' in coming to the conclusion of 25% and 75%.

Point No.(ii):

13. The claimant in MFA No.11468/2011 is the pillion rider and she claims that she was working as a Tailor. She has suffered disability to the extent of 32% and after deposed 15% to the whole body. The Tribunal while assessing the disability taken 10%. Having taken note of the nature of injuries she has suffered i.e., head injury, fracture to 3rd, 4th, 5th rib right side and fracture 4th, 5th, 6th rib left side. In total, there were 6 rib fractures. Apart from the fractures, she has suffered haemopneumothoran and the multiple abrasions of face. Hence, the Tribunal awarded an amount of Rs.40,000/- under the head of 'pain and sufferings'. Having taken note of these injuries, the Tribunal ought to have considered little higher side. Hence, Rs.50,000/- awarded under the head of 'pain and sufferings' as against Rs.40,000/- awarded by the Tribunal.

14. The records reveal that she was an inpatient for a period of 14 days and an amount of Rs.5,000/- was awarded under the head of 'incidental expenses like, food, conveyance, nourishment, attendant charges, etc.,' the same requires to be interfered with. This is the accident of the year 2008. Hence, it is appropriate to award an amount of Rs.10,000/- as against Rs.5,000/- awarded by the Tribunal.

15. The Tribunal has awarded compensation on other heads considering the materials available on record. The only interference required is regarding the income taken by the Tribunal. The notional income would be Rs.4,500/- in the year 2008 and the Tribunal has taken the income of Rs.3,000/-. Having taken the monthly income of Rs.4,500/-, applying the multiplier 14 and considering the disability of 10%, it comes to Rs.75,600/- ($4500 \times 12 \times 14 \times 10 / 100$) towards 'loss of future income'.

16. The very contention of the learned counsel for the appellants is that the Tribunal has committed an error in taking the disability of 10% and the said submission cannot be accepted. The Doctor, who has been examined, has assessed the disability at 32% and the whole body disability at 15% and the same has been on the higher side and taken note of half of the disability considering the whole body disability.

17. The Tribunal has awarded an amount of Rs.9,000/- towards 'loss of income during the laid up period'. The injured has suffered several fractures and it requires minimum four months rest to

re-unite the fractures. Hence, it is appropriate to award an amount of Rs.18,000/- (4500x4) as against Rs.9,000/- awarded by the Tribunal.

18. On other heads, the reasonable compensation has been awarded and it does not require any interference of this Court.

19. With regard to the interest portion is concerned, this Court vide order dated 26.11.2013, while condoning the delay of 443 days in filing the appeal passed an order that the appellant would not be entitled for any interest for the delayed period of 443 days, in case of enhancement of compensation. Hence, the appellant is not entitled for any interest for the delayed period of 443 days in filing the appeal.

20. In the circumstances, the appellant/claimant is entitled for an enhanced compensation of Rs.2,24,100/- as against Rs.1,74,450/- awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till its deposit excluding the interest for a period of 443 days in filing the appeal.

21. The appellant/claimant in MFA No.11467/2011 is the rider of the motor cycle. The learned counsel appearing for the appellant would vehemently contend that the Tribunal has committed an error in taking the income of Rs.3,000/- per month and the notional income would be Rs.4,500/- in the year 2008, applying the multiplier 12 and considering the disability of 8%, it comes to Rs.77,760/- (4500x12x18x8/100) towards 'loss of future income'.

22. The Tribunal has awarded an amount of Rs.12,000/- towards 'loss of income during the laid up period'. The injured has suffered several injuries and it requires minimum three months rest. Hence, it is appropriate to award an amount of Rs.13,500/- (4500x3) as against Rs.12,000/- awarded by the Tribunal.

23. On other heads, the reasonable compensation has been awarded and it does not require any interference of this Court.

24. With regard to the interest portion is concerned, this Court vide order dated 11.06.2021, while condoning the delay of 444 days in filing the appeal passed an order that the appellant would not be entitled for any interest for the delayed period of 444 days, in case of enhancement of compensation. Hence, the appellant is not entitled for any interest for the delayed period of 444 days in filing the appeal.

25. In the circumstances, this Court comes to the conclusion that there is negligence on the part of the rider/claimant. Hence, out of the total compensation of Rs.1,50,150/-, 25% has to be deducted towards negligence, it comes to Rs.1,12,620/-. In all, the appellant/claimant is entitled for an enhanced compensation of Rs.1,12,620/- as against Rs.84,015/- awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till its deposit excluding the interest for a period of 444 days in filing the appeal.

26. In view of the discussions made above, I pass the following:

ORDER

(i) The appeals are allowed in part.

(ii) The Judgment and Award dated 17.03.2010 passed in M.V.C.Nos.2350 & 2351/2008 on the file of Motor Accident Claims Tribunal, Bengaluru, is modified granting compensation of Rs.2,24,100/- as against Rs.1,74,450/- excluding the interest for a period of 443 days in filing the appeal in MFA No.11468/2011 and Rs.1,12,620/- as against Rs.84,015/- excluding the interest for a period of 444 days in filing the appeal in MFA No.11467/2011, respectively, awarded by the Tribunal with interest at the rate of 6% per annum from the date of petition till its deposit.

(iii) The respondent No.2/Insurance Company is directed to deposit the amount within six weeks from today in both the appeals.

(iv) The Registry is directed to transmit the records to the concerned Tribunal, forthwith.

Sd/-
JUDGE

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