NC: 2023:KHC-K:5557
MFA No. 200307 of 2018
C/W MFA No. 200141 of 2018

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

MISCL. FIRST APPEAL NO. 200307 OF 2018 (MV-I)
C/W
MISCL. FIRST APPEAL NO. 200141 OF 2018 (MV-I)

IN MFA NO.200307/2018

BETWEEN:

KOBANNA
S/O SIDRAMAPPA SUTAR
AGE: 40 YEARS
OCC: EX-CENTERING LABOUR,
R/O DONGARGAON,
TQ. & DIST. KALABURAGI

...APPELLANT

(BY SRI SHARANABASAPPA K. BABSHETTY, ADVOCATE)

AND:

THE MANAGER,
KARNATAKA BANK LIMITED
SUPER MARKET
KALABURAGI-585101

...RESPONDENT

(BY SRI UDAY P. HONGUNTIKAR, ADVOCATE)

Digitally signed by SHYAMALA
Location: HIGH COURT OF KARNATAKA

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO MODIFY THE JUDGMENT AND AWARD DATED 07.09.2017, PASSED BY THE PRL. SENIOR CIVIL JUDGE AND M.A.C.T. AT KALABURAGI, IN MVC NO.655/2013 AND ENHANCE THE COMPENSATION AMOUNT AS CLAIMED BY THE APPELLANT.

IN MFA NO.200141/2018

BETWEEN:

KARNATAKA BANK LIMITED
SUPER MARKET
KALABURAGI-585103
THROUGH ITS MANAGER

…APPELLANT

(BY SRI UDAY P. HONGUNTIKAR, ADVOCATE)

AND:

KOBANNA
S/O SIDRAMAPPA SUTAR
AGE: 40 YEARS
OCC: EX- CENTRING LABOUR,
R/O DONGARGAON VILLAGE
TQ. & DIST. KALABURAGI-585103

…RESPONDENT

(BY SRI SHARANABASAPPA K BABSHETTY, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 173(1) OF MV ACT, PRAYING TO SET ASIDE THE JUDGMENT AND AWARD DATED 07.09.2017 PASSED BY THE PRL. SENIOR CIVIL JUDGE AND MACT AT KALABURAGI BY ALLOWING THE APPEAL.

THESE APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

MFA No.200307/2018 is filed by the claimant seeking enhancement of compensation awarded by the Principal Senior Civil Judge and MACT, Kalaburagi (henceforth referred to as 'Tribunal) in MVC No.655/2013 vide its judgment and award dated 07.09.2017.

2. MFA No.200141/2018 is filed by the erstwhile owner of the motorcycle bearing registration No.KA-32/L-4463 challenging the liability fastened on it to pay the compensation awarded by the Tribunal in the aforesaid claim petition.

3. The claimant suffered injuries in a road accident on 22.11.2012 when a motorcycle bearing registration No.KA-32/L-4463 (henceforth referred to as referred to as 'offending motorcycle') ridden in a rash and negligent manner dashed against him. The claimant suffered injuries on the left leg and was shifted to Kamareddy Ortho and Trauma Care Hospital, Gulbarga, where he was treated from 22.11.2012 to 30.11.2012. The claimant underwent a surgery for fixing the fracture. He claimed that he was 35 years old at the time of the accident and was earning Rs.15,000/- per month by doing scaffolding work. He contended that due to the fracture of the both bones of left leg, he could not scale height to lay scaffold and hence was disabled. Therefore, he filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation from the owner of the motorcycle as the vehicle was not duly insured.

4. The claim petition was contested by the owner who claimed that it had sold the offending motorcycle to a person named Mr. Arunkumar on 01.03.2009 and a sale letter was issued to him and concerned documents such as Form Nos.29, 30 and 36, R.C. Book and copies of insurance policy were handed over to him. It contended that it was not liable in any way and that the true owner of the vehicle was Mr. Arunkumar and therefore, contended that it was not liable to indemnify the claim.

5. Based on these rival contentions, the claim petition was set down for trial. The claimant was examined as PW.1 and he marked documents as Exs.P1 to P14. He examined a doctor as PW.2, who deposed that the claimant had suffered fracture of both bones of left leg and that he was treated by CRIF with IL Nail for fracture of tibia and fibula. He claimed that the fractures were not united and that there was shortening of the right leg by 3 cm. He claimed that the claimant had suffered disability of 50% to the lower limb and 30% to 35% to the whole body. The owner examined one of its officials as RW.1 and marked Exs.D1 to D5.

6. Based on the oral and documentary evidence, the Tribunal held that the accident was due to the rash and negligent riding of the offending motorcycle by its rider. It further held that the claimant had suffered disability to the extent of 10% to the whole body and considered the age of the claimant as 35 years and his notional income at a sum of Rs.6,000/- per month and awarded the following compensation:-

Sl. No.	**Particulars**	**Amount (in Rs.)**
1	Towards pain and suffering	1,00,000/-
2	Towards loss of amenities and enjoyment of life	10,000/-
3	Towards loss of future income	1,15,200/-
4	Towards medical expenses	54,161/-
5	Towards attendant's charges, food, nourishment and conveyance expenses	4,000/-
6	Towards loss of income during period of treatment	18,000/-
	Total	**3,01,361/-**

7. In so far as liability to pay the compensation is concerned, the Tribunal held that the registration certificate of the offending motorcycle indicated that it was the respondent who was the owner of the offending motorcycle as on the date of the accident and therefore, it held that the respondent was

liable to pay the compensation along with interest at the rate of 6% per annum from the date of the claim petition till the date of realization

8. Being aggrieved by the quantum of compensation awarded, the claimant has filed MFA No.200307/2018, while the erstwhile owner of the offending motorcycle also filed MFA No.200141/2018 challenging the liability fixed on it.

9. The learned counsel for the claimant contended that the claimant had suffered fracture of both bones of the left leg and also shortening of right leg by 3 cm as per the disability certificate at Ex.P11 and the evidence of PW.2. He further submitted that the Tribunal ought to have considered the notional income of the claimant at Rs.6,500/- per month instead of Rs.6,000/- per month. He also submitted that the compensation awarded under the other heads deserves to be enhanced.

10. The learned counsel for the owner contended that the offending motorcycle was financed by the owner under a hire purchase scheme and since the hirer failed to pay the installments, the motorcycle was put up for auction and the

vehicle was sold on 01.03.2008 to a person named Mr. Arunkumar. He contended that corresponding forms for transfer of the registration certificate were handed over to Mr.Arunkumar along with R.C. Book and insurance policy and the physical possession of the vehicle was also handed over to him. He therefore, contend that the said Mr.Arunkumar is the owner of the motorcycle and therefore, he is answerable for the claim.

11. I have considered the submissions made by the learned counsel for the claimant and the learned counsel for the owner.

12. The accident involving the motorcycle and the consequent injury suffered by the claimant is not much in dispute. The medical records namely, the case sheet of the claimant issued by the Kamareddy Ortho and Trauma Care Hospital, Kalaburagi indicates that the claimant had suffered fracture of both bones of the left leg and that he underwent surgery with IMIH nail on 25.11.2012. Except this, there is no indication that the claimant had suffered shortening of the left or right leg by 3 cm. Be that as it may, in view of the fact that

the claimant was a scaffolding worker, fracture of both bones of leg must have left him temporarily disabled. Having regard to the age of the claimant, some amount of functional disability cannot be ruled out in view of the avocation of the claimant and therefore, this Court considers it appropriate to enhance the disability suffered by the claimant to 12% to the whole body. As rightly contended by the learned counsel for the claimant, the notional income of the claimant ought to have been considered at Rs.6,500/- per month.

13. Consequently, the claimant is entitled to enhanced compensation which is re-determined as follows:-

Sl. No.	**Particulars**	**Amount (in Rs.)**
1	Pain and suffering	50,000/-
2	Loss of amenities	40,000/-
3	Loss of income during the period of treatment for 3 months	19,500/-
4	Medical expenses	54,161/-
5	Attendant charges, transportation charges, food and nourishment charges	15,000/-
6	Loss of income due to disability	1,49,760/-
	Total	**3,28,421/-**

14. In so far as liability to pay the compensation is concerned, the offending motorcycle stood in the name of the Karnataka Bank Limited/appellant in MFA No.200141/2018. Though Karnataka Bank Limited claimed that the offending motorcycle was transferred, no evidence was produced before the Court to establish that the motorcycle was indeed transferred to a person named Mr. Arunkumar. The documents produced at Exs.D1 to D5 merely indicate that the offending vehicle was put up for sale in an auction. However, till the registration certificate of the motorcycle stands in the name of Karnataka Bank Limited, it cannot avoid liability to pay the compensation awarded by the Tribunal and re-determined by this Court.

15. In view of the above, the appeal filed by the claimant in MFA No.200307/2018 is ***allowed in part.*** The compensation of Rs.3,01,361/- awarded by the Tribunal is enhanced to a sum of Rs.3,28,421/-, which is payable by the owner - Karnataka Bank Limited along with interest at the rate of 6% per annum from the date of claim petition till the date of realization.

16. The appeal filed by the owner - Karnataka Bank Limited in MFA No.200141/2018 is ***dismissed.*** The amount in deposit is ordered to be transferred to the Tribunal for necessary orders.

17. The compensation amount along with interest shall be deposited by the owner - Karnataka Bank Limited before the Tribunal within a period of one month from the date of receipt of certified copy of this Judgment.

18. Upon deposit, 50% of the compensation and interest shall be deposited in the name of the claimant in any nationalized Bank for a period of three years.

19. Before parting from the case, it is seen that PW.2 has furnished a disability certificate based on medical records, indicating therein that the claimant had suffered shortening of limb by 3 c.m. However, the case sheet maintained at Kamareddy Ortho and Trauma Care Hospital, Kalaburagi does not indicate any shortening of the right or left leg. It is thus prima facie evident that PW.2 had given a false disability certificate.

20. In view of the above, the Karnataka Medical Council Board is directed to initiate appropriate action against the Dr.Ramakant Kulkarni, who is the Consulting Orthopedic Surgeon at Kalaburagi who has issued the disability certificate.

21. The Registry is directed to forward a copy of this judgment to the Karnataka Medical Council Board along with case sheet issued by the Kamareddy Ortho and Trauma Care Hospital, Kalaburagi and the disability certificate issued by PW.2 - Dr.Ramakant Kulkarni for suitable action.

Sd/-
JUDGE

PMR/SRT