

Pikani Bai vs The Managing Director on 22 March, 2022

Author: Pradeep Singh Yerur

Bench: Pradeep Singh Yerur

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR.JUSTICE PRADEEP SINGH YERUR

M.F.A. NO. 182 OF 2019 (MV)

BETWEEN:

PIKANI BAI
W/O SHIUVA NAIKA
NOW AGED ABOUT 57 YEARS
R/O ADIVALA FARM VILLAGE
HIRIYUR TALUK
CHITRADURGA DISTRICT - 577 599.

... APPELLANT

(BY SRI N R RANGE GOWDA, ADVOCATE)

AND

1. THE MANAGING DIRECTOR
KSRTC R/O SHANTI NAGAR
BANGALORE - 560 027.
2. THE CHAIRMAN, INTERNAL INSURANCE FUND
K.S.R.T.C R/O DOUBLE ROAD
SHANTHI NAGAR, BANGALORE - 560 027.
3. DIVISIONAL CONTROLLER, KSRTC
VIJAYAPURA DIVISION
INDI DEPOT.

... RESPONDENTS

(BY SRI. B L SANJEEV, ADVOCATE)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST
THE JUDGMENT AND AWARD DATED 21.04.2018 PASSED
IN MVC NO.941/2016 ON THE FILE OF THE SENIOR CIVIL

JUDGE & ADDITIONAL MACT, HIRIYUR PARTLY ALLOWING

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THE CLAIM PETITION FOR COMPENSATION AND SEEKING
ENHANCEMENT OF COMPENSATION.

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

JUDGMENT

The claimant has filed this appeal seeking enhancement of compensation being aggrieved by the impugned Judgment and Award dated 21.04.2018 in MVC No.941/2016 passed by the Senior Civil Judge & JMFC, Hiriyyur (hereinafter referred to as "Tribunal"). This appeal is founded on premises of inadequacy of compensation.

2. On 24.06.2015 at 6.30 p.m., while the claimant was walking on the left side of the road, in front of Muthuswamy Gownner's House at Adhivala farm on NH-4 road, at that time, the KSRTC bus bearing registration No.KA-28-F-2024 came in a high speed in a rash and negligent manner so as to endanger human life and safety dashed against the claimant. As a result of which, the claimant fell down and sustained injuries on her face, leg and chest. Immediately, she was shifted to Government hospital, Hiriyyur and thereafter she was referred to District Hospital, Chitradurga, It is stated that claimant was inpatient for almost a month from 24.06.2015 to 24.07.2015. It is further stated that claimant sustained fractures of 7th and 8th ribs of the left side of chest and was advised to take bed rest for a period of 6 months. Due to accident, the claimant had to suffer finance expenditure, which has been spent for her treatment and towards other expenditures. Accordingly, she filed claim petition seeking compensation from the respondents.

3. On notice being issued, respondents filed statement of objections and pleaded that the bus driver was not negligent in occurrence of the accident and the accident was caused due to negligence of the claimant. Inter alia denied all other contentions made by the claimant. On the basis of the pleadings, the Tribunal has framed the following issues for consideration :-

"1. Whether the petitioner proves that, she sustained injuries due to the actionable negligence of the driver of K.S.R.T.C bus bearing No.KA-28-F-2024 who drove it in a rash and negligent manner with high speed, in front of Muthuswamy Gownner House on NH-4 road on 24.06.2015 at 6.30 p.m.?

2. Whether the petitioner is entitled for the compensation? If so at what quantum and from whom?

3. What order or decree?"

4. In order to substantiate her case, the claimant examined herself as PW.1 and got marked as Exs.P.1 to P.7. On the other hand, respondents examined one witness as RW.1. However, did not produce any documents in support of their case.

5. On the basis of the pleadings, material evidence both oral and documentary, the Tribunal awarded compensation of Rs.45,000/- along with 7.5% interest per annum from the date of the filing of petition till the date of realization. Being dissatisfied with the meager amount of compensation awarded by the Tribunal, the appellant/claimant is before this Court seeking enhancement of compensation.

6. It is the contention of the learned counsel appearing for the claimant that the Tribunal has erred in awarding meager compensation and has not taken into consideration the material evidence both oral and documentary and has thereby committed an error causing miscarriage of justice to the claimant. He further contends that the Tribunal has awarded compensation, which is not commensurate with the injuries sustained by the claimant and on the other heads also, the Tribunal has awarded very less compensation, which requires enhancement of compensation at the hands of this Court.

7. It is further contended by the learned counsel for the appellant/claimant that the Tribunal has failed to award any compensation for 'Loss of income during the laid up period' without taking into consideration the claimant having suffered fractures to left rib. On these grounds, learned counsel seeks to allow the appeal and enhance the compensation.

8. Per contra, learned counsel Sri B L Sanjeev appearing for respondent/insurer vehemently contends that the compensation awarded by the Tribunal is just and reasonable and does not warrant interference. He further contends that claimant has not produced any material evidence regarding proof of income. Accordingly, the Tribunal has taken into consideration these material facts while awarding compensation and has awarded just and reasonable compensation, which does not call for interference by this Court.

9. Learned counsel further contends that the pleadings of the claimant is that she was inpatient for a period of 30 days whereas Ex.P7 - discharge card which is produced differs from the pleadings and however, Ex.P.7 is not authentic document as there is no seal and signature of issuing authority. He further contends that judgment and award passed by the Tribunal is just and reasonable and the same is commensurate to the injuries sustained by the claimant. Hence, appeal deserves to be dismissed and award of the Tribunal to be upheld.

10. Having heard the learned counsel for the appellant/claimant and learned counsel for respondents/insurer, the point that arise for consideration is:

"Whether the Tribunal has awarded just and reasonable compensation in the facts and circumstances of the present case, commensurate to the injuries sustained by the claimant ? "

11. It is not in dispute that the claimant sustained injuries due to the accident caused by the driver of the KSRTC Bus bearing registration No.KA-28-F-2024, which came in rash and negligent manner and dashed against the claimant. Though this fact is disputed by the insurer/ respondents, the same is not corroborated in the evidence let by the respondents or in the cross-examination of PW.1. To substantiate this, the claimant has produced documents at Exs.P.1 to 6, which are all police records. These police records are not in dispute neither is it challenged by the respondents or the driver of the KSRTC bus before the concerned jurisdictional Court. The respondents have not produced any iota of documents or evidence to prove that the records produced by the police are false and that there is a challenge made against charge sheet, which has been laid by the investigating Agency. In view of there being no challenge to the criminal prosecution as against the driver of the KSRTC bus and there being no contra materials to disprove the case put forth by the claimant, it can be safely concluded that the driver of the KSRTC bus against whom the charge sheet is laid is responsible for rash and negligent driving leading to the accident, wherein the claimant sustained injuries.

12. Admittedly, claimant has not produced any materials to show proof of her income. It is pleaded that she was working as coolie and accordingly, it can be presumed that she is earning a sum of Rs.8,000/- per month. As per medical records produced by the claimant and the wound certificate, it would clearly reveal that the claimant has suffered four injuries out of which one is fractures of 7th and 8th rib of left side of the chest. As per the wound certificate, injury No.4 is grievous in nature. The Tribunal has awarded global compensation of Rs.25,000/- with regard to the injuries suffered by the claimant. I am in agreement with the learned counsel for the claimant that the compensation awarded is global compensation to the injuries is on the lower side and the same is not correct. Hence, requires enhancement for the reasons that the appellant/claimant was working as a coolie.

13. In a case on hand when there is no proof of income produced by the claimant, the Court will have to do guess work and to assess the same a standard procedure of legal services authority prescribed notional income chart for consideration of the income for computation of compensation. The accident having occurred in the year 2015, Rs.9,000/- is taken as notional income for the relevant year. Accordingly, Rs.9,000/- is taken as income for the claimant as she was a coolie. In the present case on hand, the claimant has not produced any disability certificate neither has examined treated doctor to show the disability and it is also not the case the claimant has suffered disability to her body, which would affect her future prospects of earning. Therefore, the compensation requires to be awarded under other heads. The claimant was admitted as inpatient for a period of almost 30 days in District Hospital, Chitradurga. However, learned counsel appearing for the insurance company contends that since the document produced at Ex.P7 is not an authenticated document and as there is no signature or seal of the concerned authority, the same cannot be considered now as no objection was raised by the claimant while marking the said document before the tribunal. Hence, the same will have to be taken and accepted on its evidentiary value.

14. In the case of motor accident claims, where the claimant/injured seeking compensation for the injuries sustained, what is required to be seen is preponderance of probabilities and not the proof beyond reasonable doubt as it is contemplated in criminal jurisprudence. Therefore, accepting the discharge summary at Ex.P.7 one month is taken as inpatient period, the claimant is entitled to attendant, food and nourishment, conveyance and transport charges at Rs.30,000/-, towards 'Loss

of income for the laid up period, the claimant would be entitled to Rs.27,000/- (she was admitted in the hospital for one month and since she has suffered fractures of rib and working as a coolie, she would not recover immediately to get back to work and hence she would require at least three months rest.

Rs.9,000/-x3=Rs.27,000/-.

15. Towards 'pain and sufferings' Tribunal has awarded Rs.10,000/-. I find that it is on lower side. Hence, I deem it necessary to enhance the same at Rs.25,000/- as against Rs.10,000/- awarded by the Tribunal. The Tribunal has not awarded any amount towards 'Loss of amenities'. Hence, I deem it appropriate to award Rs.25,000/- towards 'Loss of amenities' to the claimant. Hence, the appellant/claimant is entitled for enhanced compensation of Rs.1,07,000/- as follows:

| Heads | By Tribunal | By this Court |
|--|-------------|---------------|
| Pain and Suffering | Rs.10,000/- | Rs.25,000/- |
| Attendant, food and nourishment and conveyance and transport | Rs.10,000/- | Rs.30,000/- |
| Medical expenses | Rs.25,000/- | - |
| Loss of amenities | - | Rs.25,000/- |
| Loss of income during laid up period | - | Rs.27,000/- |
| Total | Rs.45,000/- | Rs.1,07,000/- |

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16. Thus, the claimants are entitled for enhanced compensation of Rs.1,07,000/- as against Rs.45,000/- awarded by the Tribunal together with interest at 6% per annum and therefore the point raised above is answered accordingly. Hence, the following order is passed :ORDER:

Appeal is allowed in part.

The claimant is entitled for enhanced compensation of Rs.1,07,000/-.

All other terms and conditions stipulated by the Tribunal is stand intact.

The respondents/Insurer shall make enhanced compensation at 6% per annum from the date of the petition within a period of six weeks from the date of receipt of certified copy of this order.

It is needless to mention that if the part amount is already paid by the respondent/insurer, the same shall be deducted while paying remaining balance amount.

Sd/-

JUDGE nms