

The Divisional Manager Vs. Akash And Anr

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Court : Karnataka Kalaburagi

Decided On : Nov-04-2020

Judge : S.Sunil Dutt Yadav and P.Krishna Bhat

Appeal No. : MFA 202337/2018

Appellant : The Divisional Manager

Respondent : Akash And Anr

Judgement :

1 IN THE HIGH COURT OF KARNATAKA R KALABURAGI BENCH DATED THIS THE4H DAY OF NOVEMBER 2020 PRESENT THE HONBLE MR. JUSTICE S.SUNIL DUTT YADAV AND THE HONBLE MR. JUSTICE P. KRISHNA BHAT MISCELLANEOUS FIRST APPEAL NO.202337/2018 (MV) C/W MISCELLANEOUS FIRST APPEAL NO.201066/2018 (MV) M.F.A.No.202337/2018 Between: The Divisional Manager, National Insurance Company Limited, Through its authorized signatory, Opp: Mini Vidhana Soudha, Kalaburagi-585102. Appellant (By Smt. Bhadrashetty Sangeeta, Advocate) And:

1. Akash S/o Vijaykumar Inamadar, Age:

18. years, Occ: Student now nil, R/o H.No.MIG-22, KHB Colony, Behind District Court, Kalaburagi, Pin Code-585101, Now at Bhagodi village, Tq: Chittapur, 2 Dist: Kalaburagi Pin Code-585239.

2. Dr. Sameer Ahmed S/o Muneer Ahmed, Age: major, Occ: Medical Practitioner and Owner of Car bearing Reg.No.KA-32/M-9624, R/o H.No.1-949/21B, Shahabaaz Colony Old Jewargi Road, Dist. Kalaburagi, Pin Code-585102. Respondents (Sri Sanjeev Patil, Advocate for R1; Sri Shivashankar H. Manur, Advocate for R2) This Miscellaneous First Appeal is filed under Section 173 (1) of the Motor Vehicle Act, 1988, praying to allow this appeal by setting aside the impugned Judgment and Award in MVC No.92/2016 dated 05.04.2018, passed by the Senior Civil Judge and Motor Accident Claims Tribunal at Chittapur. M.F.A.No.201066/2018 Between: Akash S/o Vijaykumar Inamdar, Age:

18. years, Occ: Student, Now nil R/o H.No.MIG-22, KHB Colony, Behind District Court, Kalaburagi, now at Bhagodi village, Tq: Chittapur, Dist: Kalaburagi. Appellant (By Sri Sanjeev Patil, Advocate) And:

1. Dr. Sameer Ahmed S/o Muneer Ahmed, Age: major, Occ: Medical Practitioner and 3 Owner of Maruti Alto Car bearing Reg.No.KA-32/M-9624, R/o H.No.1-949/21B, Shahabaaz Colony Old Jewargi Road, Dist. Kalaburagi, Pin Code-585102.

2. The Divisional Manager, National Insurance Co. Ltd. Divisional Office, Opp: Mini Vidhana Soudha, Kalaburagi-585102. Respondents (Sri Bapugouda Siddappa, Advocate for R1; Smt. Sangeeta Bhadrashetty, Advocate for R2) This Miscellaneous First Appeal is filed under Section 173 (1) of the Motor Vehicle Act, 1988, praying to call for records and modify the judgment and award dated 05.04.2018 passed by the learned Senior Civil Judge and MACT at Chittapur in M.V.C.No.92/2015, by enhancing the compensation amount to Rs.15,08,000/- and also enhance the interest payable by the respondents on the compensation amount and further allow this appeal. These appeals coming on for further hearing, this day, P. Krishna Bhat J., delivered the following:

JUDGMENT

These appeals are by the Insurance Company as well as by the claimant, calling in question the correctness of the Judgment & Award dated 05.04.2018 4 in MVC No.92/2016 by the learned Senior Civil Judge & MACT, Chittapur.

2. The claim petition proceeded on the allegation that on 09.01.2015 at about 8.30 p.m. the claimant was riding a motor cycle bearing Reg.No.KA-32/EG-8808 in order to return to his house and while he was near Satya Hospital on Anand Hotel to Court Cross Main Road of Kalaburagi, a car bearing Reg.No.KA-32/M- 9624 driven by its driver in high speed came from the inner side of Satya Hospital in a rash & negligent manner and dashed to the motor cycle resulting in the claimant falling down to the road causing grievous injuries to him. The claim petition filed in this behalf was allowed in part by awarding a compensation of Rs.30,18,000/- with interest at 6% per annum from the date of petition till realization.

3. Learned counsel for the Insurance Company submitted in support of its appeal in MFA5No.202337/2018 that there was delay in the FIR which creates a suspicion about the involvement of the offending vehicle in causing the accident and, accordingly, Insurance Company has filed this appeal. However, pursuant to a direction issued by us, learned counsel for the Insurance Company has graciously filed a memo enclosing thereto Accident Intimation Letter dated 10.01.2015 submitted by the owner of the offending vehicle to the appellant - Insurance Company. Perusal of the said Accident Intimation Letter shows that the owner of the offending vehicle has in terms admitted the accident but he has given a slightly different version regarding the manner of happening of the accident. In that view of the matter, learned counsel for the Insurance Company further submits that the finding of the learned Tribunal that the driver of the offending vehicle was negligent in causing the accident is not supported by the evidence placed before the Tribunal. She further submits that learned 6 Tribunal has awarded excessive amount under the head of medical expenses and it is not borne out from the bills produced by the claimant.

4. Learned counsel for the claimant-appellant in MFA No.201066/2018 per contra submits that the charge sheet is filed against driver of the offending vehicle and therefore the finding of the learned Tribunal that the accident had resulted only on account of rash & negligent driving of the driver of the offending vehicle is based on legal evidence and it is not liable to be interfered with. It was his next submission that learned Tribunal has approached the question of computation of compensation in a conservative manner and even though PW-2 has estimated

total disability of the claimant at 72% of the whole body, the nature of the injuries suffered would put the functional disability of the claimant at 100% and therefore he would not be in a position to earn any income by taking up a gainful 7 employment. He also drew our attention to the decision of the Honble Supreme Court in the case of Kajal vs. Jagdish Chand & others reported in (2020) 4 SCC413 and contended that Honble Supreme Court while dealing with a similar case has given guidelines for assessing the compensation on various heads like expenses relating to treatment, hospitalization, medicines, transportation, etc., loss of earning, attendant charges, pain and suffering and loss of amenities, loss of marriage prospects, future medical treatment in cases where the victims of accidents are minors. He therefore submits that in a case of this nature, especially where the claimant has suffered serious injury to his kidney which requires him to be on dialysis and permacath and also when there is a very high degree of probability for the need to go for renal transplantation, the principles adopted by the Honble Supreme Court in Master Mallikarjun vs. Divisional Manager, the National Insurance Company Ltd. & 8 Anr. reported in (2014) 14 SCC396 should not be applied and guidelines given by the Honble Supreme Court in Kajals case should be followed in order to do complete justice in this case by awarding just compensation.

5. We have perused the records carefully. The evidence placed clearly shows that at the time of the accident the claimant who was a minor aged about 15 years was riding the motor cycle. But his age has little relevance insofar as the causing of the accident is concerned as the evidence clearly suggests that the driver of the offending car had come from an alley i.e. from the premises of Satya hospital in order to join the road in high speed and in the process he had dashed his car to the motor cycle resulting in very serious injuries to the claimant. The involvement of the offending vehicle in causing the accident is also corroborated by the Accident Intimation Letter 9 furnished by the owner of the offending vehicle to the Insurance Company (appellant) on the following day of the accident. In view of the evidence available on record and also the Accident Intimation Letter, we have no reason to disagree with the finding of the learned Tribunal that the accident was caused on account of the rash & negligent driving of the car by its driver and we affirm the same.

6. The claimant was aged about 15 years at the time of the accident. The voluminous case sheets produced from Global Hospital, Hyderabad and also the assessment of the bodily disability made by PW-2 and his evidence before the Tribunal point to certain aspects, namely, that the claimant had suffered renal thrombosis of both arteries of kidneys which has resulted in his being put on permacath, his need for periodical dialysis and a high degree of future prospect of his requiring renal transplantation. One more aspect 10 which needs to be taken note of is that on account of the injuries caused to the left hand, he is not able to hold any object firmly. The resultant picture emerging on account of the injuries suffered is the minor claimant will not be able to take up any gainful employment and the functional disability will be 100%, even though the medical assessment of his whole body disability made is 72%. Therefore, for the aforesaid reasons, we hold that claimant has suffered 100% functional disability. In arriving at this conclusion, we have kept in view the following observation of Honble Supreme Court of India, at para-14 of Jagdish vs. Mohan & Ors. reported in (2018) 4 SCC571 14. But the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are 11 not laws doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

7. The next important question that arises is what is the future loss of income suffered by the claimant?. In Kajals case Honble Supreme Court has, by following the notification issued by the State of Haryana, held that the notional income of the claimant should be taken at Rs.4,846/- per month. We adopt the same income for the claimant in this case as well. Honble Supreme Court has held that while calculating the future loss of income, loss of future prospects at 40% will also have to be added. The multiplier adopted by the Honble Supreme Court in Kajals case is 18 and therefore we feel persuaded to adopt the same multiplier in this case as well. Accordingly, loss of future income 12 with loss of future prospects superadded is $\text{Rs.}4,846 + 40\% = 6,787.40 \times 12 \times 18 = 14,65,430.40/-$.

8. Next important head of compensation is pain and suffering and loss of amenities. We have already noted that the claimant has suffered serious injuries to his kidneys and it has resulted in various health issues like lack of proper control over his bowel movements, bloating of the abdomen, indigestion, etc. He has to be permanently on permacath. He cannot hold objects by his left hand firmly. In that view of the matter, by following the guidelines given by the Honble Supreme Court in Kajals case, we deem it just to award a compensation of Rs.7,50,000/- under this head i.e. pain and suffering and loss of amenities. On account of the injuries suffered and dialysis required for his stable health, claimant will not be in a position to get married and enjoy the bliss of normal life. Therefore, we award 13 a sum of Rs.3,00,000/- under the head of loss of marriage prospects.

9. The medical evidence shows that claimant requires frequent dialysis and he may even require renal transplantation after sometime. Therefore, we quantify the compensation under the head of future medical expenses at Rs.5,00,000/-.

10. Since the claimant will have to attend hospital for his dialysis and other connected treatment periodically, during the entire duration of his life, some amount has to be awarded to take care of attendant expenses and conveyance charges throughout his life. We hold that awarding a sum of Rs.3,00,000/- will meet the ends of justice to take care of the claimants expenses towards attendant charges and conveyance expenses. 14

11. Learned Tribunal has awarded Rs.28,63,000/- under the head of medical expenses. Perusal of the comprehensive bill issued by Global Medical Hospital where the claimant had taken treatment shows that on behalf of the claimant a sum of Rs.25,90,000/- was paid to the hospital itself. Even though for the remaining amount of Rs.2,73,000/- supporting medical bills are not available, taking into consideration the nature of the treatment injured had taken in the hospital, it is just and proper to hold that the award made in a sum of Rs.28,63,000/- towards medical expenses is not unreasonable. Accordingly, we maintain the same. Thus, the total compensation comes to Rs.61,78,430/-. Learned Tribunal has awarded Rs.30,18,000/- by way of compensation. Therefore, the enhanced compensation to be awarded is Rs.31,60,430/-. It shall carry interest

at the rate of 6% per annum from the date of petition till the date of payment. Hence, the following:

15.

ORDER

The appeal filed by the Insurance Company in MFA No.202337/2018 is dismissed. The appeal filed by the claimant in MFA No.201066/2018 is allowed in part. In modification of the award dated 05.04.2018 in MVC No.92/2016 passed by the Senior Civil Judge & MACT, Chittapur, the compensation awarded is enhanced by Rs.31,60,430/- with interest thereon at 6% per annum from the date of petition till the date of payment. The amount in deposit shall be transmitted to the concerned MACT forthwith. Insurance Company shall deposit the award amount with interest thereon within a period of eight weeks from the date of receipt of certified copy of the judgment. 16 In view of disposal of the appeals on merits, I.A.No.2/2018 does not survive for consideration and it is disposed of. SD/- JUDGE SD/- JUDGE swk

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