(2015) 10 KAR CK 0049

In the Karnataka High Court

Case No : M.F.A. No. 5902 of 2014 (MV)

Abdul Khader — APPELLANT

Vs

The United India Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 10 KAR CK 0049

Hon'ble Judges : N.K. Patil and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : Sandhya Rao P., Advocate, for the Appellant; S.V. Hegde Mulkhand, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the injured claimant is directed against the impugned judgment and award dated 28th October 2013, passed in MVC No. 991/2011, by the Principal Senior Civil Judge and Member, Motor Accident Claims Tribunal, Mangalore, (for short, ''Tribunal'') for enhancement of compensation on the ground that, the compensation of Rs. 10,18,000/-, awarded in his favour as against his claim for Rs. 40,00,000/-, is inadequate.

2. The appellant claims to be aged about 50 years and working as a Cleaner, earning a sum of Rs. 8,000/- per month. He was hale and healthy prior to the date of accident. That at about 9:30 A.M., on 27-02-2011, when the appellant was standing behind the Lorry bearing Registration No. KA-19/A-4282, near a Saw Mill, on Laila-Koyyur Road, near Koyyur Cross, Koila village, Belthangady Taluk, the driver of the said Lorry drove the same negligently in the reverse direction from saw Mill towards road and dashed the same against the appellant and thereby caused the accident, causing grievous injuries to the appellant. Immediately, he was shifted to Damodar Hospital, Belthangady and thereafter shifted to Tehaswini Hospital, Mangalore and thereafter to Wenlock Hospital, Mangalore.

3. It is the case of the appellant that he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated adequately.

4. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 40.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 28th October 2013. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 10,18,000/- with interest at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned counsel for appellant and learned counsel for first respondent/Insurance Company for considerable length of time.

6. The submission of the learned counsel appearing for appellant, Shri Guruprasad, at the outset is that, the Tribunal has erred in not assessing the reasonable income of the appellant, for the reason that the appellant was aged about 50 years and working as a Cleaner in a Lorry, earning a sum of Rs. 8,000/- per month and the accident has occurred in the year 2011. Therefore, he submitted that the Tribunal ought to have assessed the income of the appellant atleast between Rs. 6,000/- to Rs. 8,000/- per month and awarded reasonable compensation on account of the grievous injuries and disability sustained by the appellant in the road traffic accident. He further submitted that, on account of the grievous injuries sustained, the appellant has undergone treatment for a period of 26 days as in-patient in different Hospitals and the Doctor, after looking at the nature of injuries sustained by the appellant, assessed the permanent functional disability at 100% towards whole body. The appellant has to pull on the life with the said disability for the rest of his life and he cannot do the work as he was doing earlier to the accident. On the advise of the Doctor, the appellant has taken follow-up treatment and on account of the permanent disability, the appellant has lost the future happiness, comforts and amenities in life. Further, it is stated that the appellant has to undergo one more operation and incur future medical expenses including incidental expenses throughout his life. All these aspects of the matter have not been taken into consideration by Tribunal, while computing compensation payable to the appellant. Hence, the impugned judgment and award passed by Tribunal is liable to be modified, by enhancing reasonable compensation under all the heads.

7. Further, learned counsel appearing for injured claimant/appellant vehemently submitted that the rate of interest awarded by Tribunal at 6% p.a. is also on the lower side as the accident has occurred on 27-02-2011 and in view of the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions, at

least 8% to 10% interest per annum may be awarded in the instant case, to meet the ends of justice and the impugned judgment and award be modified accordingly.

8. As against this, learned counsel appearing for first respondent/Insurer, inter alia, sought to substantiate the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and also after due consideration of the oral and documentary evidence available on file, nature of injuries sustained, nature and duration of treatment undergone and hence, interference in the same is unwarranted. However, he fairly submitted that rate of interest may be reasonably modified, in accordance with law.

9. After hearing learned counsel for the appellant, learned counsel appearing for first respondent/Insurer and after perusal of the judgment and award passed by Tribunal including the original records placed before us, the only point that arise for our consideration in this appeal is,

"Whether the quantum of compensation awarded by Tribunal is just and reasonable?"

10. After perusal of the entire material available on file, it can be seen that, occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 50 years and a Cleaner by profession. The Tribunal, after assessing the oral and documentary evidence available on file and having regard to the age, avocation, nature of injuries sustained, nature and duration of treatment undergone, medical expenses and also the disability sustained by appellant, has rightly awarded compensation of a sum of Rs. 1,10,000/- towards medical expenses, as per the medical bills and prescriptions, Rs. 2,00,000/- towards injury, pain and sufferings, Rs. 35,000/- towards conveyance, nourishing food and attendant charges including other incidental expenses and Rs. 1,20,000/- towards loss of amenities, discomfort and unhappiness on account of permanent disability. Hence, interference in the same is uncalled for.

11. However, so far as the compensation awarded under loss of future earnings and future medical expenses is concerned, the same is on the lower side and needs to be re-determined. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries such as tenderness over the back over the lumbar region, lacerated wound 5 x 2 c.m. over lower 1/3rd of left cut deformity, C-ray T-L spine, fracture of L-2 subluxation with paraplegia and fracture of left tibia and fibula. In spite of the best treatment, the appellant has lost ability to walk and sit independently and has become bedridden. After considering the nature of injuries sustained, the Tribunal, relying upon the oral evidence of the appellant and also his avocation, has assessed the whole body permanent disability at 100%. The same, in our opinion is just and proper and accepted, to meet the ends of justice. The appellant being aged about 50 years,

has to endure this disability for the rest of his life. Further, it is seen that the monthly income assessed by Tribunal at Rs. 4,000/- is on the lower side and having regard to the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 6,000/-, to meet the ends of justice. Further, it is stated that the appellant took treatment as in-patient for quite a long period on account of permanent physical disability. During this period, he must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Further, on account of the grievous injuries and permanent disability sustained, the appellant has to be under continuous medication through out his life. The appellant was aged about 50 years at the time of accident and therefore, the proper multiplier applicable is ''13'' as per the decision of the Hon''ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Therefore, having regard to the age, avocation, nature of injuries, disability, nature and duration of treatment undergone and the facts and circumstances of the case on hand, we award a sum of Rs. 2,00,000/- towards future medical expenses and Rs. 9,36,000/- (i.e. Rs. 6,000/- x 12 x ''13'' x 100%) towards loss of future income as against Rs. 5,28,000/- awarded by Tribunal.

12. Thus, the total compensation works out to Rs. 16,01,000/- as against Rs. 10,18,000/- awarded by Tribunal and there would be enhancement of compensation by a sum of Rs. 5,83,000/-.

13. Further, as rightly pointed out by learned counsel appearing for appellant, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 27-02-2011. Therefore, as per the ratio of law laid down by the Hon''ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 9% per annum, on the enhanced compensation.

14. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 28th October 2013, passed in MVC No. 991/2011, by the Principal Senior Civil Judge and Member, Motor Accident Claims Tribunal, Mangalore, is hereby modified, awarding a sum of Rs. 16,01,000/- as against Rs. 10,18,000/- awarded by Tribunal, with interest at 9% per annum on the enhanced sum, excluding interest on Rs. 2,00,000/- awarded towards future medical expenses, from the date of petition till the date of realization. The break-up is as follows:

There would be enhanced compensation of Rs. 5,83,000/- with 9% interest per annum, excluding interest on Rs. 2,00,000/- awarded towards future medical expenses.

The first respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 5,83,000/-, with interest thereon at 9% per annum, excluding interest on Rs. 2,00,000/- awarded towards future medical expenses, within four weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, a sum of Rs. 4,00,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of five years, renewable by another five years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum of Rs. 1,83,000/- with proportionate interest shall be released in favour of the appellant, immediately on deposit by the Insurer.

Office to draw award, accordingly.

