

(2013) 07 KAR CK 0104
In the Karnataka High Court
Case No : M.F.A. No. 11558 of 2011 (MV)

Abdul Saleem

APPELLANT

Vs

D.S. Lingappa Gowda and National Insurance Co., Ltd.

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0104

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : P. Karunakar, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 24th June 2010, passed in MVC No. 1466/2004, by the Member, Motor Accident Claims Tribunal, Puttur, D.K., (for short, "Tribunal") on the ground that the compensation awarded is on the lower side and is liable to be enhanced. Along with the appeal, learned counsel appearing for appellant has also filed I.A. 1/2011, seeking condonation of delay of 432 days in filing the Appeal.

2. The delay of 432 days in filing the appeal has been explained at paragraphs 4 and 5 of the affidavit filed in support of the application, I.A. 1/2011. In the said affidavit, it is stated that the impugned judgment is passed by the Court below on 24th June, 2010 and the certified copy was applied on 20th July, 2010 and the copy was ready on 3rd August 2010. Thereafter, at paragraph 5, it is stated that the Advocate advised the claimant that there is 432 days time to file the above appeal and that he was in deep financial crisis and after mobilizing the money from his friends and well wishers, he could prefer the above appeal. Therefore, he could not prefer the appeal well in time and he has stated that the said delay in filing the above appeal is not intentional, but the same is for aforesaid reasons and that if the delay in filing the above appeal is not condoned, he would be put to irreparable injury and hardship, but, on the other hand, no

hardship or injury would be caused to the other side, if the delay is condoned.

3. I have heard the learned counsel appearing for appellant and perused the statements made in the affidavit, accompanying the application, I.A. 1/2011.

4. After going through the statements made in the affidavit filed in support of the application, I am of the considered view that the inordinate delay of 432 days in filing the appeal has not been explained satisfactorily by assigning valid and cogent reasons. The explanation offered is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the delay of 432 days in filing the appeal. Whenever there is inordinate delay, the party is bound to explain each day's delay in filing the appeal by setting out the dates and events. Further, it can be seen that, at paragraph 5, it is stated that the Advocate advised the claimant that there is 432 days time to file the appeal. The said statement is totally baseless and cannot be sustained at all and it shows sheer non application of mind while drafting the delay application. Hence, in view of non explanation of inordinate delay in filing the appeal, in a proper manner, I am of the view that delay cannot be condoned nor the appellant has made out a good case to condone the delay. Hence, for the foregoing reasons, I.A. 1/2011 is dismissed as misconceived.

5. However, in the interest of justice and equity, I have gone through the impugned judgment and award passed by Tribunal. After perusal of the same, it is seen that as per Ex. P2, Wound Certificate, the appellant has sustained two injuries, out of which, one is grievous in nature and the other is simple. The Tribunal has awarded Rs. 17,000/- towards injury, pain and sufferings. The same is just and proper and does not call for interference.

6. Further, it can be seen that as per Ex. P23, there is permanent disability of 20% towards function of left lower limb and for whole body it is assessed at 7%. A sum of Rs. 45,360/- awarded under the head disability, taking the income of the appellant at Rs. 3,000/- per month is just and proper and it does not call for interference, as the accident is of the year 2003.

7. Further, having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal is justified in awarding compensation towards conveyance, nourishing food and attendant charges, loss of earning and also towards medical expenses. Hence, interference is not called for. Therefore, the appeal filed by appellant is liable to be dismissed. For the foregoing reasons, the appeal filed by appellant is dismissed both on the ground of delay and laches as also on merits.