

(2013) 12 KAR CK 0044
In the Karnataka High Court
Case No : M.F.A. No. 8886 of 2011 (MV)

Ali Imam

APPELLANT

Vs

The New India Assurance Co. Ltd. and Girish S.B.

RESPONDENT

Date of Decision : 17-12-2013

Acts Referred:

Citation : (2014) 2 AKR 125

Hon'ble Judges : N.K. Patil, J; Budihal R.B., J

Bench : Division Bench

Advocate : Vishwanath S. Shettar, for the Appellant; D.S. Sridhar, Advocate for R. 1, for the Respondent

Final Decision : Disposed Off

Judgement

N.K. Patil, J.—Though this matter is posted for orders, with the consent of the learned counsel appearing for both parties, the matter is taken up for final disposal. This appeal by the claimant is directed against the impugned judgment and award dated 17th June 2011, passed in MVC No. 3174/2009, by the XVIII Additional Judge, Court of Small Causes and Member MACT-4, Bangalore (SCCH-4), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 6,48,400/-, awarded in his favour as against his claim for Rs. 40,00,000/-, is inadequate.

2. The appellant claims to be aged about 38 years and working as Senior Merchandiser, earning a sum of Rs. 25,000/- per month. He was hale and healthy prior to the date of accident. That at about 1:30 P.M., on 25-07-2008, when the appellant was riding the Motor Cycle bearing Registration No. BR-1/L-1177 from M/s. Seams Fab India Private Limited on the left side of the road at that time, driver of the Maruthi Wagon-R Car bearing Registration No. KA-01/MA-7584 came from Bangalore towards Nelamangala with high speed and in a rash and negligent manner and dashed against the appellant, as a result of which, he sustained grievous injuries and took treatment in the Hospital and spent lot of money for treatment in the Hospital.

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 u/s 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 17th June, 2011. 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. 6,48,400/- 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. Vishwanath S. Shettar is that, the Tribunal grossly erred in not awarding reasonable compensation on account of the grievous injuries sustained in the road traffic, viz. amputation of left hand below elbow. He submitted that, the claimant was aged about 38 years working in a private Company, and drawing salary of Rs. 24,175/- per month as per Ex. P15. Further, he submitted that on account of the said injuries sustained, he was hospitalized for a period of 90 days and also underwent five surgeries. The Doctor, on clinical examination of the appellant has assessed the whole body disability at 70%. During the course of treatment, the appellant has spent huge sums of money towards conveyance, nourishing food and attendant charges and because of the amputation he could not attend to his job for a period of two months and on account of amputation of left hand below elbow and the nature of duties performed by the appellant, he has been discontinued from service as per Ex. P17. These aspects of the matter have not been looked into nor considered or appreciated by the Tribunal. Therefore, he submitted that reasonable enhancement may be made under all the heads and the impugned judgment and award passed by Tribunal is liable to be modified.

7. As against this, learned counsel appearing for first respondent/Insurer inter alia contended and substantiated the impugned judgment and award passed by tribunal, stating that the same is passed after due consideration of the oral and documentary evidence available on file and interference in the same is uncalled for. However, after careful perusal of Ex. P15 and also Bank statement of ICICI Bank for the relevant period, which shows that the appellant was getting salary of Rs. 24,175/- per month, he fairly submitted that the same may be considered in accordance with law and further he is quick to point out and substantiate that 30% whole body disability assessed by Tribunal is after due consideration of the

oral and documentary evidence available on file at paragraph 18 of its judgment and the same is strictly in consonance with the material on record and the Tribunal is justified in awarding just and reasonable compensation towards all the other heads and the impugned judgment and award passed by Tribunal may be modified in accordance with law.

8. 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?

After careful 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, on account of the grievous injuries sustained, the appellant has lost left fore arm. It is further not disputed that, he was aged about 38 years at the time of accident and working as Senior Merchandiser, drawing salary of Rs. 24,175/-. The said income is substantiated by the appellant by produced the Salary Certificates at Ex. P15 (in all, four in Number) and Bank statement extract issued by ICICI Bank, wherein it reveals that the appellant was regularly being credited with the said sum monthly. Further, as per Ex. P17, the appellant has been terminated from service on account of amputation of left hand below elbow considering the nature of duties performed by him in the Company.

9. The Tribunal, after assessing the oral and documentary evidence available on file and considering the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment undergone, disability assessed by Doctor and also the surgeries undergone including amputation of left hand below elbow, has rightly awarded compensation of a sum of Rs. 2,34,192/- towards medical expenses, as per the medical bills and prescriptions, Rs. 20,000/- towards future medical expenses and Rs. 50,000/- towards purchase of artificial limb. Hence, interference in the same is uncalled for.

10. However, so far as the compensation awarded under injury, pain and sufferings, loss of amenities, loss of future earnings, conveyance, nourishing food and attendant charges and loss of income during treatment period is concerned, the same is on the lower side and liable to be enhanced. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries such as comminuted fracture of left humerus, comminuted fracture of left radius and ulna, brachial artery injury left hand and crush injury on left forearm and other injuries. On account of the said injuries, his left fore arm is amputated. PW 2, Doctor has stated that the appellant has sustained 70% permanent disability towards whole body. But, the Tribunal, disbelieving the same and considering the nature of injuries sustained by appellant, has re-assessed the whole body

permanent disability at 30%. The same, in our opinion is just and proper and we accept the same, to meet the ends of justice. The appellant being aged about only 38 years, has to endure this disability for the rest of his life and cannot do his day-to-day activities in a normal manner and because of the amputation of left hand below elbow, he may have to depend on others for some activities. Because of the injuries sustained, he must have also been away from work for a period of not less than two months. Further, having regard to the age, avocation and the year accident coupled with the credible documentary evidence produced at Exs. P15 and P21, we re-assess the monthly income of the appellant at Rs. 24,175/-, 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 amputation of his left hand below elbow. 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. Since the appellant was aged about 38 years at the time of accident, the proper multiplier applicable is "15" 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 and duration of treatment undergone, amputation of left hand below elbow, nature of injuries, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 1,00,000/- towards injury, pain and suffering as against Rs. 60,000/-; Rs. 15,000/- towards conveyance, nourishing food and attendant charges as against Rs. 6,000/-; Rs. 48,350/- towards loss of income during treatment period, at the rate of Rs. 24,175/- per month for a period of two months; Rs. 80,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 40,000/-; and Rs. 13,05,450/- (i.e. Rs. 24,175/- x 12 x "15" x 30/100) towards loss of future income as against Rs. 2,30,400/- awarded by Tribunal. 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 17th June 2011, passed in MVC No. 3174/2009, by the XVIII Additional Judge, Court of Small Causes and Member MACT-4, Bangalore (SCCH-4), is hereby modified, awarding a sum of Rs. 18,52,992/- as against Rs. 6,48,400/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

The total compensation would workout to Rs. 18,52,992/- as against Rs. 6,48,400/-. The enhanced compensation would be Rs. 12,04,592/- with 6% interest per annum.

The first respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 12,04,592/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, a sum of Rs. 8,00,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of ten years, renewable

by another ten years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum of Rs. 4,04,592/- with proportionate interest shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.

In view of disposal of main matter on merits, I.A. No. 2/2013 filed for production of additional documents does not survive for consideration and is disposed of as having become infructuous.