
(2018) 02 KAR CK 0066
In the Karnataka High Court
Case No : 32201 of 2012

ANAVEERAI AH

APPELLANT

Vs

RIYAZULLAH KHAN & Anr

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0066

Hon'ble Judges : B. Sreenivase Gowda

Bench : Single Bench

Advocate : BABU.H.METTAGUDDA, MANJUNATH CHIDDALLI,
UDAY.P.HONGUNTIKAR

Judgement

1. The MFA.No.32201/2012 is filed by claimant seeking enhancement of compensation awarded by the Tribunal, whereas MFA.No.32194/2012

is filed by the Insurer of the offending vehicle seeking reduction of compensation awarded by the Tribunal.

2. As these two appeals have arisen out of a common judgment and award of the Tribunal with the consent of the learned counsels appearing for

the parties, they were heard together and disposed off by this common judgment. Perused the judgment and award passed by the Tribunal

including the records of the Tribunal.

3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident that occurred on 11.03.2011 due to rash and

negligent driving of a Lorry No.CNP.4650 by its driver and liability of the insurer of the said vehicle, only point remains for consideration in these

appeals are :

Whether compensation of Rs.25,90,000/- awarded by Tribunal with interest at

6% p.a. is just and reasonable or does it call for enhancement or reduction?

4. Sri.Babu.H.Metagudda, learned counsel appearing for claimant submits, on account of spinal cord complex and quadriplegia injuries sustained by the claimant, his movement in both the hands and legs are completely restricted and he is confined to bed and is depending upon an attainer for his day to day affairs. The Tribunal without considering this aspect of the matter has committed an error in considering the disability caused to whole body at 75% instead of 100% while computing loss of future income and awarding meager compensation of Rs.11,97,000/- towards loss of future income. The Tribunal has not awarded any compensation towards future attendant charges. Therefore, he prays for allowing the appeal preferred by the claimant by enhancing the compensation awarded by the Tribunal and dismissing the appeal preferred by the insurer of the offending vehicle.

5. Whereas Sri.Uday.P.Honguntikar, learned counsel appearing for the insurer of the offending vehicle submits, though claimant has failed to examine any Neurologist or Neuro Surgeon regarding percentage of disability suffered by him on account of spinal cord injury sustained by him the Tribunal has committed an error in taking the disability caused to the whole body at 75% on the evidence of PW.2 who is General Surgeon. He further submits that the income of claimant assessed by the Tribunal at Rs.9,500/- per month in the absence of proof of income is on the higher side, consequently Tribunal has committed an error in awarding Rs.11,97,000/- under the head of loss of future income. He further submits, the Tribunal in all has awarded Rs.5,00,000/- towards future medical expenses and attendance charges which is on the higher side. Therefore, he prays for allowing the appeal preferred by the Insurance Company by reducing the compensation awarded by the Tribunal.

6. As per Ex.P.6 wound certificate claimant had sustained following injuries; Posterior disc-osteophyte complexes at C4-C5 and C5-C6 cord compression with quadriplegia. Injuries sustained and treatment underwent by the claimant are also evident from discharge summaries produced at Ex.P.7 and Ex.P.8. Ex.P.7 Discharge Summary issued by Ganga Institute of Neuroscience and Trauma Care reveals that claimant was inpatient in

the said Hospital from 13.03.2011 to 02.04.2011. Injuries sustained by him were diagnosed as posterior disc-ostcophyte complexes at C4-C5

and C5-C6 cord compression with quadriplegia. PW.2 Dr.Rajendra Kothari, General Surgeon who issued Ex.P.21 disability certificate has

assessed the disability suffered by the claimant at 80% to the whole body. In his cross-examination he has deposed that he treated the claimant at

his nourishing home and also by visiting the house of the claimant along with medical equipment and has assessed the disability based on the

medical records of the claimant.

7. The spinal card injuries sustained by claimant at C4-C5 and C5-C6 are not in dispute. Though this Court has passed an order on 11.09.2015

stating that, it is open for the insurer to have the claimant examined by any Neurologist or Neurosurgeon working in any Government Hospitals at

their risk and costs, it was not done by the insurer on the ground that no Neurologist or Neuro Surgeon is available in Government Hospital. If it is

so, we have to presume that claimant had difficulty to examine any Neurologist or Neuro Surgeon that too when is not in a position to move out. In

the facts and circumstances of the case the Tribunal was justified in relying upon the disability assessed by PW.2 General Surgeon. Considering the

nature of injuries, evidence of PW.1 and PW.2, disability caused to whole body can be taken at 80% as stated by PW.2.

8. Considering the nature of the injuries sustained by the claimant it is just and proper to award a sum of Rs.2,50,000/- towards pain and suffering

as against Rs.3,00,000/- awarded by the Tribunal. As Rs.2,68,127/- awarded by the Tribunal towards medical expenses is based on the medical

bills produced by claimant, it is just and proper and there is no scope for either reduction or enhancement of said amount awarded under the head

of medical expenses. The claimant was treated as inpatient in a private nursing home about a month. Therefore, a sum of Rs.25,000/- is awarded

towards conveyance, nourishment and attendant charges. Considering the nature of the injuries sustained by the claimant, disability stated by

PW.2-Doctor and an amount of discomfort and unhappiness he has to undergo for the rest of his life a sum of Rs.2,50,000/- is awarded towards

loss of amenities as against Rs.2,00,000/- awarded by the Tribunal. Claimant is confined to bed as could be seen from the medical records. He

needs an attendant for his day to day activities. He requires treatment throughout his life. Therefore, it is just and proper to award a sum of

Rs.4,00,000/- towards future medical and attendant charges as against Rs.5,00,000/- awarded by Tribunal under different heads.

9. The fact that while Claimant transporting coconut from Davanager to Gulbarga in the offending vehicle, the vehicle met with accident and

Claimant sustained the aforesaid injuries itself goes to show that he was doing business in selling coconuts. But how much income he was earning

by doing the said business, no evidence is adduced. Therefore, considering his age as 43 years, year of accident as 2011 and his avocation as

business, his income can be easily assessed at Rs.8,000/- per month as against Rs.9,500/- per month assessed by the Tribunal.

10. Now the income of the claimant is assessed at Rs.8,000/- per month as against Rs.9,500/- per month assessed by the Tribunal. Multiplier

applicable to his age group is 14. Disability caused to the whole body can be easily taken at 80% as stated by PW.2 as against 75% taken by the

Tribunal and for the reasons stated above. If so loss of future income would workout at $Rs.8,000 \times 12 \times 14 \times 80 / 100 = 10,75,200/-$ and it is awarded.

In view of the awarding compensation towards loss of future income by taking 80% disability it is not just and proper to award compensation

towards loss of income during laid up period. Therefore, Rs.57,000/- awarded by the Tribunal towards loss of income during laid up period is

disallowed. As Rs.50,000/- awarded by the Tribunal towards value of coconut which lost at the time of accident is based the receipts produced

by the claimant for having purchased the coconut, it does not require either enhancement or reduction.

11. Thus, compensation awarded by the Tribunal is re-assessed as under : -

1Towards Pain and Suffering :Rs.02,50,000/-

2Medical Expenses :Rs.02,68,127/-

3Incidental expenses :Rs.00,25,000/-

4Towards loss of amenities in life :Rs.02,50,000/-

5Loss of future income :Rs.10,75,200/-

6Diet, Nourishment and and conveyance charges:Rs.04,00,000/-

7Loss of coconuts :Rs.00,50,000/-

Total :Rs.23,18,327/-

Thus, claimant is entitled to a total compensation of Rs.23,18,327/- with interest at 6% per annum from the date of claim petition till the date of realization as against Rs.25,90,000/- awarded by the Tribunal.

Accordingly, MFA.No.32194/2012 filed by the Insurance Company is allowed in part. The Judgment and award passed by the Tribunal is

modified. Claimant is entitled to a total compensation of Rs.23,18,327/- with interest at 6% P.A. from the date of claim petition till the date of realization as against Rs.25,90,000/- awarded by the Tribunal.

Insurance Company is directed to deposit the compensation amount of Rs.23,18,327/- with interest at 6% per annum from the date of claim petition till the date of realization after deducting the amount in any already deposited.

In view of allowing the appeal filed by the Insurance Company and reducing the compensation awarded by the Tribunal MFA.No.32201/2012

filed by the claimant for enhancement of compensation does not survive for consideration. Accordingly, it is rejected.

The amount in deposit of any is ordered to be transmitted to the Tribunal for disbursement in favour of the claimant in terms of the award of the

Tribunal. Deposit and release of the compensation amount shall be in terms of the award of the Tribunal. No order as to costs.