

(2014) 01 KAR CK 0149
In the Karnataka High Court
Case No : M.F.A. No. 10802 of 2011 (MV)

B. Shivaram

APPELLANT

Vs

N.B. Ramegowda, N.S. Nagaraju and The Divisional Manager,
Bajaj Allianz General Insurance Company Limited

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 01 KAR CK 0149

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

Bench : Division Bench

Advocate : P. Mahesha, for the Appellant; E.I. Sanmathi, Advocate for R3, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 2nd August 2011, passed in MVC No. 62/2010, by the Senior Civil Judge and Motor Accident Claims Tribunal, Nanjanagudu, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 4,99,120/-, awarded in his favour as against his claim for Rs. 46,00,000/-, is inadequate. The appellant claims to be aged about 48 years and an RTO Agent. He was hale and healthy prior to the date of accident. That at about 3:30 P.M., on 14-03-2010, when the appellant was traveling in his Swift Car bearing Registration No. KA-09/P-9122, from Melukote to Pandavapura Taluk, Mandya District, Mysore, on left side, with due care and caution, near Nemmanahalli village, Jakkanahalli turning, the driver of Tata Sumo bearing Registration No. KA-11/M-2486 came at a high speed, in a rash and negligent manner and dashed against the Car and caused the accident. Due to the impact, the appellant sustained grievous injuries. Immediately, he was shifted to the Hospital.

2. 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.

3. 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. 46.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 2nd August, 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. 4,99,120/- 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.

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

5. It is the case of the appellant that on account of the road traffic accident, he sustained injury to head, right lower limb and both bones fore arm and sustained 41.8% permanent disability as per the evidence of Doctor and was in-patient for some period and therefore, he has to be awarded reasonable compensation.

6. After hearing learned counsel for the appellant and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the 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 48 years and an RTO agent. The Tribunal, after assessing the oral and documentary evidence available on file and also taking into consideration the age, avocation, year of accident, and other relevant aspects, has rightly awarded compensation of a sum of Rs. 3,53,000/- towards medical expenses, as per the medical bills and prescriptions and a sum of Rs. 50,000/- towards injury, pain and sufferings. Hence, interference in the same is uncalled for.

7. However, so far as the compensation awarded under disability conveyance, nourishing food and attendant charges, loss of income during treatment period and future medical expenses is concerned, the same is on the lower side and needs to be re-determined. Further, the Tribunal has failed to award any compensation towards loss of amenities, discomfort and unhappiness on account of disability. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries as per the wound Certificate. Further, the Doctor has assessed 41.8% in respect of whole body disability. But, the Tribunal, relying upon the oral evidence of the appellant and also his avocation, has assessed the whole body permanent disability at 8%. The same, in our opinion is on the lower side. Having regard to the age, avocation, nature of injuries, we re-assess the whole body disability at 14%, to meet the ends of justice. The appellant being aged about 48, years, has to endure this disability for the rest of his life. Because

of the injuries sustained, he must have been away from work for a period of not less than three months. Further, having regard to the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 6,500/-, to meet the ends of justice as against Rs. 6,000/- assessed by Tribunal. Further, during the treatment 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. The compensation awarded by Tribunal towards disability is on the lower side. Therefore, having regard to the age, avocation, nature of injuries, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 1,00,000/- towards disability and loss of amenities, discomfort and unhappiness as against Rs. 69,000/-; Rs. 15,000/- towards conveyance, nourishing food and attendant charges as against Rs. 12,000/-; Rs. 19,500/- towards loss of income during treatment period, at the rate of Rs. 6,500/- per month for a period of three months as against Rs. 2,000/-; and Rs. 15,000/- towards future medical expenses as against Rs. 13,000/- 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 2nd August 2011, passed in MVC No. 62/2010, by the Senior Civil Judge and Motor Accident Claims Tribunal, Nanjanagudu, is hereby modified, awarding a sum of Rs. 5,52,500/- as against Rs. 4,99,120/- 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. 5,52,500/- as against Rs. 4,99,120/-. The enhanced compensation would be Rs. 53,380/- with 6% interest per annum.

The third respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 53,380/-, with interest thereon at 6% per annum, within three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.