(2011) 07 KAR CK 0266

In the Karnataka High Court

Case No : MFA No. 4394 of 2010 (MV)

Basavarajappa APPELLANT

Vs

GA Mallika and The National Insurance Co. Ltd. RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Citation : (2011) 07 KAR CK 0266

Hon'ble Judges : K. Govindarajulu, J

Bench : Single Bench

Advocate : H. Pavana Chandra Shetty, for the Appellant; BC Seetharam Rao, for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Govindarajulu

1. Though the matter had come up for admission, with the consent of both parties it is taken for consideration on merits,

2. The claimant in MVC No. 534/2006 on the file of the Senior Civil Judge & MACT, Kundapurs, is the appellant in this appeal.

3. The case of the claimant is, that on 30.4.2006 at about 8.00 a.m. while he was travelling on his motor cycle hearing Rag. No. KA-20 K 2616, the driver of the Maruti Omni Car bearing Registration No. KA 20 A 5823, has driven the vehicle rashly, negligently and hit the claimant, which resulted in injuries to the claimant For the pain and agony suffered by the claimant seeks for compensation.

4. The Insurance Company filed objections, called upon the claimant to prove the accident, impact, contend that the claim is exaggerated. Further, contend that the liability is strictly in accordance with the policy. So, plead for dismissal of the claim application.

5. After framing of the issues, PWs.1 & 3 are examined. Exs. P1 to P210 are marked. The learned member of the Tribunal has awarded a sum of Rs.

2,06,610/- with interest at 6% p.a.

6. The learned advocate for the claimant submits that the claimant is a tailor-cum-cloth merchant. He has produced the IT returns, which reveals the income of Rs. 8,000 - 10,000/- per month. So, the assessment at Rs. 3,000/- p.m. by the Tribunal is on the tower side. So also contend that the compensation awarded under otter heads requires interference.

7. Per contra, learned counsel for the Insurance Company vehemently contended that the learned member of the Tribunal has considered the facts of the case and has rightly fixed the compensation. So, pray for dismissal of the appeal.

8. I have Carefully considered the meterials and submissions. The accident is admitted end the actionable negligence is not in dispute. The Tribunal has awarded compensation of Rs. 2,06,610/-. The particulars are as fellows:

Sr. No.

Under the head of:

Rs.

a.

Pain and sufferings

35,000/-

b.

Medical expenses

74,000/-

e.

Future medical expanses

10,000/-

d.

Special diet, Nourishment & attendant charges

11,800/-

e.

Loss of income during treatment period

12,000/-

f.

Loss of future income due to disability

33,810/-

g.

Loss of amenities

20,000/-

h.

Conveyance charges

2,000/-

i.

Damages to motor cycle

8,000/-

Total

2,06,610/-

Coming to the quantum of compensation, the assertion of the advocate for Insurance Company is that the business income being shown in the income tax return is not proved by producing the documents. Since the claimant has produced income tax return, the contention of the learned counsel for the Insurance Company is rejected. This Court assess the income of the claimant at Rs. 4,500/- p.m. There being permanent disability of 10% to the right lower limb, the proper multiplier applicable is 15, the loss of earning capacity works out to Rs. 81,000/- (10% of Rs. 4,500 = 450 x 12 = 5400 x 15) as against Rs. 33,810/- awarded by the Tribunal. Hence, the enhanced amount comes to Rs. 47,190/- rounded off to RS.48,000/- (Rs. 81,000 - Rs. 33,810). The claimant is entitled far additional sum of Rs. 5,000/-towards future medical expenses. In all, the claimant is entitled to Rs. 53,000/-. The enhanced compensation shall carry interest at 6% p.a.

Accordingly, The appeal is allowed in part.