

(2016) 07 KAR CK 0082
In the Karnataka High Court
Case No : M.F.A. No. 5673 of 2015 (MV)

Bettaswamy Marappa

APPELLANT

Vs

M/s. Cholamandalam General Insurance Co. Ltd., Bangalore

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2125

Hon'ble Judges : Mohan M. Shantanagoudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Sri. H.B. Somapur, Advocate, for the Appellants; Sri. Ravi S. Samprathi for Sri. H.S. Lingaraj, Advocates, for the Respondents No. 1; Notice is dispensed with vide order dated 20.08.2015, for the Respondents No. 2

Final Decision : Partly Allowed

Judgement

Mohan M. Shantanagoudar, J.—The judgment and order dated 17-1-2015 passed by the MACT, Bangalore (SCCH.15) in MVC No. 4720/2013 is appealed against by the claimant seeking enhancement of compensation. By the impugned judgment and award, the Tribunal has awarded total compensation of Rs. 1,70,000/- with interest thereon at the rate of 8% per annum.

2. In the accident that occurred on 9-6-2013, the claimant-appellant herein sustained two fractures, viz.,

- i) Comminuted fracture lateral end of left clavicle.
- ii) Fracture inferior pubic rami right.

The claimant was treated surgically, he was an inpatient for 14 days in Saptagiri Hospital, which is a private hospital and was discharged on 24-6-2013. Prior to his admission in the said hospital, he had taken treatment in General Hospital, Nelamangala for two days. Thus, in all the claimant was under treatment for about 16 days. He was a Mason. According to him, he was earning Rs. 300/- per

day as on the date of the accident.

3. The doctor (PW.4) attached to Bowring and Lady Curzon Hospital, Bangalore who examined the claimant on 22-7-2014 and 26-7-2006 for assessment of disability of the claimant, has found the following disabilities:-

a) Difficulty to sit cross-legged to squat (to use Indian toilet) $(3+4) = 7$.

b) Range of movements (ROM) of right hip joint is normal.

c) Loss of power of the muscles acting around right hemipelvis is $4/5$ ($5/5$) is $20 \times 0.3 = 6$. 12.5% of disability of right hemipelvis and 6.25% of whole body.

d) Difficulty to lift over head objects remove and keeping them at same place. Difficulty for ablution Indian style. Tying Dhoti, and to do other activities of daily living. Range of movements of left shoulder is normal. Loss of power of the muscle acting around left shoulder girdle is $4/5$ ($5/5$) is $20 \times 0.3 = 6$. 11.6% of disability of left shoulder girdle and 3.87% (4%) of whole body. Total whole body disability is $6.25\% + 3.87\% = 10\%$.

The doctor has assessed the disability of the claimant to the whole body at 10% as on the date of examination by the doctor-PW.4. The fracture of left clavicle and inferior pubic rami right showed union at the time of discharge. The doctor has opined that due to disability it would be difficult for the claimant to perform the masonry work.

4. The aforementioned factors and the evidence on record clearly reveal that the claimant has suffered 10% disability and there would be difficulty for the claimant to continue the work of a Mason. Since the claimant has suffered fracture of pubic bone, it would also be difficult for him to do heavy work as coolie. He finds difficulty in sitting and squatting. Be that as it may, since the doctor has opined that the claimant has sustained 10% disability, we deem it proper to calculate the compensation under the head of loss of future income based on the disability of 10% suffered by the claimant.

5. The Tribunal has awarded Rs. 25,000/- under the head of pain and suffering which appears to be on the lower side. Since the claimant has suffered two fractures in sensitive pubic area and as he is a skilled-cum-manual labour, he must have been suffered a lot. Thus, we propose to award Rs. 40,000/- under the head of pain and suffering.

6. We find that the compensation awarded by the Tribunal under the head of loss of income during laid up period, diet, nourishment and etc. and attendant charges, conveyance, other incidental charges and etc. at Rs. 15,000/- each is just and proper.

7. The medical expenditure of Rs. 10,000/- awarded by the Tribunal is on lower side. As mentioned supra, the claimant has taken treatment as inpatient for about 14 days in Satpagiri Hospital, which is a private hospital; prior to that period, the claimant has taken treatment for two days in General Hospital,

Nelamangala; during his treatment he must not have maintained medical records meticulously. Thus, we propose to award Rs. 20,000/- as against Rs. 10,000/- awarded by the Tribunal under the head of medical expenditure.

8. The Tribunal has taken Rs. 6,000/- as the monthly income of the claimant for the purpose of quantifying the compensation under the head of loss of future earnings. The accident is of the year 2013. Generally this Court has been taking Rs. 8,000/- as the monthly income of the injured when there is no concrete material to show his monthly income. Even otherwise, since the injured was working as Mason, he must be getting at least Rs. 300/- per day during relevant period. Hence, conservatively we assess the monthly income of the claimant at Rs. 8,000/-. The doctor has opined that the claimant has suffered 10% disability. The proper multiplier to be adopted is 16[?] having regard to the age of the claimant. Based on the said factors, the claimant is entitled to Rs. 1,53,600/- ($8,000 \times 12 \times 10 / 100 \times 16$) as compensation under the head of loss of future earnings.

9. Apart from the same, the claimant is entitled to Rs. 1,00,000/- towards loss of amenities as against Rs. 20,000/- and Rs. 50,000/- towards permanent physical impairment as against Rs. 20,000/- awarded by the Tribunal.

10. The claimant is also entitled to Rs. 25,000/- under the head of future medical expenses.

11. Thus, the claimant is entitled to total compensation of Rs. 4,18,600/-. The Tribunal has awarded compensation awarded Rs. 1,70,000/-. Hence, the claimant shall be entitled to enhanced compensation of Rs. 2,48,600/-, which shall carry interest at the rate of 9% per annum from the date of petition till the date of realization.

12. The award of the Tribunal is modified to the aforementioned extent. Accordingly, appeal is partly allowed.