

(2015) 11 KAR CK 0138

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 204 of 2014(MV)

B.N. Shivakumar

APPELLANT

Vs

The United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 11 KAR CK 0138

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : H.B. Somapur, Advocate, for the Appellant; O. Mahesh, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned common judgment and award dated 17.1.2013 passed in MVC. No. 6921/2011 on the file of the XXII Additional Small Causes Judge & Member, MACT, Bangalore (for short, "Tribunal"). The tribunal by the impugned judgment and award, awarded a compensation of Rs. 3,22,400/- with interest at 6% p.a. from the date of petition till the date of realization on account of grievous injuries sustained by the claimant in the road traffic accident. Being dissatisfied with the quantum of compensation and rate of interest awarded, the claimant has presented this appeal seeking enhancement of compensation and also higher rate of interest.

2. The brief facts of the case on hand as contended by the appellant is that he was aged 20 years at the time of accident and hale and healthy prior to the accident. He was working as a coolie in a goods Tempo bearing registration No. KA-04-C-6426 earning Rs. 250/- per day, i.e., a sum of Rs. 7,500/- per month. Be that as it may, he met with an accident on 26.9.2011 at about 7.30 a.m. on account of rash and negligent driving by the driver of the tempo in which he was traveling and sustained Type II compound Galeazzi fracture left forearm displaced, fracture of both bone right leg middle 1/3rd displaced, extensor

tendon injury of forearm, on account of which, he undergone treatment as inpatient for a period of 15 days in the hospital. He examined the Doctor, who in turn after clinical and radiological examination, assessed 23% whole body disability. It is further case of the appellant that he suffered mental pain and agony during treatment and spent reasonable amount towards "medical expenses including incidental expenses" and on the advice of the Doctor, he has taken bed rest and follow up treatment and disability persists throughout his life and is not in a position to do the work as earlier on account of permanent disability in the road traffic accident on account of grievous injuries. He may also require some amount towards "future medical expenses" also. Taking all these factors, he filed a claim petition under Section 166 of the M.V. Act against the respondents. The said matter had come up for consideration before the tribunal. The tribunal after taking into consideration the oral and documentary evidence and other material on record assessed the income of the claimant at Rs. 4,500/- p.m. and awarded a sum of Rs. 3,22,400/- under different heads with interest at 6% p.a. from the date of petition till the date of realization. Being dis-satisfied with the impugned judgment and award, the claimant has presented this appeal.

3. We have heard learned counsel appearing for the appellant and learned counsel appearing on behalf of the Insurer/respondent No. 1.

4. The submission of the learned counsel for the appellant at the outset is that the tribunal has erred in assessing the income of the appellant at Rs. 4,500/- per month which is on the lower side as the claimant was a young and energetic person, doing coolie work in a goods tempo and earning more than Rs. 7,500/- p.m. The accident has occurred on 26.9.2011 and therefore, the income of the appellant ought to have been taken at least between Rs. 6,000/- and Rs. 6,500/- per month and on account of injuries sustained, he has undergone treatment for a period of 15 days in the hospital and he examined the Doctor and the Doctor has assessed permanent disability at 23% towards whole body and he suffered mental pain and agony during treatment period and as per the advice of the Doctor, he has taken follow up treatment for a period of four months and he has spent reasonable amount towards conveyance, nourishing food and attendant charges and is not in a position to work as effectively as he was doing earlier. Therefore, he has to be compensated by awarding reasonable compensation towards "loss of amenities" by modifying the impugned judgment and award and interest awarded at 6% p.a. is on the lower side as the accident is of the year 2011 and following the judgment of the Apex Court and High Court, 9% -10% interest per annum may be awarded.

5. Per-contra, learned counsel appearing for the 1st respondent - insurer inter alia sought to substantiate the impugned judgment and award and submits after due consideration of the oral and documentary evidence, year of accident, nature of injuries sustained, treatment undergone, period of hospitalization, the tribunal is justified in awarding just and reasonable compensation under all the heads. Therefore, interference by this Court is not called for.

6. After careful consideration of submission made by the learned counsel appearing for both the parties and on perusal of the material available on record and upon going through the judgment and award passed by the Tribunal, the only point that arise for our consideration is:

"Whether the quantum of compensation awarded is just and reasonable?"

7. The occurrence of accident and the resultant injuries sustained by the claimant in the road traffic accident are not in dispute. On account of the grievous injuries, he has undergone treatment for a period of 15 days in the hospital. It is stated that the claimant was aged 20 years at the time of accident and by profession he was a coolie working in a Good tempo and earning salary of Rs. 250/- per day. But, the claimant has not produced any credible document to prove the same. However, we can safely re-assess the income of the appellant at Rs. 6,000/- p.m., to meet the ends of justice. Further, it emerges from the records that the claimant has sustained disability at 23% whole body. As per evidence of Doctor, the same is accepted. He has suffered mental pain and agony during treatment period and on advice of the Doctor he must have taken bed rest at least for a period of four months. He has to endure the said disability throughout his life and as he was aged 20 years, appropriate multiplier would be "18". Taking all these aspects, we deem it fit to award a sum of Rs. 75,000/- towards "injury, pain and suffering" as against Rs. 50,000/- awarded by the tribunal, Rs. 24,000/- towards "loss of income during laid up period" as against Rs. 18,000/- awarded by the tribunal, Rs. 30,000/- towards "loss of amenities" as against Rs. 10,000/-, Rs. 2,98,080/- (Rs. 6000/- x 12 x 23 x 18/100) towards "loss of future earning" as against Rs. 1,94,400/- awarded by the tribunal. The tribunal has rightly awarded Rs. 50,000/- towards "medical, conveyance, attendant and nourishment" and Rs. 10,000/- towards "future medical expenses". Hence, interference by this Court is not called for. In all, the appellant is entitled for compensation of Rs. 4,87,080/- as against Rs. 3,22,000/- awarded by the tribunal. There would be enhancement of Rs. 1,65,000/-.

8. As rightly pointed by learned counsel appearing for the appellant, the rate of interest awarded at 6% p.a. is on the lower side. Hence, following the law laid down by the Supreme Court and High Court in host of judgments, we award 9% interest per annum on the enhanced compensation from the date of petition till the date of realization.

9. Having regard to the facts & circumstances of the case, the appeal is allowed-in-part. The impugned common judgment and award dated 17.1.2013 passed in MVC

passed in MVC. No. 6921/2011 on the file of the XXII Additional Small Causes Judge & Member, MACT, Bangalore is hereby modified awarding enhanced compensation of Rs. 1,65,000/- with 9% interest per annum from the date of petition till the date of realization, excluding interest on delayed period of 236 days.

R-1/Insurer is directed to deposit the enhanced compensation of Rs. 1,65,000/- with interest at 9% p.a. from the date of petition till the date of realization excluding interest for the delayed period of 236 days in filing the appeal.

Out of the enhanced compensation of Rs. 1,65,000/-, Rs. 1.00 lakh with proportionate interest shall be invested in Fixed Deposit in the name of the appellant in any Nationalized Bank or Schedule or Grameena Bank for a period of five years renewable by another five years and he is entitled to withdraw interest periodically.

Remaining Rs. 65,000/- with proportionate interest shall be released in favour of the appellant immediately on deposit by the 1st respondent insurer.

Office to draw award, accordingly.