

(2014) 12 KAR CK 0130

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4146/2014 (MV)

B.T. Nagaraja Rao

APPELLANT

Vs

The Managing Director

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0130

Hon'ble Judges : Dr. K. Bhakthavatsala, J

Bench : Single Bench

Advocate : Sunitha B.H for Suresh M. Latur, Advocate for the Appellant

Judgement

Dr. K. Bhakthavatsala, J.—This is an appeal filed by the claimant for enhancement of compensation.

2. Learned counsel appearing for the appellant submits that the Tribunal erred in not awarding adequate compensation towards pain and suffering, medical and future medical expenses, loss of amenities, loss of income during the period of treatment and rest, conveyance and attendant charges and loss of future income.

3. Perused the L.C.R.

4. It is the case of the claimant that he was 55 years old, working as a Cook and earning Rs. 15,000/- p.m., and he sustained grievous injuries in the motor accident that occurred on 15.11.2012. He filed a claim petition seeking compensation of Rs. 10,00,000/- towards personal injuries sustained by him in the motor accident. Before the Tribunal, the claimant got himself examined as P.W. 1 besides examining Dr. S.A. Somashekar, Smt. Lakshmidhevi and R. Ravi as P.Ws. 2 to 4 and got marked Exs. P.1 to P.19. In rebuttal, one Sri. B.V. Sharath Singh, driver of the bus was examined as R.W. 1. The Tribunal has answered Issue No. 1 on the point of negligence in favour of the claimant and discussed about the earnings of the claimant and fixed his income at Rs. 5,000/- p.m., and awarded compensation as under:

5. According to P.W. 2/the Medical Officer, the claimant was treated as in-patient in Bowring Hospital for a period of 37 days. P.W. 2 has opined that the claimant has got permanent disablement in respect of both hips at 44% and the Tribunal has fixed permanent disablement at 15% of the whole body. Since the claimant was 58 years old, the Tribunal applied multiplier 9 while awarding compensation towards loss of future earning and the Tribunal has awarded compensation in all amounting to Rs. 1,81,000/- in favour of the claimant and against respondent along with costs and interest. There is no documentary proof that the claimant was earning Rs. 15,000/- p.m. Oral evidence of R. Ravi (P.W. 4), employer of the claimant is not sufficient to fix his income at Rs. 15,000/- p.m. However, taking into consideration that the claimant is a resident of Bangalore and he was a Cook by profession and the accident occurred in the year 2012, his income can be safely fixed at Rs. 8,000/- p.m., as against Rs. 5,000/- p.m., fixed by the Tribunal. Since it is case of fracture of sacroiliac joint disruption with pubic diasthesis, the claimant underwent surgery and he has to undergo one more surgery, the claimant is entitled for reasonable compensation towards medical treatment and expenses. In my view, the claimant is entitled for compensation as under:

6. In the result, I pass the following order:

"Appeal is partly allowed, holding that the appellant/claimant is entitled for compensation of Rs. 2,98,600/- as against Rs. 1,81,000/-, along with costs and interest at the rate of 6% p.a., from the date of petition till realization."

Respondent is directed to deposit the enhanced compensation amount along with costs and interest with the Tribunal within two months from to-day.

Out of the enhanced compensation amount, a sum of Rs. 50,000/- shall be kept in fixed deposit for a period of five years, during which period, he shall be at liberty to draw periodical interest that accrues on the deposit. Accordingly, the impugned Judgment and Award are modified.

Registry is directed to return the LCR immediately to the Tribunal.