

(2014) 12 KAR CK 0032

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 7889/2010 (MVC)

Chandra Shekar

APPELLANT

Vs

Ganesh P.

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 12 KAR CK 0032

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : C.N. Raghavendra, Advocate for the Appellant

Judgement

Aravind Kumar, J.—This is a claimant's appeal for enhancement of compensation not being satisfied with the quantum of compensation awarded passed by MACT, Bangalore, dated 27.10.2009 in MVC No. 1777/2009 whereunder the claim petition filed by the appellant herein under Section 166 of the Motor Vehicle's Act seeking compensation of Rs. 5,00,000/- came to be allowed in part and a compensation of Rs. 80,000/- has been awarded.

2. Heard the arguments of Sri. C.N. Raghavendra, appearing on behalf of Smt. Suguna R. Reddy, learned counsel appearing for appellant/claimant and Sri. H.C. Vrushabendraiah, learned counsel appearing for respondent No. 2—Insurance Company. Notice to respondent No. 1 has been dispensed with vide order of even date.

3. It is the contention of Sri. Raghavendra, learned counsel appearing for the appellant that Tribunal erred in not considering the claim for compensation towards loss of future income by construing the whole body disability at 22% as assessed by doctor-P.W.5 and as such he seeks for enhancement of compensation under all heads.

4. Per contra, learned counsel Sri. H.C. Vrushabendraiah, learned counsel appearing for Insurer would submit that compensation awarded by the Tribunal is

just and reasonable and it does not call for any enhancement and it is contended that claimant had failed to prove that he had been terminated from service on account of injuries sustained and as such Tribunal has rightly not awarded any compensation towards loss of future income and as such he prays for affirming the quantum of compensation awarded by the Tribunal.

5. Sri. Raghavendra, learned counsel appearing for the appellant-claimant has also made available certified copy of pleadings, depositions and exhibits produced before the Tribunal. Same is perused by me. Accident in question, issuance of policy to the offending vehicle and the same being in force as on the date of the accident are all undisputed facts and as such they are not discussed in this appeal as it would be repetition of facts.

6. The only point which would arise for consideration in this appeal is:--

"Whether claimant would be entitled for award of additional compensation? and, if so, to what extent?"

7. Perusal of award as well as exhibits which came to be marked before the Tribunal would indicate that claimant had sustained following injuries:--

1) Open knee injury (left)

2) Compound fracture proximal, Phalanx Little toe left foot.

As per the wound certificate as per Ex. P3, claimant was admitted to Panacea Hospital, Bangalore, immediately after the accident on 4.1.2009. He was surgically operated upon on 5.1.2009. He was inpatient in the said hospital till his discharge on 8.1.2009. P.W.5-Doctor who had treated claimant has reiterated the contents of the discharge summary, Ex. P4. Same would also indicate that claimant was diagnosed for open knee injury with compound fracture of left little toe. He has undergone surgery under spinal anesthesia for wound debridement on 5.1.2009 as already noticed herein above. Claimant has also been subsequently attended to by the doctor and was advised physiotherapy as could be seen from the evidence of doctor. P.W.5-Doctor has also opined that though fracture of little toe has been united, knee injury that has been sustained by claimant is still subsisting and on account of it he is getting constant pain. This evidence of doctor came to be accepted by the Tribunal and rightly so. However, disability as assessed by the doctor to be at 22% to the whole body has been rightly held by the Tribunal as excessive. There being no fracture of knee and little toe fracture having united, the whole body disability could not be at 22%. Same is exaggerated by the doctor as observed by the Tribunal rightly. Be that as it may, the compensation awarded by the Tribunal towards pain and suffering is on lower side. Considering the nature of injuries sustained by claimant, surgery undergone and pain in the left knee still subsisting, this Court is of considered view that additional compensation of Rs. 20,000/- requires to be awarded towards pain and suffering and it is hereby awarded.

8. Claimant was said to be working in a partnership firm called R & R Associates.

The employer namely one of the partners had been examined as P.W.3. Though Mr. Raghavendra, learned counsel appearing for the claimant vehemently contended by relying upon evidence of P.W.3 to contend that claimant had left his employment on account of injuries sustained or in other words claimant had ceased to be the employee of R and R Associates, Tribunal has rightly not accepted said plea on the ground that there was no notice of termination issued by employer and there was no evidence placed by the claimant to prove that he had been removed from service on account of injuries sustained. This finding recorded by the Tribunal does not suffer from any infirmity inasmuch as cross-examination of said witness- P.W.3 dated 20.6.2009 would clearly indicate that claimant had not been issued with any notice of termination and on the other hand said witness admits that claimant had not been terminated from service of the partnership firm, R & R Associates, on account of injuries sustained in the accident. Hence, question of awarding any compensation towards loss of future income does not arise.

9. Taking into consideration number of days of hospitalization which was from 5.1.2009 to 8.1.2009, claimant as well as his attendants would have spent amounts towards food, nourishment and transportation charges. What has been awarded by the Tribunal being marginally on the lower side, this Court is of the considered view that an additional sum of Rs. 4,000/-, if awarded, it would meet the ends of justice. Accordingly, it is hereby awarded.

10. On account of injury sustained to knee, as opined by doctor, claimant is having perennial pain. Claimant being a Field Executive said pain would definitely come in the way of discharge of his normal work and certain comforts of normal life is lost. Hence, this Court is of considered view that a sum of Rs. 20,000/- if awarded towards loss of amenities, it would meet the ends of justice and accordingly, it is hereby awarded.

11. Doctor has opined that on account of the injuries sustained by claimant, he has to undergo further surgery. Compensation awarded towards future medical expenses requires to be enhanced by awarding additional sum of Rs. 4,000/- since doctor has stated that claimant will have to spend Rs. 10,000/- and by taking into consideration Rs. 6,000/- awarded, an additional sum of Rs. 4,000/- is hereby awarded.

12. On account of the injuries sustained, claimant would have been unable to attend to his normal duties at least for a period of two months. Though claimant claimed that he was drawing salary of Rs. 14,000/- per month by relying on Ex. P19, cash voucher said to have been issued by his employer, Tribunal has not accepted the same and rightly so inasmuch as the partnership firm would not have paid the said amount by cash or in other words, even if it is to be held same was paid by cash, there was no other supporting document like ledger produced to prove payment of said amount to claimant. On that ground, Tribunal has relied upon appointment letter issued by the employer of claimant as per Ex. P18 to arrive at the conclusion that claimant was drawing salary of Rs. 6,500/-

per month. Accepting the same, compensation of Rs. 13,000/- is hereby awarded towards loss of income during laid up period i.e. for a period of two months as it would meet ends of justice. Thus, claimant would be entitled to additional compensation of Rs. 61,000/- under following heads:--

13. For the reasons aforesaid, I proceed to pass the following:

ORDER

"(i) Appeal is hereby allowed in part.

(ii) Judgment and award passed by MACT, Bangalore, dated 27.10.2009 in MVC No. 1777/2009 is hereby modified and an additional compensation of Rs. 61,000/- is hereby awarded, which shall carry interest @ 6% p.a. from the date of petition till payment or deposit, whichever is earlier.

(iii) Insurer shall deposit above said compensation with interest before Tribunal within six weeks from date of receipt of copy of this order.

(iv) Since compensation enhanced by this Court is marginal, same is ordered to be released in favour of the claimant.

(v) No order as to costs."