

(2015) 02 KAR CK 0137
In the Karnataka High Court
Case No : MFA No. 5862/2010 (MV)

Chandrappa K.N.

APPELLANT

Vs

C. Nagraj and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 02 KAR CK 0137

Hon'ble Judges : N.K. Patil, J.

Bench : Single Bench

Advocate : Shripad V. Shastri, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant is arising out of the impugned judgment and award dated 11.2.2010 passed in MVC No. 2423/2009 on the file of the XI Additional Judge, Court of Small Causes, Motor Accidents Claims Tribunal (S.C.C.H.12) at Bengaluru (hereinafter referred to as Tribunal" for short).

2. By its judgment and award, the Tribunal has awarded a sum of Rs. 2,72,000/- with interest at 6% p.a., from the date of petition till its realization as against the claim made by the appellant, on account of the injuries sustained by him in the road traffic accident.

3. It is the case of the appellant that, he was aged about 48 years as on the date of accident, hale and healthy prior to the accident and was working as Senior Veterinary Inspector and drawing a salary of Rs. 16,000/- per month. On 13.03.2009 at about 4.30 p.m near Setharamabattarapalya Bridge on NH-48, Kunigal Nelamangala Road, the appellant in MVC. No. 2423/2009 was driving the car bearing No. KA.05.Z.143 from Gundegere towards Nelamangala. At that time a lorry bearing No. OP.05.A.4416 came from opposite direction in rash and negligent manner and dashed against the car. Due to the impact, the appellant sustained grievous injuries on his head, both eyes, fracture of rib, fracture right

tibia, fracture right zygoma, fracture right zeugmatic arch, type II DM and other part of the body. He was shifted to Abhaya Hospital at Bangalore. PW3-Doctor Jyoti Matalia who is a Consultant Ophthalmologist at Narayana Nethralaya, has opined that based on nature and duration of treatment, visual fields tests result, clinical examination, the appellant will (a) never be able to see the right side of his visual, (b) normally in presence of right hemianopia the movement of eyes in the right field can aid in visualization. But as he will not be able to move the right eye in all fields like the left eye even after squint surgery, this can be of a major handicap. She has stated that the appellant falls in the category of low vision and hence assessed 40% visual disability. PW-4 Dr. Sharan Srinivasan who is a Consultant Neurosurgeon at Abhaya Hospital has stated that he has made detailed neuro psychological assessment and has stated that appellant has a whole body disability at 53.52%. It is the case of the appellant that, he has spent huge amount for treatment, conveyance, nourishing food and attendant charges. Therefore, he filed a claim petition under Section 166 of MVC Act before the Tribunal claiming compensation against the respondents. The said claim petition had come up for consideration before the Tribunal. To substantiate his case, he examined himself as PW1, Smt. Chandrakala. C as PW2, Dr. Jyoti Matalia as PW3, Dr. Sharan Srinivasan as PW4 and Dr. Ramasubba Reddy as PW5 and got marked documents as Exs. P1 to P50. Respondents have got marked Ex. R1. The Tribunal after hearing both sides and after appreciating the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 2,72,000/- as compensation under different heads with interest at 6% p.a., from the date of petition till its realisation. Being dissatisfied with the quantum of compensation awarded by the Tribunal, in so far as it relates to loss of amenities, discomfort and unhappiness, disability on the account of the injuries sustained in the road traffic accident and future medical expenses, and pain and sufferings, appellant has presented this appeal, seeking enhancement of compensation.

4. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

5. Sri C. Puttaswamy, learned counsel appearing for the appellant submits that, the Tribunal has erred in taking only 40% towards visual disability and 16% towards orthopedical disability and 53% of neurological disability to the whole body. Further, Tribunal has committed an error in awarding lesser compensation towards pain and sufferings, loss of amenities, discomfort and unhappiness and what has been awarded towards loss of future income on account of disability is on the lower side. It requires re-consideration. Therefore, impugned judgment and award passed by the Tribunal, is liable to be modified awarding just and reasonable compensation.

6. Per contra, the learned counsel appearing for the second respondent, inter alia, contended and substantiated that, the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral

and documentary evidence available on record and therefore he prayed for dismissal of the appeal.

7. After considering the submissions made by the learned counsel appearing for both the parties and on perusal of the materials available on record, including the impugned judgment and award passed by the Tribunal, the only point that arise for consideration is:

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

8. The Tribunal after appreciation of the oral and documentary evidence available on record taking into consideration the age, avocation, nature of injuries sustained and duration of treatment, has awarded Rs. 1,10,000/- towards Medicine and hospital expenses, Rs. 42,000/- towards loss of earning during laid up period and the same is just and proper and interference by this Court is not called for.

9. However, the Tribunal has erred in not awarding reasonable compensation towards pain and suffering and Disability. What has been awarded is on the lower side. It requires re-consideration by enhancing reasonably. PWs 4 and 5 -Doctors have assessed permanent disability at 40% towards Visual disability and 16% towards orthopedical disability and 53.25% to the whole body. He was treated as inpatient for ten days and even after discharge he was under follow up treatment as per the advice of the doctors. The disability is permanent in nature and he is supposed to suffer it through out his life. Taking into consideration all these facts and circumstances, we deem it fit to award Rs. 1,00,000/- towards pain and sufferings as against Rs. 45,000/-, Rs. 75,000/- towards loss of amenities of life as against Rs. 25,000/- and Rs. 1,50,000/- towards disability as against Rs. 50,000/- awarded by the Tribunal under the said heads.

10. Having regard to the facts and circumstances of the case as stated above, appeal is allowed in part. The impugned judgment and award dated 11.2.2010 passed by the XI Additional Judge, Court of Small Causes, Motor Accidents Claims Tribunal (S.C.C.H.12) at Bengaluru in MVC No. 2423/2009 is hereby modified. The total compensation payable comes to Rs. 4,27,000/- with 6% interest per annum, as against Rs. 2,72,000/- and the break-up is as follows:

Enhanced compensation comes to Rs. 2,05,000/-The 2nd respondent-Insurer is directed to deposit the enhanced compensation of Rs. 2,05,000/- with interest at 6% p.a., from the date of petition till the date of realisation, within three weeks from the date of receipt of a copy of this judgment and award.

Out of the enhanced compensation, 50% of the enhanced compensation with proportionate interest shall be invested in the Fixed Deposit in any Nationalized or Scheduled Bank, in the name of the appellant for a period of five years and renewable for another five years, with liberty to him to withdraw the interest accrued on it.

The remaining 50% of the enhanced compensation with proportionate interest shall be released in favour of the appellant, immediately, on deposit by the Insurer.

The enhanced compensation with interest shall be released in favour of the appellant, immediately, on deposit by the Insurer.

Draw the award, accordingly.