

(2012) 08 KAR CK 0097

In the Karnataka High Court

Case No : M.F.A. No. 10662 of 2011 (MVC)

Chi Manohar M Since Minor Rep by His Father/Natural
Guardian Sri. Muniraj

APPELLANT

Vs

Bajaj Allianz General Insurance Company Ltd. and B.K.
Nanjundaiah

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0097

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Siddalingaswamy, for the Appellant; H.S. Lingaraju, For R1, for the Respondent

Judgement

B. Sreenivase Gowda

1. This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Although the appeal is listed for admission with the consent of learned Counsel appearing for the parties it is taken up for final disposal.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 11.09.2009 due to rash and negligent driving of Bajaj Pulsar 150 DT bearing registration No. KA 51 L-2391 by its rider and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether quantum of compensation awarded by the Tribunal is just and proper or does it call for enhancement

4. After hearing the learned Counsel for the parties and perusing the award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is

not just and proper, it is on the lower side and therefore it is deserved to be enhanced.

5. As per wound certificate Ex. P 4 claimant had sustained injuries like Type III-A fracture of tibia and fibula left leg, head injury right parietal occipital SDH and multiple condition over deep ganglinia area. Injuries sustained by him are also evident from case sheet of Mallya hospital Ex. P 14, X-ray film and report Ex. P 15, inpatient records of DG hospital Ex. P 16 & P 16(a), inpatient records of Mallya Hospital Ex. P 16(b) & P(c), Outpatient patient record of DG Hospital Ex. P 17, Outpatient record of Mallya Hospital Ex. P 17(a) X-ray films Ex. P 18 and supported by oral evidence of the father of the claimant and the doctor examined as P.Ws 1 and 2 respectively.

6. PW 2 Dr. Madhusudhan in his evidence has stated the claimant has suffered disability of 32% to whole body.

7. Considering two major fractures, head injury and other simple injuries sustained by the claimant a sum of Rs. 60,000/- is awarded towards pain and suffering as against Rs. 50,000/- awarded by the tribunal under this head.

8. As Rs. 3,00,441/- awarded by the Tribunal towards medical expenses is based on the medical bills produced by the claimant for the said sum, there is no scope for enhancement under this head.

9. He was treated as inpatient in Mallya Hospital, Bangalore for 40 days. Considering the same a sum of Rs. 20,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs.10,000/- awarded by the Tribunal.

10. Considering the nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness he has to undergo in his future life a sum Rs. 50,000/- is awarded towards loss of amenities including loss of inconvenience caused to his educational career education during the academic year as against Rs. 40,000/- awarded by the Tribunal.

11. The claimant is a minor aged about 11 years and therefore his notional income is assessed at Rs. 15,000/- per annum. Multiplier applicable to his age group is 15. Doctor has stated there is 32% disability to whole body. If so, loss of future income works out to Rs. 72,000/- (Rs.15,000/- x 32% x 15) and it is awarded as against Rs. 50,000/- awarded by the Tribunal.

12. Thus, the claimant is entitled for the following compensation:

I)

Pain & Suffering

Rs.60,000/-

II)

Medical Expenses

Rs.3,00,441/-

III)

Incidental expenses

Rs. 20,000/-

IV)

Loss of income during laid up period

Rs. 10,000/-

V)

Loss of amenities including loss of education

Rs. 50,000/

VI)

Loss of future income

Rs. 72,000/-

Total

Rs. 5,12,441/-

Less compensation awarded by the Tribunal

Rs. 4,50,441/-

additional compensation comes to

Rs. 62,000/-

13. Accordingly the appeal is allowed in part and the judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 62,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment from which Rs. 35,000/- with proportionate interest is ordered to be invested in F.D. in the name of the claimant in any nationalised/scheduled bank or post office till he attains majority renewable once in two years and with a right of option to withdraw interest periodically by his father natural guardian. Remaining amount is ordered to be released in favour of the father of the claimant.

No order as to costs.