

(2000) 07 KAR CK 0045

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1726 of 1994 (MVC)

C.M. Shantha Kumar

APPELLANT

Vs

Oriental Insurance Company Limited and Another

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 170 (B)

Citation : (2001) 2 ACC 725 : (2001) ACJ 1371 : (2000) ILR (Kar) 3803 :
(2001) 2 KarLJ 121 : (2000) 4 KCCR 2669

Hon'ble Judges : T.N. Valinayagam, J; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : Sri C.R. Goulay, for the Appellant; Sri Sowri Raju, for the Respondent

Judgement

1. This appeal is directed against the award in MVC No. 1333 of 1990 passed by the Motor Accidents Claims Tribunal, Bangalore, on 4-9-1993.

2. The facts that has given rise to be proceedings of the Tribunal was that the appellant and one Gopala Gowda were proceeding on Grant Road on their motor-cycle bearing No. CKP 5218 which was driven by the appellant. At that time, a lorry bearing No. MYA 7013 owned by the 2nd respondent came from the opposite direction and dashed against the motor-cycle. As a result of the accident, the appellant and the other petitioner in MVC No. 1129 of 1990 were thrown off from the motor-cycle and sustained injuries. They were removed to Victoria Hospital and then transported to NIMHANS and Ramakrishna Nursing Home, Bangalore. Both were operated upon. It was claimed that the appellant had suffered permanent disability on account of injuries sustained. This appellant had claimed compensation of Rs. 6,50,000-00. The 2nd respondent-owner of the lorry, in both cases, remained ex parte and the 1st respondent-insurer alone has resisted the claim. It was contended by the 1st respondent before the Trial Court that the accident took place due to the fault of the petitioners themselves and therefore, they are not entitled to any claim. The Insurance Company also sought permission u/s 170(b) of the Act to contest the claim applications on all

grounds available to the owner. On the basis of the above pleadings, similar issues were framed by the Trial Court in both the M.V.Cs. Answering issue No. 1 regarding negligence, the Trial Court held that the accident was due to the actionable negligence on the part of the lorry driver in the course of his employment under the 2nd respondent-owner. On the question of compensation, taking into consideration the evidence given by the P.W. 2 namely the appellant and also P.W. 3 namely the Doctor and taking into consideration the injuries as well as the disability, the Court has granted a total sum of Rs. 2,08,000-00 to the appellant under the following heads.-

Rs.

1.

Injury, pain and suffering

25,000-00

2.

Medical and incidental expenses

67,000-00

3.

Loss of earning during hospitalisation and illness and loss of earning capacity

91,000-00

4.

Loss of amenities of life

10,000-00

5.

Attendant and conveyance charges

15,000-00

Total

2,08,000-00

3. Feeling aggrieved by the quantum, the appellant is before this Court in the above appeal.

4. Mr. C.R. Goulay, learned Counsel for the appellant, submitted that there are as many as eight injuries which the appellant had suffered which resulted in disability of limb on the right leg, stiffness of right knee joint, paralysis of whole right arm etc. The disability was assessed by the Doctor P.W. 3 as under.-

1. 60% of right lower extremity (right lower limb).

2. 100% of the right upper extremity (right upper limb).
3. 30% loss of vision in the right eye.
4. The disability of the entire body suffered by the petitioner is 55% to 60%.

It was submitted that, having regard to the nature of injuries and disability, the award of Rs. 2,08,000-00 as compensation is too meagre. Under the head of amenities of life, grant of Rs. 10,000-00 is on the lower side. The future income of the appellant was not taken into consideration in arriving at the loss of future income. The appellant was admitted to hospital nearly thrice, for the first time for 31 days, secondly for 23 days and thirdly for 3 and 1/2 months. So the grant of Rs. 67,000-00 for the medical and incidental expenses is also too meagre. The grant of conveyance and attendant charges at Rs. 15,000-00 is also not proper.

5. On the other hand, Mr. Sowri Raju, learned Counsel appearing for the respondent, submitted that compensation awarded by the Tribunal is on the higher side. There is absolutely no evidence produced by the petitioner himself who was examined as P.W. 2. Respondent 2 was the owner of the lorry and even according to him, he was earning from the lorry by hiring the lorry to third parties. There could therefore be no question of reduction of his income and loss of income because of the accident. The permanent disability spoken to by the Doctor was not even spoken to by P.W. 2-the claimant himself. His evidence is totally vague and does not warrant grant of so much of compensation as has been done by the Court below. The grant of expenses for medical treatment as well as for future income is also on the higher side. There has been no proper evidence available to arrive at such an award by the Tribunal.

6. We have considered over the matter.

7. So far as injuries are concerned, P.W. 3-Doctor had given the list of injuries suffered by P.W. 2, which are as under:-

1. He was semi-conscious.
2. A radial abrasion on the frontal area and the chin.
3. Multiple deep abrasions with skin lost over the right chest, maxilla and right forearm.
4. Lacerated curved wound over the right knee 3" x 1/2" in size.
5. Fracture patella right side.
6. Comminuted montaggia fracture of right forearm bone.
7. Fracture dislocation of right radial head.
8. Comminuted fracture of mid shaft femur on the right side.
9. Cerebral contusion.

It is rather surprising to note that semi-consciousness is noted as injury by the Doctor. No injury certificate was produced by the Doctor P.W. 3 when he spoke about the injuries. He would conveniently say in the cross-examination that he had not brought the original case-sheet concerning both the injured persons. The wound certificate produced as Ex. P. 30 does not tally with the list of wounds spoken to by the Doctor. In particular, there is no mention about the patient being semi-conscious on 24-5-1990 when the accident took place on 23-5-1990 and he was examined on 24-5-1990. How Dr. Surendra who was not the Doctor who gave wound certificate Ex. P. 30 after examining the claimant on 24-5-1990 a day after the accident, can speak about the wounds when Dr. Surendra who saw P.W. 2 on 25-5-1990, two days after the accident did not mention about the same and the wound certificate Ex. P. 30 does not tally with the list of wounds spoken to by the Doctor merely from his memory on 5-2-1993 and the first three injuries as found in Ex. P. 30 prima facie appears to be simple in nature. In fact, the Doctor has gone to the extent of assessing the disability in respect of vision though he admits in cross-examination that he was not an eye surgeon to speak about the percentage of loss of vision. The Doctor also spoke about alleged disabilities. The Doctor has given the list of eight disabilities in his evidence. The appellant himself was examined as P.W. 2 and he spoke about following disabilities only namely:-

- (i) He cannot walk long distance;
- (ii) He cannot bend his right leg;
- (iii) He cannot get up without assistance of others;
- (iv) He cannot do any work involving his right hand.

When P.W. 2 himself did not speak about the disabilities of such a serious nature, the Doctor has chosen to fill in the lacuna, the inference is obvious. In these circumstances, we find that grant of compensation of Rs. 25,000-00 for injuries, pain and suffering, by the Trial Court is reasonable and proper.

8. On the claim for medical and incidental expenses, though a larger amount is claimed by the claimant, the Court below has referred the vouchers available on record and produced before the Court and considering the three different periods during which the appellant was admitted to hospital and taking into consideration the duration of the stay also, granted a sum of Rs. 67,000-00 for medical and incidental expenses. The contention of the learned Counsel for the appellant that the bills were misplaced and lost and therefore he could not produce the same does not deserve any credence. We feel that grant of Rs. 67,000-00 as medical and incidental expenses does not call for interference or for enhancement.

9. So far as loss of earning during hospitalisation and illness and loss of earning capacity is concerned, the Court has granted a sum of Rs. 91,000-00 under that head. The claim made in the claim petition is vague and in our opinion, if a man owns a lorry, then he is definitely not affected by any injury suffered by him. The

Court has taken into consideration the loss of earning if at all during hospitalisation and illness period and loss of earning capacity and granted Rs. 91,000-00 as compensation. No case is made out for enhancing the quantum and we find no reason to interfere with the quantum.

10. The sum of Rs. 15,000-00 granted for attendant and conveyance charges is also reasonable and does not call for any interference. We confirm the same.

11. For loss of amenities of life, a sum of Rs. 10,000-00 had been granted by the Tribunal. A photograph has been shown to us which was not in exhibit and it is also claimed that the petitioner is not married. It is further claimed that he could not get married because of the accident. In such circumstances, we deem it proper to increase the amount granted towards loss of amenities of life by Rs. 15,000-00 more, thus granting a sum of Rs. 25,000-00 for loss of amenities of life.

12. Thus the total sum of compensation to be awarded comes to Rs. 2,23,000-00 and we round it off to Rs. 2,25,000-00.

13. On the question of interest, a ground has been raised that grant of 6% per annum interest is on the lower side and a request has been made for enhancing the same in view of the recent decision of this Court and of Supreme Court. We also feel that grant of interest at 6% per annum is on the lower side and taking into consideration the special circumstances of this case, we deem it proper to grant 9% p.a. interest on the entire amount of compensation and the interest shall be paid from the date of petition till the date of payment.

The appeal is partly allowed as indicated above and the award is modified as indicated above.