(2014) 10 KAR CK 0226

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 24818/2010 (MV)

Deepak Hanamant Jangale APPELLANT

Vs

Parasharam Ramu Patil RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2014) 10 KAR CK 0226

Hon'ble Judges : Mohan M. Shantana Goudar, J;Ashok B. Hinchigeri, J

Bench : Division Bench

Advocate : Harish S. Maigur, Advocate for the Appellant; Parasharam R. Patil, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—It is the claimant''s appeal seeking for enhancement of compensation.

2. The records reveal that, the appellant herein has lost his left hand in the accident occurred on 03.02.2009. The left upper limb of the appellant is amputated above the elbow. He was a coolie by profession. The Tribunal having held that the claimant has suffered 25% disability in respect of the whole body, awarded compensation of Rs. 3,01,189/- in toto under various heads. It is relevant to note that the Tribunal has taken Rs. 100/- per day as the daily wages of the appellant/claimant.

3. Before proceeding further, we may mention herein itself that the Insurance Company had filed an appeal in MFA No. 21358/2011 questioning the very impugned award, which came to be dismissed on 22.05.2012. However, at that point of time, this appeal was not clubbed with the said MFA. Hence it is clear that the findings of the Tribunal as against the Insurance Company are confirmed in MFA No. 21358/2011.

4. Insofar as quantum of compensation is concerned, we find that the compensation awarded by the Tribunal is grossly inadequate.

The claimant is a coolie/manual labour. He will have to use both the hands for doing coolie work. Practically, the claimant has lost his left hand in as much as the same is amputated above elbow and below shoulder. Therefore, the left over stem of the left hand measuring about 5-6 inches may not be of any use to the appellant. But the Tribunal has assessed the disability of 25% to the whole body. Under Ex. P10, it is mentioned that the appellant has sustained permanent physical disability at 80% to the left upper limb.

Be that as it may. Having regard to the fact that the appellant is a coolie and as he cannot do the coolie work as was being done by him earlier, we are of the considered opinion that interest of justice will be met if 50% is taken as permanent physical disability for the purpose of quantifying compensation. We say so because, by virtue of the amputation of his left hand he must have lost minimum 50% of his income. He may have to depend on third parties. At the time of accident, he was still aged about 28 years. He had long way to go in life. He will have to lose his happiness throughout his life.

Looking to the totality of facts and circumstances, hence we deem it proper to take 50% as physical disability for quantifying the compensation.

So also the Tribunal has erred in taking Rs. 100/- per month as the daily wages of the appellant. The accident is of the year 2009. Any coolie would have earned at least Rs. 200/- per day during the relevant period at Belgaum city.

Be that as it may, even taking the conservative view in the matter, the income of the injured can be fixed at Rs. 150/- per day i.e., Rs. 4,500/- per month. Therefore, based on said figures, the appellant is entitled to amounts under the head loss of future income due to disability'' as under:

Rs. 4,500 x 12 x 17 x 50% = Rs. 4,59,000/-.

5. Apart from the said amount, the appellant shall be awarded Rs. 1,00,000/- under the head ''pain and suffering'' in as much as he must have suffered lot of pain during his treatment and later also. He may have to suffer pain mentally throughout his life. Therefore, Rs. 1,00,000/- under the head ''pain and suffering'' is awarded.

6. So also, the claimants shall be entitled to Rs. 100000/- under the head ''loss of future amenities''. The claimant cannot enjoy life as others of his age since he has lost one hand. Hence, the amount that could be awarded under the head loss of amenities'' is Rs. 1,00,000/-.

7. We find that the compensation awarded under the ''medical expenses'', loss of earning during laid up period'' and ''attendant charges'' is just and proper. Based on these facts and figures, the claimant is entitled to Rs. 7,17,189/- rounded off to Rs. 7,17,200/-.

8. Coming to the aspect of liability, Sri. Soudagar, the learned counsel appearing for the Insurance Company submits that the Insurance Company is liable to pay

only a limited compensation as prescribed under the Workmen''s Compensation Act. According to him, the Insurance Company is not liable to pay any compensation in excess of the limits prescribed under the Workmen''s Compensation Act.

Such submission is unacceptable. Such a contention is not taken by the Insurance Company before the Tribunal below. Consequently, no issue was raised in that regard before the Tribunal. It is also relevant to note that the Insurance Company has not led any rebuttal evidence. Even a copy of the Insurance Policy, which is produced before the Tribunal does not reveal that the Insurance Company''s liability to pay the compensation is limited to what is prescribed under the Workmen''s Compensation Act. Mr. Soudagar tried to take the help of additional sheets of Insurance Policy before this Court, which cannot be entertained at this stage at the time of final hearing of this appeal, as they are not part of the records and when no I.A. for the production of additional evidence is filed.

Be that as it may, in the absence of any plea on behalf of the Insurance Company before the Tribunal in its statement of objections and in the absence of any evidence let in on its behalf, the contention as raised by the Insurance Company before this Court for the first time at the time of final hearing of this appeal cannot be entertained. In view of the same, we hold that the Insurance Company is liable to pay compensation as awarded. Accordingly, following order is passed:

9. The claimant is entitled to Rs. 7,17,200/-(Rupees Seven Lakh Seventeen Thousand Two Hundred Only) with interest at the rate of 8% p.a. from the date of institution of claim petition till the date of payment. The compensation, if any already paid, shall be deducted while paying the remaining amount.

10. The Insurance Company is liable to pay the entire compensation. The judgment and award of the Tribunal dated 31.05.2010 is modified accordingly.

The appeal is partly allowed.

