

(2010) 11 KAR CK 0003
In the Karnataka High Court
Case No : M.F.A. No. 3365 of 2005

Deepak Moolya

APPELLANT

Vs

K. Umesh Nayak, Shivananda Mestry and United India
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 11 KAR CK 0003

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Savitha Shetty, for the Appellant;

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the impugned judgment and award dated 28th July 2004, passed in M.V.C. No. 1981/2000, by the Prl. Civil Judge(Sr. Dn), Additional Motor Accident Claims Tribunal, Udupi, (for short, Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. . 1,16,500/- awarded in his favour as against his claim for Rs. . 10,61,000/-, is inadequate.

2. The Appellant claims to be aged about 20 years, working as Mechanic, getting income of Rs. . 6,000/- per month. He was hale and healthy prior to the date of accident. That at about 8:15 P.M., on 06-03-2000, when the Appellant was travelling as a pillion rider in Bajaj M.80 Scooter bearing No. KA-20/K-889, from Inna Mahalingeswara Temple, he met with an accident near Baikala Moolya's house at Inna Nejar, on account of rash and negligent driving by the driver of Tempo, on account of which, he fell down and sustained injuries to left thigh, waist and other parts of the body.

3. It is the case of the Appellant that on account of the injuries sustained, he is unable to sit, stand and walk properly and continue his profession as Mechanic and he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and

therefore, he has to be compensated reasonably.

4. On account of the injuries sustained in the accident, the Appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. . 10.61 lakhs against the Respondents. The said claim petition had come up for consideration before the Tribunal on 28th July 2004. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. . 1,16,500/- with interest at 8% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the Appellant is in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned Counsel for Appellant, for considerable length of time. The Respondents are served and unrepresentative.

6. Learned Counsel appearing for Appellant, at the outset, submitted that the Tribunal has committed error in not awarding reasonable compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of income during treatment period, loss of amenities, discomforts and unhappiness on account of disability and further erred in not awarding any compensation towards loss of marriage prospects and future medical expenses. To substantiate the said submission, referring the original records placed before us, she pointed out that the claimant has undergone treatment for a total period of 85 days and also underwent one surgery and because of the injuries, he is not in a position to his duties as Mechanic. He is also unable to sit, stand and walk properly on account of the injuries sustained in the accident. Further, she submitted that on account of the injuries, he is unable to pass urine properly and he is suffering from an incurable disease and because of this, his future is ruined and he cannot enjoy the sexual life. This clinching evidence is not appreciated by Tribunal while awarding compensation for the injuries sustained in the accident. Therefore, she submitted that the impugned judgment and award passed by Tribunal is liable to be modified by awarding reasonable compensation.

7. After hearing learned Counsel for the Appellant, after perusal of the judgment and award passed by Tribunal and after critical evaluation of the original records placed before us, the only point that arise for our consideration in this appeal is as to:

Whether the compensation awarded by Tribunal is just and reasonable ?

The occurrence of accident and the resultant injuries sustained by Appellant are not in dispute. It is also not in dispute that he was aged about 20 years and working as "Mechanic". In view of the injuries sustained in the accident, he has taken treatment for about 85 days in the Hospital and during this period, he would have under gone lot of deep pain and agony and must have spent considerable amount towards conveyance, nourishing food and attendant charges, apart from medical expenses. As per Ex.P4 wound certificate, the injury

sustained is said to be of grievous nature. There was fracture of superior pubic femur on left side and there was urethral injury. Further, it is stated that he is suffering from Carthol problem (Posterior Urethral stricture) and he has undergone transpuvic Urethra plasty. PW3 - Doctor has deposed in Ex.P124 that, the Appellant cannot enjoy the marital life on account of urethral injury and in future also, he may feel difficulty in passing urine and this is an incurable disease and therefore, he has stated that on account of this injury, he cannot be as a normal person. The Appellant, being aged only about 20 years, at the time of accident, has to undergo this trauma and pull on with this disability for the rest of his life and he definitely cannot do the work of a mechanic, when he is unable to sit, stand and walk properly. Because of the injuries, he cannot enjoy the sexual life in future, like a normal human being.

Because of this precarious state of the claimant, the hopes and aspirations of the mother to see him settle in life, is also spoiled. The fact that the marriage prospects of the claimant are also going to be seriously affected cannot be ruled out. Having regard to the nature of injuries sustained in the accident, we presume that he would have taken follow-up treatment and bed rest at least for a period of four months. Accordingly, taking into consideration all the above aspects, we redetermine compensation by awarding a sum of Rs. . 50,000/- towards pain and sufferings as against Rs. . 15,000/-; Rs. . 20,000/- towards conveyance, nourishing food and attendant charges as against Rs. . 9,500/-; Rs. . 24,000/- towards loss of income during treatment period, taking the income of the Appellant at Rs. . 6,000/-per month for a period of four months as against Rs. . 17,000/-, Rs. . 60,000/- towards loss of amenities, discomforts, and unhappiness on account of serious injuries sustained as against Rs. . 25,000/- awarded by Tribunal; and a sum of Rs. . 30,000/- towards loss of marriage prospects.

8. Further, the Tribunal has not awarded any compensation towards future medical expenses. Having regard to the nature of injuries and also the fact that he requires medical in future also, we award a sum of Rs. . 20,000/- towards future medical expenses.

9. However, a sum of Rs. . 50,000/- awarded by Tribunal towards medical expenses is as per the medical bills produced and is just and reasonable. Hence, it does not call for interference.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by Appellant is allowed in part. The impugned judgment and award dated 28th July 2004, passed in M.V.C. No. 1981/2000, by the Prl. Civil Judge(Sr. Dn), Additional Motor Accident Claims Tribunal, Udupi, is hereby modified, awarding a sum of Rs. . 2,54,000/- as against Rs. . 1,16,500/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

Towards Pain and sufferings

Rs. . 50,000/-

Towards Loss of amenities & enjoyment in life

Rs. . 60,000/-

Towards Medical Expenses

Rs. . 50,000/-

Towards conveyance, nourishing food and attendant charges

Rs. . 20,000/-

Towards Loss of earning during treatment period

Rs. . 24,000/-

Towards future medical expenses

Rs. . 20,000/-

Towards loss of marriage prospects

Rs. . 30,000/-

Total

Rs. . 2,54,000/-

The Insurance Company is directed to deposit the enhanced compensation of Rs. . 1,37,500/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment and award.

On such deposit by the Insurance Company, out of the enhanced compensation of Rs. . 1,37,500/-, 50% of it with proportionate interest shall be deposited in Fixed Deposit in any Nationalised or Scheduled Bank, in the name of the Appellant, for a period of five years, renewable for another five years, with permission to him to withdraw the periodical interest.

The remaining 50% of the enhanced compensation with proportionate interest shall be released in favour of the Appellant, immediately.

Office to draw award, accordingly.