
(2009) 08 KAR CK 0028

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 12696 of 2007

Devendra

APPELLANT

Vs

The Divisional Manager, Bangalore Metropolitan Transport Corporation Ltd.

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 08 KAR CK 0028

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Shripad V. Shastry, for the Appellant; M. Poornima, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—This is a claimant's appeal. Claim petition u/s 166 of Motor Vehicle Act 1988 claiming compensation from the respondent at Rs. 8,00,000/-, on account of injuries sustained In the road traffic accident on 28.8.2004 on account of wrongful action on the part of driver of the bus bearing Registration No. KA-01 F-2671, has been allowed in part, directing the respondent to pay to the claimant, compensation of Rs. 1,98,250/- with interest at 7% p.a. from the date of petition till the date of deposit. Respondent has accepted the award passed by the Motor Accident Claims Tribunal.

2. Dissatisfied with the amount awarded and to award just compensation, this appeal has been preferred by the appellant/claimant.

3. As this is a claimant's appeal for enhancement, the finding regarding actionable negligence does not require consideration.

4. The only point, therefore, that arises for consideration is:

Whether the compensation awarded is Inadequate and whether it requires to be increased?

5. Heard the learned Counsel on both sides and perused the record.

6. Learned Counsel for the appellant contended that, the approach of the tribunal and appreciation of evidence available on record with regard to assessment of loss, is against settled principles of law. It was contended that, the compensation awarded is meager. Though there is 15% permanent disability to the whole body, which is established from the record, non awarding of any sum towards future loss of earning, is illegal. The amount awarded under the head conveyance, nourished food and incidental expenses, is also meager and at any rate, the award is on a lower side, being not just compensation, keeping in view the nature of injuries sustained in the accident and the resultant loss which has been established.

7. Per contra, learned Counsel for the respondent made submissions in support of the findings and conclusion of the tribunal and contended that, the amount awarded is just and no increase in the award is called for.

8. The evidence on record establishes that, the appellant sustained injuries like cerebral odema with fracture of occipital bore, fracture of both bones of left fore aim, deep lacerated wound just below the bone patella, joint exposed swelling present above and below joint right side, lacerated wound on back of left fore arm, fracture of right femur. Immediately after the accident, he was taken to CMH hospital, wherein after receiving first aid treatment, he was admitted to Bowring hospital as an inpatient for a day and after conservative treatment, he was shifted to Nimhans hospital, wherein, he was treated as outpatient. X-rays were taken, C.T. scan was done and other injuries were treated conservatively. Later, on he was admitted to St. John's hospital from 29.8.2004 to 27.9.2004, wherein X-rays were taken, surgery was performed and implants were inserted. He was readmitted to St. John's hospital and treated as an inpatient from 18.11.2004 to 20.11.2004, surgery was performed and proximal screws were removed from his right leg and other injuries were conservatively treated. He was advised to use crutches and take follow up treatment once in a week for a period of 3 months and thereafter once in 15 days for further period of 3 months.

9. PW.2 Dr. C.R. Krishna Rao, working as Sr. Casualty Medical Officer in St. John's Medical College hospital has deposed that, he examined the injured on 29.8.2004 when ha was brought to the hospital by his uncle with history of road traffic accident on 28.8.2004, by which time, the patient had taken treatment at Bowring hospital and Nimhans hospital. He was brought to St. John's hospital for further management and on examination, he found the injuries, such as, deep lacerated wound just below the right patella bone. Right knee joint exposed, swelling present above and below the joint. X-ray taken showed fracture of lateral condyle of right femur and fracture patella. Lacerated wound 1cm x 1cm on back of left fore arm. Deformity and pain present. X-ray taken showed fracture of both bones of left fore arm. Fracture of occipital bone. Cerebral Oedema present. Patient was admitted in Orthopaedic Ward from 29.8.2004 and was treated upto 21.9.2004. He was operated for fractures on 10.9.2004 and

thereafter, he took further treatment. Patient was re-admitted on 18.11.2004 and discharged on 20.11.2004. On recent examination by him on 15.3.2007, he found from the X-rays that, fractures have united well and the implants applied are still present and a sum of Rs. 15,000/- is required, to remove the implants by subjecting the patient to another surgery in the hospital. He found the patient was unable to flex the knee joint fully. There is limitation of movement of right knee joint by 50%. Patient was unable to squat and get up easily. Patient was limping while walking and was unable to walk fast and long distance. According to him, the patient who was a driver by profession, is unable to work as a driver due to the injuries and according to him, the said injuries have caused permanent disability. The permanent disability to the lower limb is at 45% and when taken to the whole body, it is 15%. In the cross-examination he has admitted that, the follow up treatment was completed on 25.11.2004 and by November, 2004 the wound was healed. He has further admitted that he was not a surgeon. However, he has denied the suggestion that he is not competent to assess the disability.

10. In the case of R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, Hon''ble Supreme Court has held that, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately, as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate the two concepts, pecuniary damages may include the expenses incurred by the claimants on: (i) medical attendance; (ii) the loss of earnings/profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include; (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress In life. In determining the quantum of damages, the tribunal/Court is bound to ascertain all considerations which will make good to the sufferer all the injuries as far as money can do, the loss which he has suffered as the natural result of the wrong done to him.

11. The documentary evidence on record viz., Exs.P4 and P5-wound certificates, discharge summaries at Exs.P6 and P7 and the medical bills and prescriptions - Ex.P11, the case sheet - Ex.P13 and X-rays Ex.P14, establish the sustaining of the said injuries and the obtaining of treatment. Considering the nature of injuries and the long period of treatment, the amount awarded under the head pain and suffering, is not just and hence a further sum of Rs. 10,000/- is required to be awarded thereunder. The amount awarded under the head

conveyance, nourished diet and incidental expenses, is also not just considering the long period of treatment. Hence further sum of Rs. 5,000/- is awarded. The amount awarded under the head loss of earning for the laid up period is also not just. The injuries must have made the appellant to be away from the work atleast for a period of 4 months and hence he is entitled to be awarded a further sum of Rs. 3,750A thereunder.

12. The appellant is a driver by profession. He was earning Rs. 4,000/- p.m. as salary which is evident from Ex.P8. His driving licence is at Ex.P9, The permanent disability has reduced the earning capacity of the claimant by 10%. Hence, there is reduction in his future income. Tribunal has not awarded any sum thereunder. The appellant is entitled to a sum of Rs. 81,600/- under the head loss of future income (Rs. 4,000 x 12 x 17 x 10/100 = Rs. 81,600).

13. Tribunal without correctly noticing the evidence with regard to the injuries and the consequential effect, has awarded compensation which is not just. In view of the nature of injuries and the consequential loss established from the record, the appellant is entitled to the enhanced compensation.

14. In the result, the appeal is allowed in part. In modification of the judgment and award passed by Motor Accident Claims Tribunal, an additional compensation of Rs. 1,00,350/- under the aforesaid heads and the said amount shall carry interest at 6% p.a. from the date of filing of claim petition till the date of deposit into the Motor Accident Claims Tribunal by the respondent, which is granted 3 months time from today for depositing of the amount. No costs.

Registry to draw the modified award.