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(2015) 02 KAR CK 0382

In the Karnataka High Court

Case No : M.F.A. No. 2777/2011 (MV)

D.H. Vishwanath APPELLANT

Vs

United India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0382

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : H.B. Somapur, for the Appellant; K.N. Srinivasa, Advocates for the Respondent

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

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

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 06.09.2008 due to rash and negligent driving of a bus bearing registration No. KA-15/2791 by its driver and liability of the insurer of the offending vehicle, the only point that arises for consideration in the appeal is:

"Whether the compensation of Rs. 2,05,200/- with interest at 6% p.a. awarded by the Tribunal is just and reasonable or does it call for enhancement?" 5. After hearing the learned counsel appearing for parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

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6. As per Ex. P6-wound certificate, the claimant had sustained following injuries:

i) Compound fracture of both bones of left leg and crush injury to the right foot with type 3

ii) Compound fracture of tarsal and metatarsal bones.

Injuries sustained and treatment taken by the claimant are also evident from discharge summary of Victoria Hospital, case sheet and OPD book at Exs. P7, P10, and P11 respectively and X-rays produced at Exs. P12, P13 and P14 respectively and they are corroborated by oral-evidence of claimant and two doctors who were examined as PW-1, PW-4 and PW-5 respectively. PW-4-Dr. A. Vishwanath, an Orthopedic Surgeon in his evidence has stated that claimant has sustained disability of 86.2 % to the limbs, 43.1% to whole body and functional disability at 100%. The evidence of PW-5-Dr. N. Chaitnaya Babu has been rightly ignored by the Tribunal as there is no credible evidence regarding maxillary injury sustained by the claimant.

7. Considering the nature of injuries sustained by the claimant, a sum of Rs. 1,00,000/- is awarded towards ''pain and sufferings'' as against Rs. 50,000/- awarded by the Tribunal.

8. The compensation awarded by the Tribunal towards ''medical expenses'' is as per the medical bills produced by the claimant at Ex. P8 and there is no scope for enhancement under this head.

9. He was treated as in patient for two months at Victoria Hospital, considering the duration of treatment as inpatient, a sum of Rs. 30,000/- is awarded towards ''incidental expenses'' such as conveyance, nourishment and attendant charges.

10. The claimant claims to have been working as a Weaver and getting a salary of Rs. 8,000/- per month and has produced salary certificate at Ex. P9 and has examined Sri Chowdappa, the owner of power loom as PW 3. PW 3 except stating that the claimant is working as a Weaver under him and he was paying him salary of Rs. 8,000/- per month, he has not produced any documents to show that he is owning a power loom and wage list to show that he was paying a sum of Rs. 8,000/- per month as salary to the claimant. In the absence of which, considering the age of claimant as 51 years, year of accident as 2008 and his avocation as a Weaver, his income could be easily assessed at Rs. 5,000/- per month as against Rs. 3,000/- per month taken by the Tribunal. The nature of injuries sustained by the claimant would suggest that he must have been under rest and treatment for a period of three months and therefore, a sum of Rs. 30,000/- is awarded towards loss of income during laid up period''.

11. Considering the nature of injuries sustained, disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, justice would be met if a sum of Rs. 75,000/- is awarded towards ''loss of amenities'' as against Rs. 30,000/- awarded by the Tribunal

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12. As the income of the claimant is assessed at Rs. 5,000/- per month and the multiplier applicable to his age group is ''11'' and PW 4, doctor has stated that claimant has suffered disability of 86.2 % to the limbs, 43.1% to whole body and functional disability at 100%, a perusal of the photographs which are available on record would show that he has sustained grievous crush injury to his right foot and muscle is exposed to outside and he cannot stand on his right foot properly. In addition to that, he has sustained compound fracture of both bones of left leg and crush injury to the right foot. Therefore, justice would be met if functional disability is considered at 60% as against 20% taken by the Tribunal. Hence, the loss of future income'' would work out to Rs. 3,96,000/- and it is awarded.

13. Considering the nature of injuries sustained and the disability stated by the doctor, justice would be met if a sum of Rs. 25,000/- is awarded towards ''future medical expenses''.

14. Thus, the claimant is entitled for the following compensation:-

15. Accordingly, the appeal is allowed in part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 4,50,800/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

16. 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, 50% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Grameena Bank for a period of 3 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant.

17. The Tribunal while releasing 50% of the amount is also directed to issue the fixed deposit slips, so as to enable the claimant to withdraw the deposit amount on its maturity without approaching the Tribunal once again and the Bank is directed to release the fixed deposit amount without insisting for any further order from the Tribunal.

No order as to costs.

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