(2015) 08 KAR CK 0091

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 30184 of 2011 (MV) and Miscellaneous First Appeal Crob. No. 1066 of 2011 (MV)

Divisional Manager, New India Assurance Company Ltd. APPELLANT

Vs

Babureddy and Others RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 4 AKR 465

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

Bench : Single Bench

Advocate : Shashikala Jahagiradhar, for the Appellant; Babu H. Metagudda, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.—MFA No. 30184/2011 is filed by the insurer of offending vehicle seeking reduction of compensation awarded by the Tribunal. Whereas, MFA Crob No. 1066/2011 is filed by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. Appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

2. As this appeal and cross objection are arising out of a common judgment and award of the Tribunal, they are heard and disposed of by this common judgment with the consent of the learned counsel appearing for the parties.

3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident that occurred on 01.07.2008 due to rash and negligent driving of an offending auto bearing registration No. KA-39-3746 by its driver and liability of the insurer of the said vehicle, the only point remains for consideration is:

Whether the compensation of Rs. 3,76,600/- with interest at the rate of 6% per annum awarded by the Tribunal is just and reasonable or does it call for enhancement?

4. After hearing the learned counsel appearing for parties and perusing the judgment and award of the Tribunal, I am of the view that quantum of compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and therefore, it is required to be enhanced.

5. As per wound certificate Ex. P3 the claimant had sustained commuted grade II compound fracture of femur. Injuries sustained and treatment taken by the claimant are evident from discharge card Ex. P9, disability certificate Ex. P10 and Exs. P15 (20) X-ray films) and they are supported by the oral evidence of the claimant and doctor who are examined as PW 1 and PW 2 respectively.

6. P.W. 2 Dr. Neetin Loharekar in his evidence has stated claimant has suffered disability of 85% to limb and 30% to the whole body. Considering the nature of injuries sustained by the claimant a sum of Rs. 25,000/- is awarded towards pain and suffering. As Rs. 1,30,000/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant at Exs. P11 and P12, it is just and proper and there is no scope for either reduction or enhancement of compensation under this head.

7. He was treated as inpatient for 10 days at Dr. Vishwekar Hospital at Umerga. Considering the duration of treatment a sum of Rs. 5,000/- awarded by the Tribunal towards incidental expenses such as conveyance, nourishment and attendant charges is just and proper and there is no scope for either enhancement or reduction of compensation under this head.

8. He claims to have been earning Rs. 10,000/- per month by doing agriculture and business and he has produced ROR at Ex. P13. Ex. P13 ROR would show he owns 3 acres 18 guntas of sugarcane growing land. Therefore, considering his age, year of accident as 2008 and avocation as agriculturist his income could be assessed at Rs. 4,500/- per month. Nature of injuries suggests he must have under rest and treatment for a period of 4 months mere-fore a sum of Rs. 18,000/- is awarded towards loss of income during laid-up period.

9. Considering the nature of injuries sustained, disability stated by the doctor and an amount of discomfort and unhappiness that he has to suffer in his future life a sum of Rs. 20,000/- is awarded towards loss of amenities as against Rs. 10,000/- awarded by the Tribunal.

10. Regarding disability is concerned learned counsel for the insurer submits P.W. 2 is not the Doctor who has treated the claimant and he has issued the disability certificate two years after the accident without taking the latest x-ray of the claimant and therefore disability taken by the Tribunal at 30% to the whole body while awarding loss of future income is not just and proper.

11. Per contra, learned counsel for the claimant submits P.W. 2 Dr. Neetin Loharekar has examined the claimant while issuing the disability certificate and issued the disability certificate based on other medical records relating to the

treatment of the claimant.

12. It is not disputed that the claimant has sustained commuted grade II compound fracture of femur. As per the disability of 85% stated by the doctor to the lower limb and as mentioned in the disability certificate the disability caused to the whole body comes to 28.33% and therefore, it may be taken at 28%. His income is assessed at Rs. 4,500/- per month and multiplier applicable to his age group is ''14''. So loss future income works out to Rs. 4,500/- x 28/100 x 12 x 14 = Rs. 2,11,680/- and it is awarded as against Rs. 2,01,600/-.

13. A sum of Rs. 10,000/- is awarded towards future medical expenses for removal of implants.

14. Thus, he is entitled for the following compensation:

15. Accordingly, cross objection filed by the claimant is allowed in part and the Judgment and award passed by the Tribunal is modified to the extent stated hereinabove. Claimant is entitled for an additional compensation of Rs. 43,080/- with interest at 6% per annum from the date of petition till the date of realization.

16. Insurance company is directed to deposit the additional compensation amount together with interest within 2 months from the date of receipt of a copy of this judgment and the same is released in favour of the claimant.

17. In view of allowing cross objection by the claimant and enhancing the compensation awarded by the Tribunal the appeal filed by the insurer for reduction of compensation does not survive and it is dismissed. The amount deposited in the appeal of the insurance company is ordered to be transmitted to the Tribunal for disbursement in favour of the claimant.

Draw up the award accordingly.

No order as to costs.