

(2013) 09 KAR CK 0397

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 659 of 2011 (MV)

Dr. Venugopal Reddy

APPELLANT

Vs

The Divisional Manager, New India Insurance Company and
Another

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 3 ACC 243 : (2014) 2 AKR 277 : (2013) 6 KarLJ 586

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : J.V. Chandrashekar, for the Appellant; C.R. Ravishankar, for the Respondent

Final Decision : Partly Allowed

Judgement

Aravind Kumar, J.—This is a claimant's appeal for enhancement of compensation not being satisfied with the judgment and award passed by MACT, Bangalore, dated 19-8-2010 in MVC No. 149 of 2003 whereunder claim petition filed by appellant/claimant has been allowed in part and a compensation of Rs. 1,27,000/- has been awarded as against claim of Rs. 4,00,000/-. I have heard the arguments of Sri J.V. Chandrashekar, learned Counsel appearing for appellant/claimant and Sri C.R. Ravishankar, learned Counsel appearing for R1. Notice to R2 has been dispensed with vide order dated 12-4-2012. Perused the records secured from the Tribunal.

2. It is the contention of Sri J.V. Chandrashekar, learned Counsel for appellant that Tribunal committed a serious error in not awarding compensation towards loss of future medical expenses when Doctor-P.W. 2 has opined that claimant has to undergo one more surgery for hip replacement and cost of the same by furnishing estimate Exhibit P. 9 and cost of hip replacement being Rs. 1,41,225/- as per Exhibit P. 20, Tribunal committed a serious error in not awarding any amount towards future medical expenses. He also contends Tribunal has not awarded compensation towards loss of future income, despite disability sustained

by claimant. He would submit that compensation awarded under all heads is abysmally low and as such he seeks for enhancement of compensation. He also contends that Tribunal committed an error in awarding interest only from the date of judgment i.e., 19-8-2010 and not from the date of restoration of claim petition i.e., on 9-3-2010 by virtue of Misc. No. 215 of 2009 having been allowed. Hence, he seeks for suitable modification of the award.

3. Per contra, Sri C.R. Ravishankar, learned Counsel appearing for R1 would support the judgment and award in question and contends what has been awarded by the Tribunal is just and reasonable and question of awarding future medical expenses would not arise since there was no evidence placed by the claimant to establish that he has to undergo hip replacement on account of injuries sustained in the accident and as such claim raised in this regard is without merit and as such he prays for dismissal of the appeal.

4. Having heard the learned Advocates appearing for the parties and after bestowing my careful attention to the records secured from the Tribunal and after examining the rival contentions, following point would arise for my consideration:

Whether the compensation awarded by the Tribunal is just and reasonable or requires to be enhanced or modified? and, if so, to what extent?

5. Accident in question, offending vehicle being issued with the policy which was in vogue as on the date of accident are facts which are not in dispute. Hence, they are not delved upon in this appeal as it would be repetition of facts.

Re: Point No. 1:

6. On account of injury sustained in a road traffic accident that occurred on 9-10-2002 claimant was admitted to Sagar Apollo Hospital on 9-10-2002 and he was discharged on 16-10-2002. Wound certificate produced as per Exhibit P. 13 would indicate that claimant had sustained following injuries:

1. Trans cervical fracture left femur
2. Abrasion over left cheek
3. Soft tissue injury over left shoulder
4. B/L nasal bleeding

7. Claimant produced the discharge summary issued by Sagar Apollo Hospital and got it marked as Exhibit P. 17 which would indicate that claimant had sustained fracture of left femur and said discharge summary would also indicate that he was operated on 12-10-2002 for C-arm control. He has underwent ORIF with Cannulated Cancellous Screws left hip. He was an inpatient for 6 days. Discharge summary would also indicate that pre-operated diagnosis indicated that he had "Basal fracture of left femur". Post operative diagnosis indicated "Trans cervical fracture of left femur". At the time of discharge claimant was

advised walking with ambulation and non-weight bearing. Doctor has also opined that claimant should get reviewed immediately after one week. Exhibit P. 17 would indicate that claimant's case was a known case of renal failure on medication (kidney failure). It has been recorded in Exhibit P. 17 that renal failure is 10 months prior to date of accident. One Dr. Karthik has been examined by the claimant as P.W. 2. Affidavit filed in examination-in-chief does not indicate as to whether he was the doctor who administered treatment to claimant at the Sagar Apollo Hospital is not forthcoming and it is as vague as vagueness could be. His evidence is silent on this aspect. To ascertain as whether he is the doctor who treated the claimant at Sagar Apollo Hospital-Exhibit P. 17 namely discharge summary issued by Sagar Hospital has to be looked into and under the heading "investigations and operative notes" it is stated that P.W. 2 is the doctor who assisted surgeon Dr. Ram Iyer V. while conducting surgery on claimant. On the basis of Exhibit P. 17 this Court has to arrive at a conclusion one of the doctors who attended to claimant at the time of claimant having been admitted to Sagar Apollo on 9-10-2002 was P.W. 2. Exhibit P. 17 would indicate that claimant has undergone surgery and Exhibit P. 16 which is an inpatient record of Reddy's Hospital would indicate that claimant was admitted on 19-5-2007 and discharged on 23-5-2007 after surgery being conducted for removal of implants. This, medical record would indicate that claimant has undergone surgery twice. Tribunal has awarded a compensation of Rs. 25,000/- under the heading "pain and agony" which is marginally on the lower side and it requires to be enhanced by awarding a additional sum of Rs. 15,000/- and accordingly it is hereby awarded.

8. Though claimant contended he is entitled for "loss of future income" Tribunal has negated said claim for the reason that claimant has himself admitted in his evidence namely cross-examination dated 3-7-2010 to the following effect:

I have not produced documents x x x towards treatment. At the time of accident my income was less i.e., Rs. 4,000/- p.m., so I have not produced any income tax returns. It is true to suggest that even today I am practising as a doctor and I have not produced any documents in that regard. I am not getting more income to pay the income tax. I have not filed any income tax returns. It is not true x x x as stated by me.

(emphasis supplied)

This admission of claimant would clearly indicate that claimant even after the accident, has continued with his profession i.e., medical profession and has been earning income out of his medical profession. Thus, claimant is not entitled for compensation towards "loss of future income" and question of awarding loss of future income does not arise and it has been rightly refused by Tribunal. No justifiable ground is made to interfere with the well-reasoned finding. Hence, contention raised in this regard is rejected.

9. Insofar as claim towards future medical expenses which is negated by

Tribunal when examined with the evidence available on record it would indicate that claimant had sustained fracture of Trans cervical of left femur. At the time of admission to hospital he had complained pain in the left hip and his inability to move left lower limb. Radiological examination of claimant revealed that claimant had sustained "Basal trochanteric fracture left femur". He was advised follow up treatment and review after one week. After discharge in the year 2002 i.e., on 16-10-2002 there is no material available on record to establish as to what was the treatment obtained by the claimant thereafter. However, claimant contends he had to take follow up treatment after a period of five years i.e., from May 2007 onwards. In support of the contention that he had taken up follow up treatment claimant has produced discharge summary Exhibit P. 16 issued by Reddy's Hospital which would indicate that claimant had been operated for removal of implants. Exhibit P. 17 which is discharge summary and entire medical records relating to Sagar Apollo Hospital would not indicate that claimant had undergone either surgery for hip injury or hip replacement as opined by P.W. 2-Doctor. In that view of the matter, I am not inclined to entertain the claim made towards future medical expenses. Contention raised by Sri J.V. Chandrashekar in this regard stands rejected. However, this Court cannot loose sight of the fact that on account of injuries sustained by claimant it has resulted in restricted movements. In fact the discharge on advice was as under:

Non-weight bearing and walker Ambulation.

In fact doctor has not assessed whole body disability. He has assessed the disability to left hip at 14.4572%. This Court cannot loose sight of the fact that as per Exhibit P. 17-medical records of Sagar Apollo Hospital which would indicate that claimant was already a patient of renal failure even 10 months prior to the date of accident. As to the nexus of hip injury vis-?-vis injuries sustained in the accident there is no medical evidence. In that view of the matter also claimant would not be entitled to future medical expenses. At the same time it is to be noticed that on account of said injury sustained by claimant as per Exhibit P. 17, he would loose certain comforts in life and as such claimant would be entitled to substantial compensation towards "loss of amenities" which includes disability. Hence, in addition to what has been awarded by Tribunal, I am of the view that claimant would be entitled for a sum of Rs. 40,000/- towards "loss of amenities" including disability. Accordingly same is hereby awarded.

10. Towards food, nourishment and conveyance Tribunal has not awarded any compensation and as such a sum of Rs. 10,000/- is hereby awarded since claimant was admitted to hospital under two spells i.e., 9-10-2002 to 16-10-2002 and 19-5-2007 to 23-5-2007. Claimant had sustained injuries as stated hereinabove on account of immobility he was unable to attend to his medical practice at least for six months Tribunal has awarded a sum of Rs. 12,000/- at the rate of Rs. 4,000/- per month. Since it is on the lower side I am of the view additional compensation towards loss of income for another two months i.e., a sum of Rs. 8,000/- if awarded it would meet the ends of justice.

Accordingly it is hereby awarded. Thus, in all claimant is entitled to additional compensation of Rs. 73,000/- under the following heads:

11. It is noticed from the records that claim petition was filed on 7-1-2003. Matter was posted for evidence of claimant on 17-2-2004. For reasons best known claimant did not lead evidence. Tribunal had extended its hand of benevolence and had granted adjournment after adjournment for a period of three years to enable the claimant to tender evidence. Despite such time being granted claimant did not lead evidence. Hence, left with no other option Tribunal dismissed the claim petition on 2-1-2006. Subsequently a miscellaneous petition for restoration of claim petition in Misc. Petition No. 215 of 2009 was filed and it came to be allowed by Tribunal by order dated 9-3-2010. Learned Counsel for claimant would fairly submit that while restoring the claim petition Tribunal has deprived the claimant interest for the said period and it is now contended that claimant is entitled for interest from the date of restoration of petition which has been denied by Tribunal. In view of this Court having re-examined the entire evidence on record and on perusal of the evidence it is noticed that for a period of three years claimant has not tendered his evidence and it is because of failure on the part of claimant, Tribunal dismissed claim petition. It is required to be ordered that claimant would not be entitled to interest from the date when claim petition was posted for evidence i.e., from 17-2-2004 till its restoration on 9-3-2010, both on the compensation awarded by Tribunal and additional compensation awarded by this Court. Subject to observation made hereinabove namely claimant would not be entitled to interest both on the compensation awarded by Tribunal as well as this Court for the period from 17-2-2004 to 9-3-2010. Claimant would be entitled to interest at 6% p.a. on the award amount.

Hence, for the reasons aforestated, following order is passed:

ORDER

1. Appeal is hereby allowed in part.
2. Judgment and award passed in MVC No. 149 of 2003, dated 19-8-2010 by MACT, Bangalore is hereby modified and an additional compensation of Rs. 73,000/- is awarded which shall carry interest at 6% p.a. from date of petition till date of payment or deposit excluding the period of 17-2-2004 to 9-3-2010.
3. Compensation enhanced by this Court with proportionate interest shall be released in favour of claimant considering the fact that he is a doctor by profession.