

(2013) 10 KAR CK 0230
In the Karnataka High Court
Case No : M.F.A. No. 5993 of 2011

Dr. Vivekananda Shetty

APPELLANT

Vs

Raghu Achar, Mahabala Shetty and The Divisional Manager
New India Ass. Co. Ltd.

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 KAR CK 0230

Hon'ble Judges : Mohan M. Shantanagoudar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : S. Vishwajith Shetty, for the Appellant; M. Narayanappa, for R3, R1 and R2, for the Respondent

Final Decision : Partly Allowed

Judgement

Mohan M. Shantanagoudar, J.—The appellant-claimant sustained fracture of 2nd to 5th ribs and fracture of lateral maxillary bone and right clavicle bone, in the accident that occurred on 8.10.2010. The claimant is a doctor practicing homeopathy. He is having degree in BHMS. He is having his own clinic at Kalsanka, Udupi and according to him he was not earning not less than Rs. 25,000/- per month at the time of accident. The Tribunal has awarded compensation of Rs. 4,92,672/- under various heads. This appeal is filed praying for enhancement of compensation. Ex. P3 is the wound certificate. Discharge summary is marked at Ex. P10. Since the claimant has sustained multiple injuries, he was treated as required and skin grafting was made by operating. Ex. P12 to P15 are the certificates disclosing the treatment provided to the claimant. The medical evidence on record reveals the following injuries:-

- 1) (L) Closes Head injury.
- 2) (H) Multiple ribs fracture right side. (2nd to 6th ribs)
- 3) (IH) Left pneumothorax

4) B. Lateral maxillary fracture.

5) Right clavicle fracture.

Thus, it is clear that the claimant had sustained fracture of five ribs on the right side apart from fracture of lateral maxillary and right clavicle bone. He must have suffered lot of pain. Having regard to the aforementioned material, we award Rs. 75,000/- to the claimant under the head of "pain and suffering".

However, we find that adequate compensation is awarded to the claimant under the heads of "medical expenses", "future medical expenses", "loss of amenities, "conveyance, food and attendant charges" and "damages caused to the vehicle of the claimant".

2. On going through the material on record, we are of the opinion that the Tribunal has fallen in error in assessing the monthly income of the claimant. Though the income tax returns of the claimant reveal that the taxable income of the claimant was Rs. 10,341/-, the Tribunal has erred in overlooking to the fact that claimant was also paying Rs. 10,000/- as EMI towards housing loan. Major portion of the amount to be paid by the claimant towards housing loan is exempted from the tax. Thus, we assess the income of the claimant at Rs. 15,000/- per month. Since the claimant must have taken rest at least for two months, he shall be awarded Rs. 30,000/- under the "loss of income during laid up period". The claimant was aged about 39 years at the time of the accident. Thus, the proper multiplier to be adopted is "15". We also find that the claimant must have suffered 15% of disability. The Tribunal in our considered opinion erred in assessing 12% disability though the doctor has deposed that the claimant has suffered disability at 16%. Be that as it may, in our considered opinion, it would be appropriate to conclude that the claimant has suffered 15% of disability.

Based on the said facts and aforesaid figures, the claimant is entitled to Rs. 4,05,000/- under the head of "loss of future income" on account of disability.

Thus, in all, the claimant would be entitled to compensation of Rs. 7,08,625/-. Accordingly, the following order is made:-

The claimant is entitled to total compensation of Rs. 7,08,625/- (Rupees seven lakhs eight thousand six hundred and twenty-five only) as against the compensation of Rs. 4,92,672/- awarded by the Tribunal below. Thus, the compensation is enhanced by Rs. 2,15,953/-.

The rate of interest and deposit of the amount in the Nationalized Bank shall remain as directed by the Tribunal.

The amount in deposit if any, shall be transmitted to the Tribunal below.

Accordingly, the appeal is partly allowed.