

(2017) 01 KAR CK 0354
In the Karnataka High Court
Case No : 4418 of 2015 (MV)

Dr.H.P. Natraj S/o. Padmanaabhaiah

APPELLANT

Vs

Pramod Prashanth Pillai V. S/o. Yesupadam K.J., & Anr.

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Citation : (2017) 01 KAR CK 0354

Hon'ble Judges : S.Abdul Nazeer, K.S.Mudagal

Bench : DIVISION BENCH

Advocate : Venkataram C.R., A.N.Krishnaswamy

Final Decision : Allowed

Judgement

1. This appeal by the claimant is directed against the judgment and award in MVC No.4242/2012 dated 18.02.2015 on the file of XXII Additional Small Causes Judge & Member, MACT, Bengaluru (for short "Tribunal"), whereby the Tribunal has awarded a total compensation of Rs.99,000/- with interest at 6% p.a. from the date of petition till the date of deposit. The claimant has filed this appeal seeking enhancement of compensation.

2. The contention of the learned counsel for the appellant is that the claimant had sustained grievous injuries in the accident in question. He was hospitalized for 15 days. The Doctors, who were examined as PWs.4 and 5 have deposed that the claimant has sustained 60% of loss of hearing. PW.5 has specifically stated that the claimant has sustained 40% of avocational disability. This injury has direct effect on the future earning of the claimant. It is further argued that the Tribunal has not awarded entire medical expenses claimed by the claimant as per Ex.P.19 and the compensation awarded under other heads is also on the lower side.

3. On the other hand, learned Counsel appearing for the second respondent/ insurance company has sought to justify the impugned judgment and award.

4. We have carefully considered the arguments of the learned counsel made at the Bar and perused the records of the Tribunal.

5. There is no dispute as to the occurrence of the accident and liability of the respondent/insurance company to pay the compensation.

6. In order to establish the income of the claimant, he has produced the income tax returns at Ex.P.17 for the year 2010-2011. This document discloses that gross annual income of the claimant is Rs.2,06,854/-. The accident had occurred on 09.06.2012. Therefore, the Tribunal has taken the monthly income of the claimant at Rs.20,000/-, which is just and reasonable.

7. On behalf of the claimant, an ENT specialist - Dr.S.U.Shivaprakash, was examined as PW.3. In his evidence, he has deposed that on examination of the claimant, he has found diminished conductive deafness both ear and bone conduction, both the tympanum are ruptured, audiological evaluation shows bilateral sensory neural hearing loss to the extent of more than 60%. On account of the disability, the claimant has difficulty in performing his professional work as he is a Doctor in Indian System of Medicines. Dr.Sharan Srinivasan, a Neurological Surgeon was examined as PW.4. In his evidence, he has given the details of the injuries sustained by the claimant and he has assessed the permanent physical impairment in neurological condition at 47.22%. It is also evident from the evidence of the experts that because of the injuries, the claimant has been subjected to increasing neuro behaviour problems. Neurologist has assessed functional disability at 40%. The Doctors have made assessment on the basis of the medical records and also on examination of the claimant. It is also clear that the claimant needs life long medicine. The Tribunal, in our opinion, is not right in holding that the aforesaid disability has no bearing on the future earning capacity of the claimant. In our view, it is just and proper to hold that the claimant has sustained 20% permanent disability to the whole body.

8. It is not in dispute that the claimant was aged about 57 years at the time of the accident and the multiplier applicable to the case is 9. Taking his income at Rs.20,000/- per month with the application of multiplier 9 and 20% of permanent disability to the whole body, the future loss of income comes to Rs.4,32,000/-.

9. It is evident from the medical bills produced by the claimant that he has spent a total sum of Rs.4,19,326/- towards medical expenses. The Ministry of Corporate Affairs, where the wife of the claimant is working, has reimbursed Rs.2,19,700/- towards medical expenses, which is evident from Ex.P19. Balance of the medical expenses comes to Rs.1,99,626/-, which is rounded off to Rs.2,00,000/-.

10. The Tribunal has only awarded a sum of Rs.20,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities. It is just and proper to award an additional sum of Rs.30,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities. Conveyance and attendant charges

awarded by the Tribunal in a sum of Rs.14,000/- (Rs.5,000+Rs.6,000+Rs.3,000) needs enhancement. An additional sum of Rs.11,000/- is awarded under this head. Similarly, an additional sum of Rs.20,000/- is awarded towards loss of income during the treatment period.

11. Thus, the additional compensation payable to the claimant is as under:

Sl.No.	Particulars	Amount
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1	Towards loss of future income	Rs.4,32,000.00
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2	Towards pain and sufferings	Rs. 30,000.00
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3	Towards loss of amenities	Rs. 25,000.00
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4	Towards loss of income during the treatment period	Rs. 20,000.00
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5	Towards conveyance, nourishment and attendant charges	Rs. 11,000.00
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6	Towards medical expenses	Rs.2,00,000.00
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TOTAL		Rs.7,18,000.00
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12. In the result, the appeal succeeds and it is accordingly allowed in part. The second respondent - Insurance Company is directed to deposit a sum of Rs.7,18,000/- with interest at 6% per annum from the date of the application till the date of deposit in addition to what has been awarded by the Tribunal within a period of eight weeks from the date of receipt of a copy of this order. The appellant is permitted to withdraw the amount on such deposit. No costs.