(2013) 12 KAR CK 0104

In the Karnataka High Court

Case No : M.F.A. No. 6386 of 2013 (MV)

Eregowda APPELLANT

Vs

J. Indra Kumar and The Manager, National Insurance Company Limited RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0104

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Sharath Kumar H.N, for the Appellant; Gangadhar Sangolli, for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Abdul Nazeer, J.—This appeal by the claimant is directed against the judgment and award in MVC No. 907/2011 dated 5.06.2013 on the file of the Principal Senior Civil Judge and Additional MACT at Hassan, whereby the Tribunal has awarded total compensation of Rs. 1,23,800/- with interest at 6% p.a. from the date of the petition till the date of deposit. I have heard the learned counsel for the parties.

2. Learned counsel for the appellant would contend that the claimant/appellant was doing agriculture and earning more than Rs. 9,000/- per month. The Tribunal has taken his income at Rs. 4,000/- per month. It is argued that he had sustained grievous injuries in the accident. He was hospitalized for 13 days. The doctor has assessed 20% permanent disability. The Tribunal has taken 9% permanent disability to the whole body. It is further argued that the award of compensation under other conventional heads is on the lower side.

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

4. I have carefully considered the arguments made at the Bar and the materials

placed on record.

5. There is no dispute as to the occurrence of the accident and liability of the insurance company to pay the compensation. Having regard to the contentions urged, the only question for consideration is whether the award of compensation by the Tribunal is adequate?

6. The accident had occurred on 5.8.2010. The claimant was aged about 39 years at the time of accident. It has come in the evidence that he was doing agriculture. Though, he contends that he was earning more than Rs. 9,000/- per month, no documents have been produced in support of the said contention. Therefore, it is just and proper to notionally fix his income at Rs. 5,000/- per month. The doctor has assessed 20% permanent disability. The Tribunal has rightly assessed 9% permanent disability to the whole body. By taking his income at Rs. 5,000/- per month with 9% permanent disability to the whole body and with application of multiplier 15, the compensation payable towards loss of future earning capacity comes to Rs. 81,000/-. I am of the view that the claimant is entitled for a sum of Rs. 25,000/- towards pain and suffering. The claimant produced medical bills worth Rs. 17,957/-. A sum of Rs. 17,000/- is awarded towards medical expenses, which is just and reasonable. The claimant is entitled for a sum of Rs. 15,000/- towards conveyance, nourishment and attendant charges; a sum of Rs. 15,000/- (three months earning) towards loss of earning during the treatment period and a sum of Rs. 15,000/- towards loss of amenities. It is clear from the evidence of the doctor that the claimant has to under go surgery for removal of implants. A sum of Rs. 15,000/- is awarded towards medical expenses.

7. Thus, the compensation payable to the claimant is reassessed as under:

8. The Tribunal has totally awarded Rs. 1,23,800/-, which has to be deducted from the aforesaid amount. Thus, the claimant is entitled for a balance compensation of Rs. 59,200/-. In the result, the appeal succeeds and allowed in part. The respondent-insurance company is directed to deposit a sum of Rs. 59,200/- with interest at 6% p.a. from the date of the application till the date of deposit within a period of eight weeks from the date of receipt of copy of this order. The claimant is permitted to withdraw the said amount on its deposit. No costs.

