

(2010) 04 KAR CK 0073

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 14325 of 2007 (MV)

Fayaz Pasha

APPELLANT

Vs

The Director, Infants Travels Private Limited and Another

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 6 KarLJ 686 : (2011) 1 TAC 506

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Sunitha B.H., for Suresh M. and Latur, for the Appellant; M. Narayanappa, for the Respondent

Judgement

Aravind Kumar, J.—The claimant is in appeal questioning the legality of the judgment and award passed in MVC No. 5758 of 2006, dated 23-4-2007 on the file of Motor Accident Claims Tribunal, Bangalore.

2. The facts in nutshell are as follows.-

On account of the Road Traffic Accident that occurred on 11-6-2006 at about 9.30 a.m. when the claimant was proceeding in his autorickshaw was dashed by a Qualis vehicle and on account of the same the claimant is said to have sustained injuries, as a result of which a claim petition in MVC No. 5758 of 2006 was filed u/s 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs. 5,00,000/-.

3. On service of notice first Respondent remained absent and was placed ex parte. Second Respondent filed its statement of objections and denied petition averments. On the basis of pleadings, Tribunal framed the issues.

4. The claimant in support of his claim got himself examined as P.W. 1 and also examined Dr. Rajanna as P.W. 2 and got marked Exs. P. 1 to P. 8. On the basis of pleadings and evidence on record, Tribunal allowed the claim petition in part and awarded a total compensation of Rs. 1,23,480/- with interest at 6% p.a. under

the following heads:

(a) Pain and sufferings Rs. 25,000/- (b) Medical expenses Rs. 3,000/- (c) Conveyance and nourishment expenses Rs. 10,000/- (d) Future loss of income (3000 x 12 x 14 x 12) Rs. 60,480/- (e) Loss of amenities Rs. 25,000/- Total Rs. 1,23,480/-

It is this judgment and award which is questioned in this appeal.

5. I have heard Smt. Sunitha B.H., learned Counsel appearing on behalf of Sri Suresh M. Latur and Sri M. Narayanappa, learned Counsel for Respondent 2. Notice to Respondent 1 has been dispensed with.

6. Though several grounds are urged in the appeal memorandum only two contentions that has been canvassed in the present appeal by Smt. Sunitha is (i) Tribunal has erred in taking the income of the claimant at Rs. 3,000/- and she contends that it ought to have taken at Rs. 6,000/- p.m. and awarded a compensation under the heading loss of future income and (ii) she would also submit that Tribunal erred in not awarding any compensation under the heading loss of income during treatment period and accordingly she seeks for modification of the award and seeks enhancement of compensation.

7. Per contra, Sri Narayanappa, would contend that claimant has not produced any documents to establish as to his income and considering the date of accident, Tribunal was justified in taking the income of the claimant at Rs. 3,000/- and submits that it does not call for interference. He would also support the judgment and award passed by Motor Accident Claims Tribunal, Bangalore in awarding compensation by it under different heads.

8. Having heard the learned Counsel for the parties, the following points arise for my consideration:

(i) Whether the compensation awarded by Tribunal is just and reasonable or it requires to be modified/enhanced? If so, to what extent?

(ii) What order?

9. A perusal of the judgment and award reveals that claimant had produced the driving licence which is at Ex. P. 6. It has also come in the evidence of P.W. 1 that by avocation he is a Driver of Autorickshaw and during the course of discharge of his duties, he met with an accident on account of which he has sustained fracture of right tibia and right patella. The Doctor on clinical examination of claimant has opined that the disability to the right lower limb is 26%. However he has stated that the whole disability is 14%. This fact has been accepted by Tribunal without assigning any reason that particular limb disability is to an extent of 26%, the whole body disability cannot be 14% and such disability is reassessed by this Court and this Court is of the considered view that 1/3rd of the particular limb disability would be the whole body disability and the same in the instant case being 8.66%, this Court is of the considered opinion that whole body disability

can be taken at 10% and accordingly it is so taken.

10. Insofar as the income that has been taken by Tribunal, it is found that the date of accident is on 11-6-2006. Considering this Tribunal was in error in taking the income of the claimant at Rs. 3,000/- only. This Court is of the opinion that the income of claimant can be safely arrived at Rs. 4,500/- p.m. Tribunal has taken the multiplier at 14 considering the age of claimant at 50 years and in view of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier would be 13 and accordingly the same is applied and considering these facts the loss of future income is to be recomputed. When so recomputed the compensation that becomes payable by the second Respondent to the claimant would be Rs. 70,200/- ($4500 \times 10 = 450 \times 12 \times 13$). The Tribunal has awarded a sum of Rs. 60,480/- and thus deducting the same the enhanced compensation would be Rs. 9,720/- under the heading loss of future income.

11. The claimant on account of the injury sustained would have been unable to discharge his duties at least for a period of three months and the income having been taken at Rs. 4,500/-, a sum of Rs. 13,500/- is required to be awarded under the heading loss of income during laid up period and accordingly it is so awarded. Thus, the total compensation that becomes payable would be Rs. 23,220/- in all. Accordingly compensation as awarded by the Tribunal is modified.

12. Re: Point No. (ii).-In view of the above discussion, the following order is passed:

ORDER

(i) The appeal is allowed in part.

(ii) Compensation as awarded by Tribunal is enhanced by awarding a further sum of Rs. 23,220/- as discussed herein above which shall carry interest at the rate of 6% p.a. from the date of petition till the date of deposit/payment.

(iii) The said compensation as enhanced herein shall be deposited within a period of six weeks from the date of receipt of a copy of this order.

(iv) Out of the said compensation enhanced herein above, Rs. 15,000/- with proportionate interest shall be kept in fixed deposit for a period of three years in the name of Appellant and Appellant would be entitled to draw periodical interest accrued on the fixed deposit.

(v) The balance Rs. 8,220/- with proportionate interest is ordered to be paid to the claimant on such deposit being made.

(vi) No order as to costs.