

(2015) 09 KAR CK 0390

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8195/2014 (MV)

G. Aravind

APPELLANT

Vs

Branch Manager, The Reliance General Insurance Co. Ltd. and
Others

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0390

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : S.S. Ravishankar for G.R. Law Firm, for the Appellant; Ashok N. Patil, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—This appeal by the claimant is directed against the impugned judgment and award dated 11th September 2013 passed in M.V.C. No. 1490/2012 on the file of the VII Additional Small Causes Judge, Member, MACT-3, Court of Small Causes (SCCH-3), Bangalore, (hereinafter referred to as "Tribunal" for short) seeking enhancement of compensation.

2. The Tribunal by its impugned judgment and award, has awarded a sum of Rs. 1,86,460/- under different heads with interest at 8% p.a., from the date of petition till its realization on account of the grievous injuries sustained by the appellant in the road traffic accident. The claimant has presented this appeal on the ground that the quantum of compensation and also the rate of interest awarded by the Tribunal is inadequate and requires enhancement.

3. Brief facts of the case of the appellant are that, he was aged about 29 years, working as a Business Analyst at HCL Limited, Bangalore, drawing salary of Rs. 40,000/- per month and hale and healthy prior to the accident. Be that as it may, he met with an accident on 15.11.2011 at about 4.30 p.m. When he was

proceeding in a Motor Cycle bearing Registration No. KA-06/W-5838 and reached near Pattanduru Agrahara Lake, a Tata Sumo bearing Registration No. KA-05/AB-507 came at high speed in a rash and negligent manner and dashed against him. Due to the impact, he fell down and sustained fracture of both bones of right leg and the same are grievous in nature. On account of which, he was admitted to the Hospital on 15.11.2011 and discharged on 24.11.2011 and undergone treatment and Doctor advised bed rest for a period of two months and he was on leave. He examined the Doctor PW-2, who after clinical and radiological examination has opined that the appellant sustained permanent disability of 15% to the whole body. Taking all these aspects into consideration, the claimant filed a claim petition under Section 166 of M.V. Act before the Tribunal against the respondents claiming compensation on account of the grievous injuries sustained in the road traffic accident. The said matter had come up for consideration before the Tribunal. The Tribunal in turn after due consideration of oral and documentary evidence and other material available on record, having regard to the age, avocation and year of accident, allowed the said claim petition in part and awarded a sum of Rs. 1,86,460/- under different heads with interest at 8% p.a., from the date of petition till its realization. Being dissatisfied with the impugned Judgment and Award passed by the Tribunal, the appellant has presented this appeal on the ground that the quantum of compensation and the rate of interest awarded by the Tribunal is inadequate and requires enhancement.

4. It is the submission of learned Counsel appearing for the appellant Sri. S.S. Ravishankar at the outset that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and suffering, loss of amenities and no compensation is awarded on account of the permanent disability sustained by the appellant in the road traffic accident. He further submitted that the appellant had spent huge amount towards treatment. To substantiate his contentions, he has taken us through the evidence of Doctor and submitted that the appellant had undergone treatment in the Hospital as inpatient from 15.11.2011 to 24.11.2011 and during the treatment the appellant has suffered mental pain and agony and had spent reasonable amount towards conveyance, nourishing food and attendant charges. The Doctor has advised bed rest and follow up treatment for a period of two months on account of disability, discomfort, frustration suffered throughout his life, during the treatment period he was on leave and has to endure the same throughout his life. These aspects of the matter have not been looked into nor considered by the Tribunal nor awarded reasonable compensation. Further, he submitted that the rate of interest awarded by the Tribunal at only 8% p.a. is on the lower side and in the light of the judgments of Apex Court and this Court in host of judgments, interest may be awarded at 9% to 10% p.a. Therefore, he submits that the impugned Judgment and Award passed by the Tribunal is liable to be modified by enhancing reasonable compensation.

5. Per contra, the learned Counsel appearing for the 1st respondent-Insurer,

inter-alia contended and sought to substantiate that, the impugned judgment and award passed by the Tribunal is after due consideration of oral and documentary evidence and other material available on record and interference by this Court is not called for.

6. After careful consideration of the submissions made by the learned Counsel appearing for both the parties and on perusal of the material available on record, including the impugned judgment and award passed by the Tribunal, the only point that arises for consideration is:

"Whether the quantum of compensation awarded by the Tribunal is just and reasonable?"

7. Occurrence of the accident and the resultant grievous injuries sustained by the appellant in the road traffic accident are not in dispute. The fact that the appellant was aged about 29 years, working as a Business Analyst at HCL Limited, hale and healthy prior to the accident is also not in dispute. He met with a road traffic accident that occurred on 15.11.2011, on account of which, he sustained grievous injuries and suffered discomfort, unhappiness during the treatment period and he might have spent reasonable amount towards conveyance, nourishing food and attendant charges. The Tribunal after due consideration of oral and documentary evidence available on record is justified in awarding Rs. 94,860/- towards medical expenses, Rs. 6,000/- towards attendant charges at the rate of Rs. 200/- per day for a period of 30 days and Rs. 27,600/- towards loss of income during treatment period, Rs. 8,000/- towards conveyance and nourishing food is just and proper and does not call for interference by this Court.

8. Further, the Tribunal has not awarded reasonable compensation towards injury, pain and suffering and loss of amenities and no compensation is awarded towards disabilities and what is awarded i.e. Rs. 40,000/- and Rs. 10,000/- under the said heads is on lower side as rightly pointed out by the learned Counsel appearing for the appellant.

9. After careful consideration of the materials available on record and the evidence of the claimant who examined himself as PW-1 has deposed that he has undergone treatment in the Hospital from 15.11.2011 to 24.11.2011 and has suffered mental pain and agony during the treatment period. Further, Ex. P7- wound certificate issued by the Hospital discloses that fracture of both bones of right leg is grievous in nature and PW-2-Doctor, after due clinical and radiological examination has opined that the appellant sustained permanent disability of 15% to the whole body on account of which, he has to suffer discomfort and frustration throughout his life.

10. Having regard to facts and circumstances stated supra and taking into consideration the relevant material on record, the evidence of Doctor and Ex. P7- wound certificate issued by the Hospital, we can safely award another Rs. 10,000/- towards injury, pain and suffering and Rs. 40,000/- towards loss of

amenities and disability, discomfort, in addition to the compensation awarded by the Tribunal under the said heads.

11. Thus, the appellant/claimant is entitled to Rs. 50,000/- in addition to the compensation awarded by the Tribunal. In the light of the judgments of Apex Court and this Court in host of judgments, we award interest at 9% p.a. on the enhanced compensation from the date of petition till realisation.

12. Having regard to the facts and circumstances of the case referred above, the instant appeal filed by the appellant is allowed in part. The impugned judgment and award dated 11th September 2013 passed in M.V.C. No. 1490/2012 on the file of the VII Additional Small Causes Judge, Member, MACT-3 (SCCH-3), Bangalore is hereby modified awarding additional compensation of a sum of Rs. 50,000/- with interest at 9% p.a. from the date of petition till the date of realization.

The respondent No. 1-Insurer is directed to deposit the enhanced compensation of Rs. 50,000/- with interest at 9% p.a. from the date of petition till the date of realization, excluding interest for the delayed period of 366 days in filing the appeal, within a period of three weeks from the date of receipt of a copy of the judgment and award.

The entire enhanced compensation of Rs. 50,000/- with interest at 9% p.a. shall be released in favour of the appellant immediately on deposit by the respondent No. 1.

Draw the award, accordingly.