

(2013) 07 KAR CK 0215

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3382 of 2009 (MV)

G.C. Raghavendra

APPELLANT

Vs

K. Natesh Babu and M/s. Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0215

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : M.R. Shashidhar, for the Appellant; K.R. Ramesh, for R. 1 and Sri. M. Narayanappa, for R. 2, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. The appeal is admitted and with the consent of learned Counsel appearing for the parties, it is taken up for final disposal.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a motor traffic accident occurred on 20.03.2003 due to rash and negligent driving of Maruthi Omni car bearing registration No. KA-06-M-7474 by its driver and liability of the insurer of the said vehicle to pay compensation, the only point arises for consideration is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. As per Ex. P. 3 wound certificate claimant has sustained the following injuries:

1) abrasion and swelling of medial malleolus of left foot measuring 3 x 2 cms. Reddish in colour;

- 2) Comminuted fracture of lower third of fibula and medial malleolus of tibia
- 3) Fracture of middle phalanx of second, third & fourth toes with subluxation of 2nd, 3rd, 4th and 5th metatarso phalangeal joints
- 4) abrasion over middle 1/3 of anterior aspect of left leg measuring 3 x 1 cms reddish in colour;

Radiologists and Forensic experts opined injury No. 1 is grievous in nature and injury No. 2 is simple in nature.

Injuries sustained and treatment taken by him are also evident from Ex. P4 out patient record, Ex. P6 discharge summary, Ex. P7 discharge card, Ex. P8 report, Ex. P9 laboratory report, Ex. P29 to P30 X-ray reports and supported by oral evidence of the claimant and doctor examined as PWs 1 and 2 respectively. PW 2 Dr. K.G. Ravi an Orthopaedic surgeon of Chitradurga has stated that he treated the claimant during the year 2003 and 2008 and the claimant has suffered 30% disability to particular limb and 10% to whole body. He noticed certain limitations in movements of left leg dealing with flexion, inversion and eversion.

5. Considering two fractures and other injuries sustained by the claimant Rs. 40,000/- is awarded towards pain and suffering as against Rs. 25,000/- awarded by the Tribunal under this head.

6. As Rs. 35,000/- awarded by the Tribunal towards medical expenses is as per medical bills Ex. P13 to P27 and there is no scope for enhancement under this head.

7. He was treated as inpatient for 14 days in two different hospitals. Considering the same, a sum of Rs. 5,000/- is awarded towards incidental expenses such as conveyance, nourishment and attendant charges as against Rs. 3,600/- awarded by the Tribunal under this head.

8. Claimant is a student, therefore awarding compensation towards loss of income during laid up period does not arise.

9. Considering nature of injuries, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs. 30,000/- is awarded towards loss of amenities and a sum of Rs. 30,000/- is awarded towards permanent disability as against Rs. 50,000/- awarded by the Tribunal.

10. Thus the claimant is entitled for the following compensation:

11. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 26,400/- with interest at 6% p.a. from the date of claim petition till the date of realization. The Insurance Company is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, and the same is

ordered to be released in favour of the claimant.

No order as to costs.