

(2015) 12 KAR CK 0154

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5369/2012 (MV)

G.T. Govindaraju

APPELLANT

Vs

The New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0154

Hon'ble Judges : Ram Mohan Reddy, J.

Bench : Single Bench

Advocate : M.S. Ashwatha Reddy, Advocate, for the Appellant; Y. Aruna, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Ram Mohan Reddy, J.—Claimant/injured aggrieved by the judgment and award dated 4th February 2012, in MVC 6326/2010 of the Motor Accident Claims Tribunal, Court of Small Causes, SCCH-4, (for short "MACT") has presented this appeal for higher compensation.

2. There is no dispute that on 11.2.2010 at about 8.10 p.m. appellant riding the scooter bearing certificate of registration K.A.05-E-5574 on the left side of the 8th Main Road, Byrasandra, Bengaluru, the motor car bearing certificate registration KA-01-3679, came in the opposite direction, driven in a rash and negligent manner, dashed against the scooter, resulting in grievous injuries, to the rider, when treated in the hospital, had, had to expend monies towards medical treatment whereafterwards, the claim petition registered as MVC 6326/2010, when filed before the MACT, led to issue of notice to the owner i.e. insured and the Insurance company arraigned as respondent Nos. 1 and 2 in the petition. The 2nd respondent-owner remained absent and unrepresented hence was placed ex-parte, while 1st respondent-Insurance Company entered appearance through counsel filed written statement denying the allegations, however, admitted issue of policy of insurance to the owner of the offending vehicle which was valid and in force on the date of the accident. The MACT

framed issues, recorded the evidence both oral and documentary and by the impugned judgment and award, attributed actionable negligence to the driver of the vehicle insured by the 1st respondent and determined the following compensation:

3. The fact that claimants was aged 58 as on 11.12.2010 the date of accident and injury is not in dispute. The fact that the appellant was a business man earning Rs. 15,000/- per month when not established by relevant materials constituting substantial legal evidence of the said fact, the MACT reckoned Rs. 3,000/- per month as notional income.

4. There is force in the submission of learned counsel that notional income Rs. 3,000/- per month is on the lower side. This Court has consistently taken the view that during the years 2010-2011, the income per month could be taken between Rs. 5,500-6,500. Reckoning Rs. 6,000/- as the income of the injured, having regard to his age, in the facts and circumstances, cannot be an exaggeration.

5. The claimant suffered fracture of both bones of the right leg and lacerated wound in the occipital region while treatment extended was interlocking nails of right tibia and suturing of occipital wound, as an inpatient in the Garden City Health Care Academy Hospital from 13.2.2010 to 20.02.2010 and thereafter, attended as outpatient, regularly, for further treatment.

6. These facts are established in the oral testimony of PW.2 Doctor who treated the claimant corroborated by the medical records such as the wound certificate Ex. P.6, discharge summary Ex.P9, Case sheet & X-Rays, Exs.P13 and P14.

7. The fact that the claimants suffered from disability of 7.3% to the whole body and has a limp while walking, is unable to drive a vehicle, is supported by the oral testimony of PW.2 Doctor. In addition, in order to remove the surgical implants PW.2 states that there is a need to expend Rs. 25,000/- for future medical expenses.

8. Having regard to the aforesaid indisputable facts, there is every reason to interfere with the frugal compensation awarded by the MACT. Pain and suffering of a 58 year old, more appropriately, in the light of fracture and the wound on the occipital region, the claimant is entitled to Rs. 50,000/- towards pain and suffering. The fact that appellant was unable to attend duties as can be noticed from the nature of injuries. It is possible that he will have difficulty in future, regard being had to whole body disability of 7.3% and therefore, awarding Rs. 50,000/- towards loss of future amenities and happiness is just and proper.

9. Medical bills and incidental charges were claimed at Rs. 15,000/- although Exs.P11 & P18 are bills of Rs. 1,19,869/- and Rs. 450/- respectively, while prescriptions, Exs.P12 & P17, support the medicines purchased by the appellant. It is not as if the appellant would have spent only for medical expenses but would have to pay for conveyance, special nourishment, attendant charges and

other miscellaneous expenses and therefore, award of Rs. 1,22,000/- towards medical expenses and other incidental charges, including conveyance to claimant is on the lower side. In the circumstances, it is just and proper to award Rs. 1,50,000/- under the head medical expenses, food and nourishment, attendant charges, conveyance etc.

10. In the light of the injuries suffered and treatment undergone, it is needless to state that appellant must have been out of duties for a minimum of four months and reckoning the monthly income at Rs. 6,000/- is entitled to Rs. 24,000/- towards loss of income during laid up period.

11. PW.2 having opined that whole body disability sustained by the appellant is 7.3% which evidence is not shown to be incriminatory in the cross examination, it is therefore reasonable to reckon 7 % as whole body disability and doing so, the loss of future income is Rs. 45,360/- (Rs. 6000 x 7% = 420x12x9).

12. P.W.2 Doctor opined that appellant will have to expend Rs. 25,000/- for future surgery to remove the implants. The MACT, having accepted the testimony of PW.2 as trustworthy, was not justified in declining to award the entire sum of Rs. 25,000/- but had done so by directing payment of Rs. 15,000/- as compensation. In my considered opinion, there is no justification for the MACT to do so and therefore, the appellant is entitled to Rs. 25,000/- towards future medical expense although that amount will not carry interest.

13. In the light of the aforesaid reasoning, the appellant is entitled to following compensation:

14. In the result, the appeal is allowed in part. The judgment and award impugned is modified entitling the appellant to Rs. 3,44,360/-, including Rs. 25,000/- which shall not carry interest while the balance carries interest at 6% p.a. from the date of petition until payment and in all other respects, remains unaltered.