

(2017) 07 KAR CK 0101
In the Karnataka High Court
Case No : 10048 of 2010 [MV]

H.C.KIRAN S/O CHANDRASHEKARAPPA

APPELLANT

Vs

BABURAYA NAYAKA S/O VASUDEVA NAYAKA SINCE DEAD BY
HIS LRS, & ORS.

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0101

Hon'ble Judges : S.Sujatha

Bench : SINGLE BENCH

Advocate : PRADEEP.H.S, V.NARAYANASWAMY

Final Decision : Allowed

Judgement

1. This appeal is directed against the Judgment and Order passed by the Motor Accident Claims Tribunal, Shivamogga [the "Tribunal", for short] in MVC No.1186/2009.
2. The claimant preferred petition before the Tribunal seeking compensation for the injuries sustained by him in the road traffic accident which occurred on 25.06.2004, alleging actionable negligence on the driver of the lorry bearing registration No.KA.19/6495. On issuing process, the Insurance company appeared and refuted the claim. The Tribunal extensively considering the evidence on record, awarded compensation of Rs.1,42,000/- with interest at the rate of 6% from the date of petition till the date of deposit. Aggrieved by the same, the claimant is in appeal seeking enhancement of compensation.
3. Heard the learned Counsel for the parties and perused the material on record.
4. The factum of accident resulting in the injuries sustained by the claimant is not in dispute. The claimant has suffered fracture of left tibia and fibula which is evident from the wound certificate at Ex.P5. The claimant had taken treatment as an inpatient on three occasions at Kasturba hospital, Manipal from 27.6.2004 to 26.7.2004 for about 30 days, from 17.11.2004 to 3.12.2004 for about 15 days

and also from 19.10.2005 to 31.10.2005 for about 12 days, in all about 57 days and undergone two surgeries with fixation of implants and bone grafting. The claimant was aged about 22 years at the time of the accident. It was contended that he was earning Rs.6,000/- p.m. as an agriculturist by profession. In the absence of cogent evidence placed on record to establish the same, the Tribunal determined the notional income at Rs.3,000/- p.m. which appears to be on the lower side. Considering the age, date of accident and occupation/profession of the claimant, this Court finds it appropriate to redetermine the monthly income at Rs.3,500/-. Accordingly, the compensation towards laid up period works out to Rs.14,000/-. The nature and the gravity of injuries sustained by the claimant being grievous and the treatment certificate at Ex.P6 issued by the Kasturba hospital, Manipal, being evident to indicate the hospitalization period of the claimant for 57 days and two surgeries undergone, this Court is of the considered view that it would be just and proper to award a sum of Rs.35,000/- towards loss of future earning globally.

5. It is obvious that the claimant has to forego some of the amenities of his life which he would have otherwise enjoyed but for the accident. Keeping in mind and considering the trauma undergone by the claimant coupled with the discomforts and inconveniences that he has to undergo due to the impact of the accidental injuries, it would be reasonable to award a sum of Rs.25,000/- towards loss of amenities and future unhappiness. A sum of Rs.3,000/- is awarded by the Tribunal towards conveyance, nourishment, etc. In view of the long period of hospitalization of 57 days, I am of the opinion that a sum of Rs.10,000/- would be the reasonable compensation towards the conveyance and nourishment. A sum of Rs.15,000/- would be the just and proper compensation towards future medical expenses.

6. The compensation awarded by the Tribunal is modified as under:

Sl. No.	Particulars	Amount [in Rs.]
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1	Pain and sufferings	30,000
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2	Medical expenses	62,000
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3	Loss of earnings during laid up period	14,000
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4	Loss of future earnings	35,000
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5	Loss of amenities	25,000
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6	Future medical expenses	15,000
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7	Attendant, charges, conveyance and incidental charges	10,000
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TOTAL		1,91,000
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7. Thus, the compensation awarded by the Tribunal is modified to Rs.1,91,000/- as against Rs.1,42,000/-, which shall carry interest at 6% per annum from the date of the petition till the realization.

8. In the result, the appeal stands allowed to the extent indicated above.