

(2017) 12 KAR CK 0039
In the Karnataka High Court
Case No : 6611 of 2014 (MVC)

JAGANNATHRAO, S/O NARASINGARAO Vs N. RAJESH S/O NARAYANAPPA

Date of Decision : 12-12-2017

Acts Referred:

Citation : (2017) 12 KAR CK 0039

Hon'ble Judges : B. Sreenivase Gowda

Bench : SINGLE BENCH

Advocate : K. SHANTHA RAJ, H.S. LINGARAJ

Judgement

1. The claimant aggrieved by the quantum of compensation awarded by the Tribunal has preferred this appeal seeking enhancement of compensation.
2. With the consent of the learned counsel appearing for the parties, appeal is heard and disposed of finally. Perused the judgment and award passed by the Tribunal, including the records.
3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.
4. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 12-05-2011 due to rash and negligent driving of the offending bus bearing registration No.KA-43-1045 by its driver and liability

of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"Whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?"

As per Ex.P.3 - wound certificate, claimant had sustained the following injuries:-

Fracture of mid shaft of left humerus

Fracture on medial epicondyle left humerus

Injuries sustained and treatment underwent by the claimant are also evident from Exs.P.8 and 9 - discharge summaries, Exs.P.10 and 11 - case sheet, Ex.P.12 - OPD card, Exs. P.13 and 14 - x-rays and corroborated by the oral evidence of the claimant and doctor who were examined as PWs-1 and 2 respectively.

PW-2, doctor in his evidence has stated that the claimant has suffered disability of 38.46% to upper limb and 13% to the whole body.

5. Considering the nature of injuries, a sum of Rs.35,000/- is awarded towards "pain and suffering" as against Rs.25,000/- awarded by the Tribunal under this head.

6. As Rs.55,184/- awarded by the Tribunal towards "medical expenses" is based on the medical bills produced by the claimant, there is no scope for enhancement under this head.

7. The claimant was treated as inpatient for 13 days at Mathru Shree Nursing home, Channapatna and attended the hospital as out patient on several occasions. Considering the

duration of treatment, a sum of Rs.10,000/- is awarded towards "incidental expenses" such as conveyance, nourishment and attendant charges.

8. Claimant claims to have been earning a sum of Rs.8,000/- per month by running a chicken and meat stall. But it is not substantiated by adducing evidence. In the absence of proof of income, considering his age as 28 years, year of accident as 2011 and avocation or daily wages his income could be assessed at Rs.6,500/- per month. Nature of injuries suggest that he must have been under rest and treatment for a period of three months and therefore a sum of Rs.19,500/- is awarded towards "loss of income during laid up period".

9. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of Rs.20,000/- is awarded towards "loss of amenities".

9. His income is now assessed at Rs.6,500/- per month. As per the disability stated by the doctor at 38.46% to the upper limb, disability caused to the whole body will be 1/4th of the disability caused to the limb, which comes to 9.6% and it can be taken as 10%. Multiplier applicable to his age group is 17. Therefore, the "loss of future income" works out to Rs.1,32,600/- ($\text{Rs.6,500} \times 12 \times 17 \times 10/100$) and it is awarded.

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

HEADS

1 Pain and sufferings 35,000-00

2 Medical Expenses 55,184-00

3 Incidental expenses 10,000-00

4 Loss of income during laid up period 19,500-00

5 Loss of amenities 20,000-00

6 Loss of future income 1,32,600-00

TOTAL 2,72,284-00

LESS: Compensation awarded by the Tribunal 1,33,404-00

BALANCE 1,38,880-00

11. Accordingly, the appeal is allowed in part.

Judgment and award dated 04-01-2014 passed by the Additional Senior Civil Judge, Ramanagara, in MVC No.390/2011, stands modified. The claimant is entitled for an additional compensation of Rs.1,38,880/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

12. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment, from which 75% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of the claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 3 years renewable once in 2 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant immediately after the deposit.

13. The Tribunal while releasing 25% of the

amount is also directed to issue the fixed deposit slips, so as to enable the claimant to withdraw the deposit amount on its maturity without approaching the Tribunal once again and the Bank is directed to release the fixed deposit amount without insisting for any further order from the Tribunal.

No order as to costs.