
(2013) 02 KAR CK 0140
In the Karnataka High Court
Case No : M.F.A. No. 5156 of 2009 (MV)

Jayappa

APPELLANT

Vs

K.G. Kallinatha

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 2 AnWR 209

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the common judgment and award dated 20,h February, 2009, passed in M.V.C. No. 201/2008, by the Principal Civil Judge (Sr. Dn) and Additional Motor Accident Claims Tribunal, Davangere, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 25,000/- with interest @ 7% p.a. awarded in favour of the claimant as against his claim for Rs. 5,00,000/- is inadequate. The appellant claims to be aged about 20 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 9.30 p.m. on 3-10-2007, when the appellant alongwith others was travelling in a Kalleshare Private Bus bearing Registration No. KA-16/D-3825, from Jagalur towards their respective villages, as passengers, due to rash and negligent driving by the driver of the said Bus near Kechenahalli village, is not in dispute. It is also not in dispute that the appellant has sustained grievous injuries and due to the said injuries sustained in the accident, he took treatment in Government Hospital, Jagalur for first-aid and thereafter shifted to C.G. Hospital, Davangere for further treatment, where he was in-patient for nearly 7 days from 3-10-2007 to 9-10-2007.

2. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe pain and agony and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses

and therefore, he has to be compensated reasonably.

3. The learned Counsel for appellant contends that the Tribunal has erred in not awarding reasonable compensation under all the heads and therefore, reasonable compensation may be awarded under all the heads by modifying the impugned judgment and award passed by Tribunal.

4. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 5,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 20th February, 2008. The Tribunal, after considering the relevant materia] available on file and after appreciation of the oral and documentary evidence allowed the claim petition in part awarding global compensation of a sum of Rs. 25,000/-, with interest at 7% per annum from the date of petition till the date of realization, being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned Counsel appearing for the appellant and also Insurer.

6. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file, had erred in not awarding reasonable compensation. Admittedly, due to the road traffic accident, the appellant has sustained fracture of both nasal bones and fracture of mandible right angle. As per the wound certificate, Ex. P-67, the said injuries are grievous in nature and his skull X-ray was taken on 5-10-2007. Further, the Discharge Card of Bapuji Dental College and Hospital, Davangere at Ex. P-69 shows that the appellant was admitted at Bapuji Dental College and Hospital, Davangere as an in-patient from 11-10-2007 to 15-10-2007 and during that per he was treated as under:

Open reduction and internal fixation of right angle mandible fracture and closed reduction of nasal bone fracture under G.A. Transmylonyoid intubation.

Further, during the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges. Further, it can be seen that in support of the injuries sustained, the appellant has examined P.W. 4. Doctor A.M. Shivakumar, E.N.T. Surgeon, S.S.I.M.S. and R.C., Davangere and produced the Disability Certificate issued by him at Ex. P-82 and produced the X-ray film of Hegde Diagnostic Centre, Davangere at Ex. P-81. Further, the said E.N.T. Surgeon has stated in his evidence that on 6-1-2009, i.e., after one year of the accident, he has examined the appellant physical disability and on such examination found that the appellant has got permanent physical disability of 25% in respect of his above fractured injuries. But the said disability assessed by Doctor has been disbelieved on the ground that the said Doctor is not the treated

doctor for the accidental injuries. The Appellant being aged about only 20 years, has to endure the inconvenience caused in account of the injuries sustained and it would be difficult for seen that the appellant has sustained fracture of both nasal bones and to a sensitive organ. Therefore, having regard to the nature of injuries sustained, age, vocation of the appellant and nature and duration of treatment, and also the fact that the cannot to do his work as effectively as he was doing earlier, I deem it fit to award a global compensation of a sum of Rs. 25,000/-, with interest at 6% per annum, in addition to the compensation awarded by Tribunal.

7. In the light of facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed I part. The impugned common judgment and award dated 20th February, 2009, passed in M.V.C. No. 201/2008, by the Principal Civil Judge (Sr. Dn) and Additional Motor Accident Claims Tribunal, Davangere, is hereby modified, awarding compensation of a sum of T 25,000/-, with interest at 6% per annum, from the date of petition till the date of realization, in additional to the compensation awarded by Tribunal.

8. The second respondent-insurer is directed to deposit the enhanced compensation of Rs. 25,000/-, with interest thereon at 6% per annum, from the date of petition till the date of realization, within there weeks from the date of receipt of copy of the judgment. On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.

Shri C.R. Ravishankar is permitted to file Vakalath on behalf of second respondent within four weeks today.