

(2013) 11 KAR CK 0284

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5544 of 2010 (MV)

Jayaraju V.M.

APPELLANT

Vs

National Insurance Co. Ltd. and M/s. Terracon Projects Pvt.
Ltd.

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0284

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : Shripad V. Shastri and Sri K.V. Naik, for the Appellant; A.N. Krishna Swamy, Advocate R-1 and served - R-2, for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Indrakala, J.—Though the matter is posted for Admission, with the consent of the learned Counsel for both the parties, the same is taken up for final disposal. This appeal is preferred against the judgment and award dated 25.1.2010 passed in MVC No. 7745/2008 on the file of the VI Additional Judge, Court of Small Causes, Bangalore City.

2. It is the case of the claimant that on 11.8.2008 at about 8.30 a.m. while he was going on the motor cycle bearing Registration No. KA-01-EA-2178 as a pillion rider on NH-4 near S.M. Circle, opposite to BSNL Office, Bangalore-58, the rider of the same was riding it in a rash manner and when he applied break all of a sudden, the claimant fell and sustained injuries. Further it is contended that after the accident, he was taken to Sparsh Hospital where he was treated as inpatient. It is contended by the claimant that prior to the accident, he was hale and healthy; earning Rs. 7,000/- p.m. working as a Supervisor; on account of injuries sustained in the road traffic accident, he is suffering from permanent disability; he has spent a sum of Rs. 1,20,000/- towards medicines and other expenses and in the circumstances, he sought awarding of compensation from the owner and insurer of the said motor bike.

3. Respondent No. 2 in its statement of objections while denying the case of the claimant on all material aspects has specifically pleaded that the liability, if any, same is subject to the terms and conditions of the policy.

4. The appellant to prove his case apart from himself getting examined as P.W. 1 has also chosen to examine the medical officer, who assessed his disability as P.W.3 and medical record keeper as P.W.2 and got marked Exs. P.1 to 15. On behalf of the respondent, no evidence is adduced.

5. The Tribunal by considering the said evidence so placed on record, deemed it fit to award a sum of Rs. 1,52,000/- with interest at the rate of 6% p.a. from the date of petition till realisation.

6. Aggrieved by the said judgment and award, the claimant is in appeal inter-alia contending amongst other grounds that the amount of compensation so awarded is inadequate and seeks enhancement of the same.

7. Learned Counsel for the appellant apart from reiterating the grounds of appeal urged in the memorandum of appeal submitted that the amount awarded under the heading loss of amenity is too low and no amount is awarded under the heading disability. Likewise he also submitted that while there is record evidencing the exact salary of the claimant as Rs. 6,000/- p.m. the Tribunal has taken the notional income at Rs. 3,000/- p.m. which is not proper.

8. Thus the cause of accident as well as the appellant sustaining injuries in the said accident are not in dispute.

9. As per the wound certificate marked as Ex. P.5, it is seen that the appellant sustained subtrochanteric fracture of right femur with intertrochanteric extension ravas oblique type and further as per Ex. P. 6 he was hospitalized from 11.8.2008 to 20.8.2008. Further it is also seen that he underwent reconstruction nailing with 10 x 420 mm nail on 12.8.2008. Thus considering the said evidence placed on record, Tribunal deemed it proper to award a sum of Rs. 30,000/- towards pain and suffering which is just and proper. Likewise awarding a sum of Rs. 1 lakh towards medical expenses by considering the medical bills and receipts which are got marked as Exs. P.10 is also just and proper.

10. The appellant has also got marked the salary certificate as Ex. P.8 which discloses that the appellant was working as Supervisor in a private firm with salary of Rs. 6,000/- p.m. apart from having conveyance allowance of Rs. 1000/- p.m. In the circumstances by considering the income of the appellant at Rs. 6,000/- p.m. and also by considering the contents of Ex. P.9 that the appellant was on medical leave for 5 months 12 days, it is reasonable to award a sum of Rs. 33,000/- towards loss of income during the laid up period.

11. The appellant is also entitled to be compensated towards incidental expenses like attendant charge, conveyance, food and nourishment, etc., and it is reasonable to award a sum of Rs. 15,000/- towards the said heading.

12. Considering the nature of injuries suffered and also the evidence of the doctor stating that the appellant did suffer disability to an extent of 20.4% to the whole body, it is reasonable to award a sum of Rs. 50,000/- towards both loss of amenities and disability. Thus the appellant is entitled to be compensated at Rs. 2,28,000/- as against a sum of Rs. 1,52,000/- awarded by the Tribunal. Hence the following

ORDER

The above appeal is allowed in part by modifying the judgment and award dated 25.1.2010 passed in MVC No. 7745/2008 on the file of the VI Additional Judge, Court of Small Causes, Bengalore City, by awarding a sum of Rs. 2,28,000/- with interest at the rate of 6% per annum from the date of petition till realisation as against Rs. 1,52,000/- awarded by the Tribunal.

The respondent/insurance company shall deposit the enhanced amount so awarded within 4 weeks from the date of receipt of a copy of this judgment and on such deposit a sum of Rs. 40,000/- with proportionate interest shall be invested in fixed deposit in the name of the claimant in any of the Nationalised Bank of his choice for a period of 5 years with liberty to him to withdraw the interest as and when the same accrues. The balance amount of Rs. 36,000/- with proportionate interest shall be released in favour of the claimant for his immediate necessity.

Office to draw the award accordingly.