

(2015) 01 KAR CK 0312

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5037 of 2011 (MV)

Jayendra Bhat

APPELLANT

Vs

R. Kanagaraj

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0312

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : Nagaraja Hegde, for the Appellant

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Respondent No. 3 - insurance company though has been served with the notice of the appeal, as long as back as on 12.9.2012, till day there has been no representation. Hence, I have heard the learned counsel appearing for the appellant, perused the judgment and award of the Tribunal and disposed of the appeal finally.

3. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 26.9.2005 due to rash and negligent driving of the offending lorry bearing registration No. KA-01-AC-399 by its driver and liability of the insurer of the said vehicle, the only point that remains for consideration in the appeal is:

"Whether the compensation of Rs. 1,41,900/- awarded by the Tribunal is just and reasonable or does it call for enhancement? " 4. After hearing the learned counsel appearing for appellant and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

5. As per Ex.P3 - wound certificate, the claimant has sustained following injuries:-

- 1) Left lower on the lip - Odema
- 2) Leefort fracture Naso Ethmoidal bone
- 3) Leefort fracture floating maxilla

Injury No. 2 is described as grievous in nature and injuries 1 and 3 are described as simple in nature. The injuries sustained and treatment taken by the claimant are also evident from discharge summaries - Exs.P5 and 6, Ex.P9 - disability certificate and supported by oral evidence of claimant and two doctors, who were examined as PWs.1, 2 and 3 respectively. PW-2, doctor in his evidence has stated that he treated the claimant in Highland Hospital and according to him, due to malunion of bones, claimant sustained disability of 15%. PW3 has stated that claimant had sustained head injury i.e. fracture of nasal bones and fracture of Ethmoidal bone and fracture of maxilla right.

6. Considering the nature of injuries sustained by the claimant a sum of Rs. 40,000/- is awarded towards "pain and suffering" as against Rs. 25,000/- awarded by the Tribunal.

7. As Rs. 66,900/- awarded by the Tribunal towards "medical expenses" is based on the medical bills and prescriptions produced by the claimant, the same is just and proper and there is no scope for enhancement under this head.

8. The claimant was treated as an inpatient for a period of 21 days in a private hospital. Considering the duration of treatment, Rs. 10,000/- is awarded towards "incidental expenses" such as conveyance, nourishment and attendant charges as against Rs. 6,000/- awarded by the Tribunal.

9. The claimant claims to have been earning Rs. 10,000/- by running a hotel and has produced Saral Forms for 2 years at Ex.P7. In the Saral Forms no income from hotel business is mentioned. However, the Tribunal by assessing his income at Rs. 8,000/- per month and considering the period of treatment and rest as 3 months, has rightly awarded Rs. 24,000/-, towards "loss of income during laid up period", as such there is no scope for enhancement under this head.

10. It is not the case of claimant that after sustaining injury he has stopped his business. Nevertheless, he has to bear with the disability stated by the doctor and certain amount of discomfort and unhappiness in his future life. Therefore, justice would be met if a sum of Rs. 50,000/-, is awarded towards "permanent disability", in addition to Rs. 20,000/- awarded by the Tribunal towards "loss of amenities".

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

12. Accordingly, the appeal is allowed-in-part. The judgment and award passed by the Tribunal is modified to the extent stated herein above. The claimant is entitled for an additional compensation of Rs. 69,000/- with interest at 6% p.a.

from the date of claim petition till the date of realisation.

13. 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.

14. From the additional compensation, 75% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 3 years, with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant. The Tribunal while releasing 25% of the amount is also directed to issue FD slip to the claimant, so that he can withdraw FD amount after maturity, without insisting for redeposit.

No order as to costs.