

(2011) 11 KAR CK 0033

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8749 of 2010 (MV)

K. Bommalingappa@Bramhananda

APPELLANT

Vs

The Branch Manager The Oriental Insurance Company Ltd.
and Raja s. Taratare

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0033

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Kavitha H.C. and Sri. Prakash H.C, for the Appellant; M. Narayanappa, for R. 1, R.2 - Notice Dispensed With, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda

1. This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.
2. Heard. The appeal is admitted and with the consent of the Learned Counsel appearing for the parties, it is taken up for final disposal.
3. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.
4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 22-2-07 due to rash and negligent driving of car bearing registration No.KA-22-N-1446 by its driver and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

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

5. After hearing the Learned Counsel for the parties and perusing the 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 therefore, it is deserved to be enhanced.

6. As per Ex. P.4 - wound certificate, claimant has sustained the following injuries:

Fracture of right zygomatic arch, fracture of lateral wall of right orbit and fracture of lateral wall of right orbit and fracture of lower 1/3rd left tibia.

Injuries sustained and treatment taken by him are also evident from discharge card - Ex. P.28, OPD card - Ex. P.29 and 30, disability certificate - Ex. P.31, CT scan - Ex. P.32 and supported by oral evidence of the claimant and doctor examined as P.Ws. 1 and 2 respectively.

P.W. 2 has stated in his evidence that claimant has suffered permanent physical disability of 15%.

7. Considering three fractures sustained by the claimant, a sum of Rs. 40,000/- is awarded towards pain and suffering as against Rs. 35,000/- awarded by the Tribunal under this head.

8. As Rs. 30,000/- awarded by the Tribunal towards medical expenses is as per medical bills produced by the claimant, the same is just and proper and therefore, there is no scope for enhancement.

9. Considering claimant was treated as inpatient for 15 days in Bapuji Hospital, Davangere, Rs. 10,000/- awarded by the Tribunal towards incidental expenses such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement.

10. Claimant claims to have been earning Rs. 10,000/- per month by doing agriculture. But it is not supported by any documents. In the absence of proof of income, considering his age as 38 years and year of accident as 2007, his income is assessed at Rs. 3,500/- per month as against Rs. 3,000/- per month assessed by the Tribunal. Nature of injuries suggest that he must have been under rest and treatment for a period of four months. Therefore, a sum of Rs. 14,000/- is awarded towards loss of income during laid up period.

11. Considering disability stated by the doctor and an amount of discomfort and unhappiness which he has to undergo for the rest of his life, a sum of Rs. 25,000/- is awarded towards loss of amenities as against Rs. 15,000/- awarded by the Tribunal.

12. Claimant is aged about 38 years. Multiplier applicable is "15". His income is assessed at Rs. 3,500/- per month. Considering three fractures sustained by the claimant, functional disability can be taken as 7%. So loss of future income works out to Rs. 44,100/- (Rs.3,500/- x 7/100 x 12 x 15) and it is awarded as against Rs. 27,000/- awarded by the Tribunal.

13. Thus the claimant is entitled for the following compensation:

- 1) Pain and suffering Rs. 40,000/-
- 2) Medical expenses Rs. 30,000/-
- 3) Incidental expenses Rs. 10,000/-
- 4) Towards loss of income during laid up period Rs. 14,000/-
- 5) Towards loss of amenities Rs. 25,000/-
- 6) Future loss of income Rs. 44,100/-

Total Rs. 1,58,100/-

14. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent: stated herein above. The claimant is entitled for a total compensation of Rs. 1,58,100/- as against Rs. 1,17,000/- awarded by the Tribunal with interest at 6% p.a. on the additional compensation of Rs. 41,100/- from the date of claim petition till the date of realisation.

15. The Insurance Company is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment from which, 75% with proportionate interest is ordered to be invested in F.D. in any nationalized or scheduled Bank in the name of the claimant for a period of nine years with a right of option for him to renew the deposit from time to time and withdraw interest periodically and the remaining amount with proportionate interest is ordered to be released in his favour.

No order as to costs.