

(2013) 09 KAR CK 0101
In the Karnataka High Court
Case No : M.F.A. No. 4001 of 2012 (MV)

K. Krishnappa

APPELLANT

Vs

The Reliance General Insurance Co. Ltd. and The Riyaz Pasha

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0101

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

Bench : Single Bench

Advocate : R. Chandrashekhar, for Lawyers Net, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 15th December 2010, passed in MVC No. 544/2010, by the 16th Additional Judge, Motor Accident Claims Tribunal, Bangalore City (SCCH-14), (for short, "Tribunal") on the ground that the compensation awarded is on the lower side and is liable to be enhanced. Along with the appeal, learned counsel appearing for appellant has also filed I.A. 1/2012, seeking condonation of delay of 412 days in filing the Appeal.

2. The delay of 412 days in filing the appeal has been explained at paragraphs 3 to 7 of the affidavit filed in support of the application, I.A. 1/2012. In the said affidavit, it is stated by the appellant that, his counsel applied for the certified copy of the judgment and award on 15th December 2010, copy was ready on 31st January 2011 and his counsel received the same on 31st January 2011. He has further stated that the averments made in the memorandum of miscellaneous first appeal be read as part and parcel of the affidavit. He has sustained fracture of both the bones of left leg in the accident which resulted in permanent disabilities. The fracture was treated with surgery and the implants were still present and he was still suffering with on and off pain in the left lower limb due to osteoarthritis of knee joint and was under continuous medication and

physiotherapy treatment. At the time of accident he was working as vegetable vendor, earning Rs. 300/- per day and after the accident he is disabled to continue: his avocation due to the permanent disabilities. Due to the ill health, treatment and follow-up treatment, he could not contact his Advocate. Further for availing and providing treatment, he has borrowed hand loans from his relatives and friends. Due to the said reasons, he could not meet his present Advocate to give instruction to prefer an appeal in time and not taken any action pursuant to the judgment. Therefore, there is delay filing the above appeal.

3. He has further stated that, on looking into the certified copies of the judgment and award, he learnt and was advised that the compensation awarded by the Tribunal is on the lower side and hence, he has decided to prefer this appeal. He has further stated that the delay in filing the appeal is due to the above said bona fide reasons and unintentional and that he has a good case on merits to succeed in the appeal and if the accompanying application is allowed no injury or hardship will be caused to the respondents, but on the other hand, if the application is not allowed, he will be put to great hardship and irreparable injury. Therefore, he has prayed that the delay may be condoned in the interest of justice and equity.

4. I have heard the learned counsel appearing for appellant and perused the statements made in the affidavit, accompanying the application, I.A. 1/2012.

5. After going through the statements made in the affidavit filed in support of the application, I am of the considered view that the inordinate delay of 412 days in filing the appeal has not been explained satisfactorily by assigning valid and cogent reasons. The explanation offered is in a very casual manner. Except making bald statements, no credible or trustworthy reasons are assigned for explaining the delay of 412 days in filing the appeal. Whenever there is inordinate delay, the party is bound to explain each day's delay in filing the appeal by setting out the dates and events. Hence, in view of non explanation of inordinate delay in filing the appeal, in a satisfactory manner, I am of the view that delay cannot be condoned nor the appellant has made out a good case to condone the delay. Hence, for the foregoing reasons, I.A. 1/2012 is dismissed as misconceived. Consequently, the appeal filed by appellant is also liable to be dismissed.

6. However, in the interest of justice and equity, I have heard the learned counsel appearing for appellant on the merits of the case and perused the entire judgment and award passed by Tribunal. After perusal of the same, it is seen that, occurrence of accident and the resultant injuries sustained by the appellant are not in dispute. Further, it is not disputed that the appellant has sustained grievous injuries such as fracture of shaft of both the bones of right leg and was in-patient for about five days from 27-12-2009 to 01-01-2010 and also undergone ORIF surgery. The Doctor has opined that he has sustained 15% disability towards whole body. The Tribunal, having regard to the age of the appellant, has rightly adopted the multiplier of "13" and rightly assessed the

monthly income of the appellant at Rs. 3,000/- per month and assessed the whole body disability at 11%. The same is just and proper and interference in the same is uncalled for. Further, it can be seen that the Tribunal is also justified in awarding a sum of Rs. 40,000/- towards injury, pain and sufferings, Rs. 20,000/- towards loss of income during treatment period, Rs. 44,000/- towards medical expenses, Rs. 30,000/- towards loss of amenities, discomfort and unhappiness and Rs. 10,000/- towards conveyance, nourishing food and attendant charges. Hence, it does not call for interference.

7. The Tribunal, after critical evaluation of the oral and documentary evidence and also considering the age, avocation, year of accident, nature of injuries sustained, nature and duration of treatment undergone, surgery undergone, disability assessed by doctor, etc, has rightly awarded compensation of a sum of Rs. 2,12,640/- for the injuries sustained by appellant. Hence, interference in the same is uncalled for. For the foregoing reasons, the appeal filed by appellant is dismissed on the ground of delay and laches as also on merits.