

(2013) 07 KAR CK 0175
In the Karnataka High Court
Case No : MFA No. 10030 of 2010 (MV)

K. Raghurami Reddy

APPELLANT

Vs

Manager, M/s. Indorewalla Carriers and Sons Pvt. Ltd. and
United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0175

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : A. Sreenivasaiah, for the Appellant; D. Vijayakumar, Advocate for R2, for the Respondent

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard, the appeal is admitted and with the consent of learned counsel appearing for parties, it is taken up for final disposal.

2. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 02.04.2005 due to rash and negligent driving of the offending lorry bearing registration No. NL-05-A-4649 by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

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

4. After hearing the learned counsel appearing for parties 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 wound certificate Ex. P-3, the claimant has sustained following injuries:

- a) Fracture of right leg lower third and right tibia
- b) Contusion of the right leg lower one third with restricted movements and deformity crepitus.

The injuries sustained by the claimant are evident for Ex. P7-Outpatient record and Ex. P8-X-ray and also supported by oral evidence of the claimant and doctor, who were examined as PWs-1 and 2. PW-2 Dr. John Ebnezer in his evidence has stated that the claimant has suffered disability of 30% to right lower limb and 10% for the whole body.

6. Considering one fracture and other injuries sustained by the claimant, a sum of Rs. 25,000/- awarded by the Tribunal towards "pain and sufferings" is just and proper and there is no scope for enhancement under this head.

7. The claimant was treated in Government hospital as inpatient for a period 15 days but no documents were produced regarding amount spent towards "medical and incidental expenses". Considering the same, a sum of Rs. 10,000/- awarded by the Tribunal towards "medical and incidental expenses" is just and proper and there is no scope for enhancement under this head.

8. The claimant claims to have been earning Rs. 8,000/- per month by working as Electrical Motor Mechanical but the same was not established by producing any documents. In the absence of proof of income, considering his age as 24 years, year of accident as 2005, his income assessed at Rs. 4,000/- per month by the Tribunal is just and proper. Further, the Tribunal considering that the claimant must have been under rest and treatment for a period of 4 months, has rightly awarded a sum of Rs. 16,000/- towards "loss of income during laid up period" and there is no scope for enhancement under this head.

9. Considering the disability stated by the doctor and an amount of discomfort and unhappiness the claimant has to undergo in his future life, a sum of Rs. 15,000/- awarded by the Tribunal towards loss of amenities" is just and proper and there is no scope for enhancement under this head.

10 The claimant is aged about 24 years at the time of accident, and the multiplier applicable to his age group is 18. His income assessed by the Tribunal at Rs. 4,000/- per month. PW-2, doctor in his evidence has stated that claimant has suffered disability 10% to the whole body. So the loss of future income" works out to Rs. 36,400/- ($4000 \times 12 \times 18 \times 10/100$) and it is awarded as against Rs. 20,000/- awarded towards "disability" by the Tribunal.

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. 66,400/- with interest at 6% p.a. from the date of claim petition till the date of realization.

13 The Insurance Company is directed to deposit the additional compensation of Rs. 66,400/- within two months from the date of receipt of a copy of this judgment. From which, 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 6 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 the fixed deposit slips, so as to enable the claimant to withdraw the deposit amount on its maturity without approaching the Tribunal once again and the Bank is directed to release the fixed deposit amount without insisting for any further order from the Tribunal.

No order as to costs.