

(2012) 01 KAR CK 0327
In the Karnataka High Court
Case No : M.FA. No. 2491 of 2010 (MA)

Kantharaj K R

APPELLANT

Vs

The New India Assurance Co. Ltd. 1st Floor, Kiade Complex,
Hosur Road, Bommasandra, Bangalore - 560099 and S.N.
Shivakumar

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0327

Hon'ble Judges : K. Govindarajulu, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : Janokere C Krishna and Sri Mahendrakumar. K, for the Appellant;
Harini Shivananda, for R1, for the Respondent

Judgement

1. Though the appeal is listed for admission, with the consent of the learned counsel for the parties, heard arguments for final disposal. Learned counsel for the appellant submits that the claimant sustained number of injuries and resulted in total permanent disablement but the Tribunal has not awarded adequate compensation. He prays for enhancement of compensation.

2. Learned counsel for the respondents 1 & 2 submits that there is no good ground for enhancement of compensation.

3. Perused the LCR.

4. It is the case of the appellant/claimant that he was 19 years old earning Rs. 300/- + Rs. 50/- Bata per day as a Coolie and he sustained grievous injuries in the motor accident that occurred on 29.09.2008 when he was travelling in the Bus bearing No. KA-04-AA-4995 from Bhashettyhalli Village to Yelahanka. He filed a claim petition against the Insurance Company and owner of the Bus claiming compensation of Rs. 77,77,000/-towards personal injuries.

5. In spite of service of notice on the Insurance Company and Owner of the Bus, they remained ex-parte before the Tribunal. In support of the case of the

claimant, be has got himself examined as PW-1 besides examining PW-2 Dr. Alfred Cyril Roy and got marked Exs. P1 to P12. The Tribunal has answered on the point of negligence in the affirmative, fixed income of the claimant at Rs. 3,000/- per month, applied multiplier 18 and permanent disablement at 25% of the whole body and awarded compensation as under:

Pain and sufferings

Rs 75,000/-

Medical expenses

Rs. 3,35,234/-

Loss of earnings during treatment period

Rs. 15,000/-

Loss of amenities and future happiness

Rs. 1,00,000/-

Loss of future earning

Rs. 1,62,000/-

Towards Conveyance, Attendant & nourishment

Rs. 20,000/-

Future medical expenses

Rs. 75,000/-

Loss of expectation of life

Rs. 40,000/-

TOTAL

Rs. 8,22,234/-

Rounded off

Rs. 8,22,250/-

Tribunal has not awarded interest on the sum of Rs. 75,000/- awarded towards future medical expenses.

6. As per Ex. P7, Wound Certificate issued by Bangalore Baptist Hospital, he sustained in all ten injuries and treated as inpatient from 31.05.2008 to 01.09.2008. Except Injury No. 1, all other injuries are grievous in nature. The claimant was treated in the above said hospital for type IIIB compound fracture of both the bones of left leg, lateral condyle fracture of right knee, undisplaced fracture medial malleolus right ankle, right superior and inferior pubic rami

fracture with right sacroiliac joint disruption, left inferior pubic rami fracture and laceration injury of right forearm. As per Treatment Certificate at Ex. P8,

10/06/2008 - Wound debridement of left leg was done;

16/06/2008 - Major debridement and sequestrectomy was done;

25/06/2008 - wound debridement; dorsalis pedis inscio - cutaneous flap with STSG;

18/07/2010 - wound debridement was done;

20/08/2008 - wound debridement and dynamic external pin fixator application with corticotomy was done.

Claimant has produced medical bills for Rs. 3,54,705/- (vide calculation sheet at page Nos. 41, 42 & 43 of LCR). Ex. P11 is the medical report pertaining to the case of the appellant/claimant as maintained in Baptist Hospital. PW-2 Dr. Alfred Cyril Roy of the Baptist Hospital has deposed about the injuries sustained by the claimant and nature of treatment given. On recent examination, he has noticed scars on the left leg with the following description;

- i) Prox leg 6 punckered scars each 1/2 cm in diameter;
- ii) Long scar in anterior aspect of left leg 6 inch length and 1 inch in breadth;
- iii) Left lower leg shows flap scar of 6 inches X 5 inches;
- iv) Dorsal aspect of left foot shows a scar of 4 inches X 3 inches of donor site for flap;
- v) Left leg shortening by 2 cms;
- vi) Both hips: terminal 10 degree flexation and 10 degree external rotation are restricted;
- vii) Right knee terminal 5 degree flexation restricted;
- viii) Left ankle : dorsiflexion 5 degree and plantanflextion 5 degree,
- ix) Scars are mildly tender.

He has deposed that the claimant has suffered disability of 54% to left lower limb and 1.5% to right lower limb and 55.5% to the whole body and after 20 to 30 years, patient's right knee will become painful for which condition he require total knee replacement and the same would coat Rs. 1,40,000/. Since the Insurance Company remained absent before the Tribunal, there is no challenge to the evidence of PW-1 the claimant and PW-2 the Medical Officer. The claimant has taken follow up treatment in Baptist Hospital for about 26 times. The Tribunal has rightly fixed permanent disablement at 25% to the whole body.

7. It is pertinent to mention that since it is not a case of death, awarding a sum of Rs. 40,000/-towards loss of expectation of life is not correct. Further, there is

no good ground to award Rs. 75,000/- to award future medical expenses.

8. The appellant/claimant has no grievance about the compensation awarded towards medical expenses. The claimant is a resident of Doddaballpur Taluk, a bachelor and a Coolie by profession. The accident occurred in the year 2008. Keeping to view the wage structure of a Coolie in the year 2008, it would meet the ends of justice if his income is fixed at Rs. 4,500/- per month. In our view, the claimant is entitled for compensation as under:

Pain and suffering

Rs. 75,000/-

Medical Expenses

Rs. 3,35,250/-

Loss of earning during the period of treatment and rest (4500X9)

Rs. 40,500/-

Loss of future earnings (4500X12X18X25%)

Rs. 2,43,000/-

Attendant, Special Conveyance, Special Diet and incidental expenses

Rs. 30,000/-

Loss of amenities

Rs. 1,00,000/-

Future medical expenses

Rs. 10,000/-

TOTAL

Rs. 8,33,750/-

Less compensation awarded by the Tribunal

Rs. 8,22,250/-

Rs. 11,800/-

9. In the result, we pass the following order: The appeal is partly allowed holding that the claimant is entitled for additional compensation of Rs. 11,450/- along with cost and interest at 6% p.a. from the date of petition till the date of its realisation. Accordingly, the impugned judgment and award is modified.

Respondent No. 1 is directed to deposit the entire compensation amount along with costs and interest with fee Tribunal within three months from today.