

(2015) 03 KAR CK 0286
In the Karnataka High Court
Case No : M.F.A. No. 6360 of 2010 (MV)

K.B. Sathish Murthy

APPELLANT

Vs

K.B. Phaneendra and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 2 KCCR 1352

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

Bench : Single Bench

Advocate : H. Vinod Kumar for P. Mahesha, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 24th February 2010, passed in MVC No. 1429/2006, by the Presiding Officer, Fast Track Court-III, Motor Accident Claims Tribunal, Mysore, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 67,000/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 3,60,000/-, is inadequate.

2. The appellant claims to be aged about 31 years and working as an agriculturist, earning a sum of Rs. 5,000/- per month and hale and healthy prior to the date of accident. That the occurrence of accident at about 04:30 P.M., on 12-09-2006, near Keelanapura Power Station, when the appellant was traveling in his Vehicle bearing Registration No. KA-09/EB-6357 from Mysore towards T. Narasipur, on account of rash and negligent riding by the rider of Motor bike hero Honda CD 100 bearing Registration No. KA-09/V-2521, is not in dispute. It is also not in dispute that the appellant has sustained cut lacerated wound over the dorsum of right foot and fracture of medical cuneiform bone of right foot. Due to the injuries sustained in the accident, he was shifted to JSS Hospital, where he took treatment as inpatient from 12-09-2006 to 16-09-2006.

3. It is his further case that, on account of the accident, he sustained injuries stated above and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

4. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 3,60,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 24th February, 2010. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 67,000/- under different heads, with interest at 6% per annum, from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the appellant and the Insurer.

6. Learned counsel appearing for appellant vehemently submitted that the Tribunal grossly erred in not awarding reasonable compensation towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of amenities, discomfort and unhappiness and loss of income during treatment period. To substantiate the said submission, he submitted that the appellant was aged about 31 years, hale and healthy prior to the accident and working as an agriculturist and because of the accidental injuries, he took treatment as in-patient and also out-patient and has lost future amenities, comforts and happiness on account of the injuries and also disability, as the Doctor observed that there is malunion of fracture, medical cuneiform bone right foot, moderate stiffness of right ankle joint and severe stiffness of right mid tarsal and subtalar joints and sustained permanent disability of 48% towards right lower limb and opined that he cannot walk long distance and stand for long duration and cannot squat. He was also operated for the fracture sustained by him. Due to the said disability, he is not normal in his daily activities and cannot do his work as effectively as before and all these aspects of the matter have not been looked into or considered by Tribunal. He further submitted that the Tribunal has failed to award any compensation towards loss of earning capacity, even though the Doctor has assessed the functional disability at 48% towards right lower limb. Therefore, he submitted that reasonable enhancement be made under all heads by modifying the impugned judgment and award passed by Tribunal.

7. As against this, learned counsel appearing for second respondent/Insurer inter alia contended and sought to substantiate the impugned judgment and award passed by Tribunal, stating that the same is passed after due consideration of the

entire material, including oral and documentary evidence available on file. Hence, interference in the same is uncalled for.

8. After hearing the learned counsel appearing for the appellant and the Insurer and after going through the impugned judgment and award passed by Tribunal, the only point that arise for my consideration in this appeal is,

"Whether the quantum of compensation awarded by Tribunal is just and reasonable?" 9. After perusal of the entire material available on file, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, and considering the age, avocation, nature of injuries sustained, nature and duration of treatment undergone, etc. has rightly awarded compensation of Rs. 21,464/- towards medical expenses including conveyance, nourishing food and attendant charges and Rs. 25,000/- towards loss of amenities, discomfort and unhappiness, on account of disability. Hence it does not call for interference. However, so far as other heads are concerned, the Tribunal erred in not awarding reasonable compensation and therefore, it requires enhancement and Tribunal further erred in not awarding any compensation towards loss of future income.

10. After perusal of the impugned judgment and award passed by Tribunal, it can be seen that, due to the road traffic accident, the appellant has sustained cut lacerated wound over the dorsum of right foot and fracture of medial cuneiform bone of right foot. On examination, PW2, Orthopedic Surgeon observed that there is malunion of fracture medial cuneiform bone right foot, moderate stiffness of right ankle joint and severe stiffness of right mid tarsal and subtalar joints and assessed the functional disability at 48% towards right lower limb and opined that the appellant cannot walk long distances and cannot stand for long duration and cannot squat. 1/3rd of 48% disability comes to 16% whole body disability. The appellant, being aged about 31 years has to endure this disability for the rest of his life and he cannot do his work as effectively as before. Because of these injuries, he took treatment as in-patient for four days and he must have also taken follow up treatment at least for a period of three months. During the period of treatment, the appellant must have undergone lot of unsaid pain and agony and would have spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental and medical expenses. Further, it is seen that the Tribunal has erred in assessing the monthly income of the appellant at only Rs. 3,000/-. The same is on the lower side. Considering the age, avocation and the year of accident, I re-assess the monthly income of the appellant at Rs. 3,500/- to meet the ends of justice. Therefore, having regard to the nature of injuries sustained, age, avocation and the nature and duration of treatment, functional and whole body disability, year of accident, I award a sum of Rs. 25,000/- towards pain and sufferings as against Rs. 12,000/-; Rs. 10,500/- towards loss of income during laid up period at the rate of Rs. 3,500/- per month for a period of three months, as against Rs. 9,000/- awarded by Tribunal; and Rs. 1,07,520/- towards loss of future income (i.e. Rs. 3,500/- x 12

x T6" x 16/100) as the Tribunal has not awarded any compensation under this head. Thus, the appellant in all, would be entitled to a total compensation of Rs. 1,89,484/-, with interest at 6% per annum as against Rs. 67,000/- awarded by Tribunal, and the break up is as follows:

11. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 24th February 2010, passed in MVC No. 1429/2006, by the Presiding Officer, Fast Track Court-III, Motor Accident Claims Tribunal, Mysore, is hereby modified, awarding compensation of a sum of Rs. 1,89,484/-, with interest at 6% per annum, as against Rs. 67,000/-, awarded by Tribunal. There would be an enhancement of compensation of Rs. 1,22,484/- with 6% interest per annum.

The second respondent - Insurer is directed to deposit the enhanced compensation, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurer, 50% shall be deposited in the name of the appellant in Fixed Deposit, in any nationalized or Scheduled or Grameena Bank, for a period of ten years, renewable for another ten years, with liberty reserved to the appellant to withdraw the periodical interest.

Remaining 50% shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.