
(2013) 09 KAR CK 0343
In the Karnataka High Court
Case No : M.F.A. No. 4097 of 2009

K.B. Uthappa

APPELLANT

Vs

K.T. Kariappa, S.A. Kavitha and The Manager, Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 09 KAR CK 0343

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

Bench : Single Bench

Advocate : T.A. Karumbaiah, for the Appellant; K. Suresh, Advocate for R3, for the Respondent

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the judgment and award dated 26th February 2009, passed in MVC No 153/2008, by the Civil Judge (Sr. Dn.) and JMFC., Motor Accident Claims Tribunal, Virajpet, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 30,000/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 1,00,000/-, is inadequate. The appellant claims to be aged about 30 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 5:00 P.M. on 14-07-2008, when the appellant was proceeding towards Mallagalale from Alur, as a pillion rider, in a Scooty bearing Registration No. KA-02/EU-0362 ridden by first respondent, due to rash and negligent riding by the rider of the said Scooty, is not in dispute. It is also not in dispute that the appellant has sustained grievous injuries. Due to the injuries sustained in the accident, he was shifted to Hassan and treated as out patient at Hemavathi Hospital, Hassan. Thereafter, he has taken treatment at various Hospitals.

2. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe pain and agony 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.

3. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 1,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 26th February, 2009. 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 global sum of Rs. 30,000/- 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.

4. 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 also Insurer.

5. Shri. T.A. Karumbaiah, learned counsel for appellant contends that, the Tribunal has erred in awarding global compensation, without awarding compensation under each head, i.e. towards injury, pain and sufferings, conveyance, nourishing food and attendant charges, medical expenses, loss of income during treatment period, loss of amenities, discomfort and unhappiness, etc. Further, he submitted that the appellant was aged about 30 years and hale and healthy at the time of accident and as per Ex. P1, wound Certificate, the appellant has sustained in all five injuries, out of them, the Doctor has opined that the injury Nos. 1 to 4 are simple in nature and injury No. 5 is grievous in nature. He further submitted that Exs. P2 to P5, P11 to P14 are all medical prescriptions, but the Tribunal has disbelieved the same on the ground that they are all private documents and much credibility cannot be attached to it and further the appellant has not examined the employer. The same is not a valid ground for declining the benefit entitled to by the appellant. Therefore, he submits that reasonable compensation may be awarded under all the heads by modifying the impugned judgment and award passed by Tribunal.

6. As against this, learned counsel appearing for Insurer inter alia contended and substantiated the judgment and award passed by Tribunal stating that the same is passed after due appreciation of the oral and documentary evidence available on file and after consideration of the entire material available on file including the submission made by the learned counsel appearing for both parties and hence, the compensation awarded by Tribunal is just and reasonable and it does not call for interference.

7. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, occurrence of accident and the resultant injuries sustained by appellant are not disputed. It is also not disputed that as per Ex. P1 wound

certificate, injury Nos. 1 to 4 are simple in nature and injury No. 5 is grievous in nature. But, the Tribunal, after assessing the oral and documentary evidence available on file, has erred in not awarding reasonable compensation. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient for one day in the Hospital. During the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges. Further, it can be seen that, Exs. P2 to P5 and P11 to P14 are medical prescriptions. Because of the injuries sustained and hospitalization, he would have lost the income and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges including medical expenses. Therefore, having regard to the nature of injuries sustained, age, avocation of the appellant and nature and duration of treatment, I deem it fit to award a global compensation of a sum of Rs. 10,000/-, with interest at 6% per annum, in addition to the compensation awarded by Tribunal, excluding interest for the delayed period of 149 days vide order dated 11th June 2010. 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 26th February 2009, passed in MVC No. 153/2008, by the Civil Judge(Sr. Dn.) and JMFC, Motor Accident Claims Tribunal, Virajpet, is hereby modified, awarding global compensation of a sum of Rs. 10,000/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal, excluding interest for the delayed period of 149 days vide order dated 11th June 2010.

The third respondent-Insurer is directed to deposit the enhanced compensation of Rs. 10,000/-, 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 excluding interest for the delayed period of 149 days vide order dated 11th June 2010.

On such deposit by the Insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.

Shri. K. Suresh, learned counsel is permitted to file vakalath on behalf of Insurer, within four weeks from today.