

(2015) 02 KAR CK 0098
In the Karnataka High Court
Case No : M.F.A. No. 2974/2014 (MVC)

K.G. Kamalakshi	Vs	APPELLANT
Manjunath J. and Others		RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0098

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : K.S. Bheemaiah, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

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

4. As there is no dispute regarding certain injuries sustained by the claimant in a road traffic accident occurred on 17.07.2008 due to rash and negligent riding of a motor cycle bearing registration No. KA-02-EG-7426 by its rider and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

"Whether the compensation of Rs. 1,75,600/- with interest at 6% p.a. awarded by the Tribunal is just and reasonable or does it call for enhancement?"

5. After hearing the learned counsel appearing for the 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.

6. As per Ex. P4- wound certificate the claimant has sustained the following injuries:--

"lacerated wound at the angle of the mouth and LEFORTII fracture".

Injuries sustained and treatment taken by the claimant at Justice K.S. Hegde Charitable Hospital, Mangalore are evident from Ex. P6 - Out patient slip and four discharge summaries which are produced at Exs. P7 to 10 and they are corroborated by oral evidence of claimant and doctor who were examined as PW-1 and CW-1 respectively.

7. Dr. S.M. Sharma has treated the claimant at Justice K.S. Hegde Charitable Hospital, Mangalore and he has found that claimant had "oedema of the face (swelling)" and on examination she was found to have "Maxilla (upper jaws) and mandible by lateral (two sides) fracture, fixation of upper and jaws fragments with steel plates" were done and she was kept under observation for healing. Again she was admitted for treatment for lower jaws swelling and she under went for operation, open surgical correction by fixing five plates and it was removed on 13/11/2008. Doctor has observed that injuries are grievous in nature that is four areas where five plates were fixed are grievous in nature. It amounts 50% of permanent disability in appearance and functions of lower and upper jaws.

8. Considering the nature of injuries, Rs. 75,000/- is awarded towards "pain and suffering" as against Rs. 50,000/- awarded by the Tribunal.

9. As Rs. 48,600/- awarded by the Tribunal towards "medical expenses" is based on the medical bills produced by the claimant there is no scope for enhancement under this head.

10. The claimant was treated as inpatient for about 20 days she under went operation and correction of surgeries. Considering the same Rs. 20,000/- awarded by the Tribunal towards "incidental expenses" such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement under this head.

11. The claimant claims to have been earning Rs. 5,000/- per month by working as an Accountant in a private estate, but it is no substantiated by adducing evidence. In the absence of proof of income considering her age as 24 years, year of accident as 2008 and avocation as daily wager her income is assessed at Rs. 4,500 p.m. The nature of injuries suggest that she must have been under rest and treatment for a period of 4 months and therefore a sum of Rs. 18,000/- is awarded towards loss of income during laid up period" as against Rs. 12,000/- awarded by the Tribunal.

12. Considering the nature of injuries sustained, 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. 50,000/- is awarded towards loss of amenities" as against Rs. 10,000/- awarded by the Tribunal.

13. The claimant is aged about 24 years at the time of accident, and the multiplier applicable to her age group is 18. Her income is assessed at Rs. 4,500/- p.m. CW-1, the doctor in his evidence has stated that claimant has suffered permanent disability of 50% of so as to disability caused to whole body comes to 13% * Thus loss of future income" works out to Rs. 1,26,360/- (4,500 x 13/100 x 12 x 18) and it is awarded.

14. Considering the nature of injuries, a sum of Rs. 10,000/- is awarded towards "future medical expenses" for removal of implants.

15. Thus, the claimant is entitled for the following compensation:--

16. 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 a total compensation of Rs. 3,47,960/- ** as against Rs. 1,75,600/- awarded by the Tribunal with interest at 6% p.a. from the date of claim petition till the date of realisation.

17. The Insurance Company is directed to deposit the additional compensation amount of Rs. 1,72,360/- *** together with interest within two months from the date of receipt of a copy of this judgment. From which, 70% 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/Grameena Bank for a period of 3 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant.

18. The Tribunal while releasing 30% 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 and there is no order as to costs.

19. Sri. K. Poornabodha Rao ****, learned counsel who has argued the case on behalf of respondent No. 2 is granted three weeks time to file vakalath.

No order as to costs.

*Corrected vide Court order dt. 26-06-15 **Corrected and inserted vide Court order dt. 26-06-15 ***Corrected and inserted vide Court order dt. 26-06-15 ****Corrected vide Court order dt. 26-06-15