
(2015) 04 KAR CK 0010
In the Karnataka High Court
Case No : M.F.A. No. 1600 of 2013 (MV)

K.L. Chandrashekara

APPELLANT

Vs

C.M. Venugopal and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 04 KAR CK 0010

Hon'ble Judges : N.K. Patil and Rathnakala, JJ.

Bench : Division Bench

Advocate : Shivaswamy, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the injured claimant is directed against the impugned common judgment and award dated 4th September 2012, passed in MVC No. 1284/2010, by the Principal Senior Civil Judge and Member, Additional Motor Accident Claims Tribunal, Hassan, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 2,63,400/-, awarded in his favour as against his claim for Rs. 20,00,000/-, is inadequate.

2. The appellant claims to be aged about 45 years and a Coffee Planter and also an agriculturist, earning a sum of Rs. 50,000/- per month. He was hale and healthy prior to the date of accident. That at about 8:00 P.M., on 03-02-2010, when the appellant and another were proceeding in a Maruthi Van bearing Registration No. KA-11/M-2683, on B.M. Road, near Gavenahalli Tank, at that time, a Tata Sumo bearing Registration No. KA-13/M-9810 being driven by its driver, in a rash and negligent manner, came from opposite direction and dashed against the Maruthi Van of the appellant. Due to the impact, the appellant sustained grievous injuries and was treated as in-patient in the Hospital.

3. It is the case of the appellant that he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses

and other incidental expenses and therefore, he has to be compensated adequately.

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. 20.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 4th September, 2012. 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. 2,63,400/- with interest at 6% per annum from the date of petition till the date of deposit and directed the second respondent/Bajaj Allianz General Insurance Company Ltd. to indemnify the said amount. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

5. We have heard learned counsel for appellant and learned counsel for second respondent/Bajaj Allianz Insurance Company for considerable length of time.

6. It is the case of the appellant that on account of the road traffic accident, he sustained swelling and deformity of right leg, lacerated wound over lower 1/3rd of right leg, operated and fixed with nail with bone grafting as per Wound Certificate at Ex. P6 and the right leg is shortened by 3/4 inch and as per the opinion of the Doctor, he sustained 40% permanent disability towards right leg and the movement of ankle joint is restricted. For the treatment of the said injuries, he was in-patient for quite a long period and also spent considerable amount towards medical and other incidental expenses and therefore, he has to be awarded reasonable compensation.

7. The submission of the learned counsel appearing for appellant, Shri Shivaswamy, at the outset is that, the Tribunal has erred in not assessing the reasonable income of the appellant, for the reason that the appellant was aged about 45 years, a coffee Planter and also an agriculturist, earning substantiate monthly income. Therefore, he submitted that the Tribunal ought to have assessed the income of the appellant atleast between Rs. 10,000/- to Rs. 12,000/- per month and awarded reasonable compensation on account of the grievous injuries and disability sustained by the appellant in the road traffic accident. He further submitted that, on account of the grievous injuries sustained, the appellant has undergone treatment for a period of 34 days as in-patient in the Hospital and the Doctor, after seeing the nature of injuries sustained by the appellant, assessed the permanent functional disability at 40% towards right leg and 13% towards whole body. The appellant has to pull on the life with the said disability for the rest of his life and he cannot do the work as he was doing earlier to the accident. On the advise of the Doctor, the appellant has taken follow-up treatment for at least three months and on account of the permanent disability, the appellant has lost the future happiness, comforts and amenities in life. Further, it is stated that the appellant has to undergo one more

operation. All these aspects of the matter have not been taken into consideration by Tribunal, while computing compensation payable to the appellant. Hence, the impugned judgment and award passed by Tribunal is liable to be modified, by enhancing reasonable compensation.

8. As against this, learned counsel appearing for second respondent/Bajaj Allianz Insurance Company Limited, inter alia, sought to substantiate the impugned 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 hence, interference in the same is uncalled for. However, after due consideration of the oral and documentary evidence available on file, nature of injuries sustained, nature and duration of treatment undergone, he fairly submitted that reasonable enhancement may be made, in accordance with law.

9. After hearing learned counsel for the appellant, learned counsel appearing for second respondent/Bajaj Allianz Insurance Company Limited and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 45 years and a Coffee Planter and also an agriculturist. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 1,16,765/- towards medical expenses, as per the medical bills and prescriptions. Hence, interference in the same is uncalled for.

10. However, so far as the compensation awarded under injury, pain and sufferings, loss of amenities, discomfort and unhappiness on account of permanent disability, conveyance, nourishing food and attendant charges, loss of income during treatment period and future medical expenses is concerned, the same is on the lower side and needs to be re-determined. Admittedly, in view of the road traffic accident, the appellant has sustained swelling and deformity of right leg, lacerated wound over lower 1/3rd of right leg, operated and fixed with nail with bone grafting as per Wound Certificate at Ex. P6 and the right leg is shortened by 3/4 inch and as per the opinion of the Doctor, he sustained 40% permanent disability towards right leg and the movement of ankle joint is restricted. The Tribunal, after appreciating the oral and documentary evidence, has assessed the whole body permanent disability at 13%. The same, in our opinion is just and proper. The appellant being aged about 45 years, has to endure this disability for the rest of his life. Because of the injuries sustained, he must have been away from work for a period of not less than three months. Further, it can be seen that the monthly income of Rs. 4,000/- assessed by Tribunal is on the lower side and liable to be re-assessed. It is not in dispute that the income from plantation and agriculture would continue, but the appellant may find difficulty in supervision of the same, due to disability and he cannot contribute to the same as he was doing before the accident. Therefore, having regard to the age, avocation and the year accident, we re-assess the monthly

income of the appellant at Rs. 6,000/-, to meet the ends of justice. Further, it is stated that the appellant took treatment as in-patient for quite a long period on account of disability sustained to his right leg. During this period, he must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. Therefore, having regard to the age, avocation, nature of injuries, disability, nature and duration of treatment undergone, future operation to be undergone and the facts and circumstances of the case on hand, we award a sum of Rs. 40,000/- towards injury, pain and suffering as against Rs. 30,000/-; Rs. 20,000/- towards conveyance, nourishing food and attendant charges as against Rs. 16,000/-; Rs. 18,000/- towards loss of income during treatment period, at the rate of Rs. 6,000/- per month for a period of three months as against Rs. 12,000/-; Rs. 1,00,000/- towards loss of amenities, discomfort and unhappiness on account of disability and also loss of future income as against Rs. 78,640/- awarded by Tribunal under the aforesaid two heads; and Rs. 25,000/- towards future medical expenses as against Rs. 10,000/- awarded by Tribunal.

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 common judgment and award dated 4th September 2012, passed in MVC No. 1284/2010, by the Principal Senior Civil Judge and Member, Additional Motor Accident Claims Tribunal, Hassan, is hereby modified, awarding a sum of Rs. 3,19,765/- as against Rs. 2,63,400/- awarded by Tribunal, with interest at 6% per annum, from the date of petition till the date of realization. The break-up is as follows:

The total compensation would workout to Rs. 3,19,765/- as against Rs. 2,63,400/-. The enhanced compensation would be Rs. 56,365/- with 6% interest per annum.

The second respondent/Bajaj Allianz Insurance Company Limited is directed to deposit the enhanced compensation of Rs. 56,365/-, with interest thereon at 6% per annum, within four weeks from the date of receipt of copy of the judgment.

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

Office to draw award, accordingly.

Shri B.C. Seetharama Rao, learned counsel is permitted to file vakalath on behalf of respondent No. 2, within four weeks from today.