

(2015) 08 KAR CK 0357

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 10778 of 2010 (MV)

Mahalingaiah

APPELLANT

Vs

ICICI Lombard General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 08 KAR CK 0357

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : P.N. Hegde, for the Appellant; B.C. Shivanne Gowda, Advocates for the Respondent

Judgement

N.K. Patil, J—This appeal by the claimant is directed against the impugned common judgment and award dated 10th March 2010, passed in MVC No. 5321/2009, by the II Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bangalore (SCCH-13), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 5,47,300/-, awarded in his favour as against his claim for Rs. 52,00,000/-, is inadequate.

2. The appellant claims to be aged about 38 years and working as a Mason, earning a sum of Rs. 400/- per day or Rs. 12,000/- per month. He was hale and healthy prior to the date of accident. That at about 2:00 P.M., on 16-06-2009, when the appellant and another person were proceeding in TVS XL heavy duty vehicle bearing Registration No. KA-41/E-2152 at Tavarekere Katte, in between Chandrappa circle and Chunchakuppa circle, slowly and cautiously, a Lorry bearing Registration No. KA-41/4148 came at a high speed, in a rash and negligent manner so as to endanger human life and after coming to the extreme right side of the road, dashed against the motor cycle. Due to the impact, both pillion rider, i.e. the appellant and the rider of the said motor cycle suffered grievous injuries. Immediately, they were shifted to Sahana Hospital, Kengeri for treatment and after first aid, the appellant was shifted to St. John's Hospital for

better treatment, where he took treatment as in-patient from 16/06/2009 to 27/07/2009.

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. 52.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 10th March, 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. 5,47,300/- with interest at 6% per annum from the date of petition till the date of deposit. 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 carefully gone through the grounds urged in the memorandum of appeal filed by appellant and heard learned counsel for first respondent/ Insurance Company, for considerable length of time.

6. It is the case of the appellant that he was aged about 41 years, hale and healthy and working as a Mason, at the time of accident. He met with an accident on 16-06-2009 and sustained multiple fractures all over his body and head and chest injuries. PW4, Doctor, after assessing the disability of the injured, deposed that the appellant was put on ventilation in ICU and as he developed bilateral Haemothorax CT chest was done on 20-06-2009, which showed bilateral hemothorax with multiple rib fractures 2-6 ribs on left and 4th rib on right side. For the same B/L inter costal chest drain inserted on 21-06-2009 and later removed on 29-06-2009 and due to long term ventilation requirement tracheotomy done on 24-06-2009, CT abdomen and pelvis (oral and IV contrast) done on 20-06-2009, which showed lesser Sac-haematoma. Further, PW3, Doctor, after examining the appellant, has confirmed the difficulties complained by the appellant and deposed that the injuries are permanent in nature. Further, PW4, Doctor, after clinical and radiological examination of the appellant, has opined that the appellant has sustained permanent physical and mental disability at 30%. But, the Tribunal, without any basis, has re-assessed the whole body disability at 15%. Therefore, it is the case of the appellant that the same is liable to be reassessed and reasonable enhancement be made under all the heads, by modifying the judgment and award passed by Tribunal.

7. As against this, Shri. B.C. Shivannegowda, learned counsel appearing for first respondent, 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.

8. After hearing learned counsel for the appellant 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 38 years and working as Mason at the time of accident. The Tribunal, after assessing the oral and documentary evidence available on file and also considering the age, avocation, nature of injuries sustained, nature and duration of treatment undergone, has rightly awarded compensation of a sum of Rs. 2,68,500/- towards medical expenses, as per the medical bills and prescriptions, Rs. 75,000/- towards loss of amenities, discomfort and unhappiness on account of disability and Rs. 25,000/- towards future medical expenses. Hence, interference in the same is uncalled for.

9. However, so far as the compensation awarded under injury, pain and sufferings, conveyance, nourishing food and attendant charges, loss of income during treatment period and loss of future income 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 grievous injuries, viz. multiple rib fractures 2-6 ribs on left and 4th rib on the right side. CT abdomen and pelvis was done, coastal chest drain inserted and later removed and Tracheotomy done. The appellant has stated that as a consequence of the injuries, he was unable to stand, walk, sit squat on the floor cannot carry any weight and under going deep mental shock, pain and sufferings. The Doctor has confirmed the said complaints in his affidavit and opined that the said injuries are permanent in nature and assessed the permanent physical and mental disability at 30%. The Tribunal, after appreciation of the oral and documentary evidence and other relevant material available on file, has re-assessed the whole body disability at 15%. It can be seen that the appellant has neither examined the Orthopedic surgeon nor Neurosurgeon. Therefore, in the absence of the same, the re-assessment of the whole body disability of the appellant at 15% by the Tribunal, in our opinion, is just and proper and is accepted. Further, it is stated that the appellant was aged about 38 years at the time of accident. But, on the basis of the documentary evidence, the Tribunal has re-assessed the age of the appellant as 41 years. The same is just and proper and accepted. The appellant being aged about only 41 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 six months. Further, it is seen that the monthly income assessed by Tribunal at Rs. 4,000/- is on the lower side. Considering the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 5,500/-, 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 permanent disability. 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. For the age of the appellant, the proper

multiplier applicable is "14" as per the decision of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 as rightly adopted by Tribunal. Therefore, having regard to the age, avocation, nature of injuries, disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 80,000/- towards injury, pain and suffering as against Rs. 50,000/-; Rs. 50,000/- towards conveyance, nourishing food and attendant charges as against Rs. 20,000/-; Rs. 33,000/- towards loss of income during treatment period, at the rate of Rs. 5,500/- per month for a period of six months; and Rs. 1,38,600/- (i.e. Rs. 5,500/- x 12 x "14" x 15/100) towards loss of future income as against Rs. 1,00,800/- awarded by Tribunal.

10. 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 10th March 2010, passed in MVC No. 5321/2009, by the II Additional Judge, Court of Small Causes, Motor Accident Claims Tribunal, Bangalore (SCCH-13), is hereby modified, awarding a sum of Rs. 6,70,100/- as against Rs. 5,47,300/- awarded by Tribunal, with interest at 6% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

The enhanced compensation would be Rs. 1,22,800/- with 6% interest per annum.

The first respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 1,22,800/-, 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, 50% shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized Bank, for a period of five years, renewable by another five years, with liberty reserved to him to withdraw the periodical interest.

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

Office to draw award, accordingly.