

(2010) 11 KAR CK 0088

In the Karnataka High Court

Case No : M.F.A. Crob. No. 158 of 2005 and M.F.A. No. 52 of 2005

Maresh Shetty

APPELLANT

Vs

National Insurance Company Ltd.
 National Insurance
Company Ltd. Vs Maresh Shetty and S.M. Hakeem

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 11 KAR CK 0088

Hon'ble Judges : N.K. Patil, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Pundikai Ishwar Bhat, in M.F.A. CROB. No. 158 of 2005 and A.N. Krishna Swamy, in M.F.A. No. 52 of 2005, for the Appellant; A.N. Krishna Swamy, for R1 in M.F.A. CROB. No. 158 of 2005 and Pundikai Ishwar Bhat, for R1 in M.F.A. No. 52 of 2005, for the Respondent

Judgement

N.K. Patil, J.—This cross objection by the claimant- Cross objector and the appeal by the Insurer are directed against the same judgment and award dated 20/08/2004 passed in MVC No. 1078/1999 on the file of the II Addl. District Judge and Member, Motor Accident Claims Tribunal-III, D.K, Mangalore, (hereinafter referred to as "Tribunal" for short).

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 6,92,000/- with interest at 8% p.a., from the date of petition till the date of deposit as against the claim made by the claimant for a sum of Rs. 8,00,000/-, on account of the injuries sustained by him in the road traffic accident.

3. In brief, the facts of the case are:

The claimant was aged about 32 years, driver by profession and getting the income of Rs. 4,000/- per month. He was hale and healthy prior to the accident. That at about 3.30 p.m., on 16.1.1999 claimant was proceeding in his car bearing CNX 6494 from Mangalore to B.C. Road at Kodikal, Padil, NH 48, at that time, the Jeep bearing No. MYZ 8846 came with a high speed in a rash and

negligent manner from opposite side and dashed against the car, due to which, he lost his balance, it went towards the extreme left side and fell upside down. In the said accident, he sustained lacerated wound on the proximal aspect of the dorsal aspect of the right forearm exposing both radius and ulna, Multiple abrasions on the lateral aspect of the right arm, lacerated wound on the distal aspect of the right fore arm and lacerated wound on the right parieto occipital region. Immediately, he has been shifted to Wenlock District hospital, where, he has taken treatment as inpatient for 139 days on different dates, underwent operation. It is the further case of the claimant that, he has spent reasonable amount towards medical expenses, conveyance and other incidental charges, he has suffered permanent disability on account of the injuries and the Doctor has assessed the disability at 70% to the right upper limb and at 30% to the whole body and it is permanent in nature. Therefore, claimant has filed a claim petition before the Tribunal u/s 166 of M.V. Act, claiming compensation. The said claim petition had come up for consideration before the Tribunal. The Tribunal after hearing both sides and after assessing the oral and documentary evidence, has allowed the said claim petition in part and awarded a sum Rs. 6,92,700/- as compensation under different heads with interest at 6% p.a., from the date of petition till its deposit. Being aggrieved by the said judgment and award, the Insurer has filed an appeal contending that, the compensation awarded by the Tribunal is on higher side and it requires to be reduced and claimant has filed Cross objection contending that the compensation awarded by the Tribunal is inadequate and it requires to be enhanced by modifying the impugned judgment and award.

4. We have heard learned Counsel appearing for the claimant and learned Counsel for the Insurer.

5. Learned Counsel appearing for the claimant submitted that, the Tribunal has erred in not awarding reasonable compensation towards pain and sufferings, loss of amenities of life and towards future medical expenses and therefore, it needs to be modified. Further, he submitted that the Tribunal has rightly assessed the disability at 100% and determined the loss of future income, but it has erred in assessing the income of the claimant at Rs. 3,000/- per month and it is on lower side and it needs to be enhanced, as he was driver by profession and on account of the injuries sustained by him, he could not continue his profession. To substantiate the said submission, he has placed reliance on the judgment of the Division Bench of this Court in the case of New India Assurance Co., Ltd. v. Papamma and Anr. reported in ILR 2006 Kar 3316 and in the case of K. Narasimha Murthy Vs. The Manager, Oriental Insurance Company Limited and Another, and submitted that the impugned judgment and award passed by the Tribunal is liable to be modified by enhancing reasonable compensation.

6. As against this, learned Counsel for the Insurer inter-alia contended and submitted that, the Tribunal has committed an error in assessing the disability at 100% to the whole body on account of the injuries sustained by the claimant in

the accident, contrary to the evidence on record. To substantiate the said submission, he has taken us through the evidence of the Doctor PW2 and submitted that, the Doctor has assessed the disability at 70% to the right upper limb and at 30% to the whole body and the same is an exaggeration and 1/3rd of the same may be taken as whole body disability instead of 100% taken by the Tribunal. Further, he fairly submitted that the compensation awarded by the Tribunal towards injury pain and sufferings, conveyance, nourishing food and attendant charges, loss of amenities and future medical expenses is inadequate and the same may be enhanced in accordance with law.

7. After consideration of the submissions made by learned Counsel for both the parties and after careful perusal of the impugned judgment and award passed by the Tribunal, the only point that arises for our consideration is:

(i) Whether the compensation awarded by the Tribunal is just and reasonable?

8. The occurrence of the accident and the resultant injuries sustained by the claimant are not in dispute. The Tribunal has awarded a sum of Rs. 40,000/- towards pain and sufferings, Rs. 25,000/- towards medical expenses conveyance and nourishing food, a sum of Rs. 25,000/- towards loss of amenities of life, discomforts and unhappiness and a sum of Rs. 2,000/- towards future medical expenses. The said compensation awarded by the Tribunal is inadequate and it needs to be enhanced. It is not in dispute that, on account of the injuries sustained by the claimant, he has taken treatment as inpatient for 139 days, underwent one surgery and during the said period he might have undergone pain and agony, spent reasonable amount towards conveyance and other incidental charges and thereafter, he has taken follow up treatment and bed rest for eight months. The PW2-Doctor has deposed on clinical and radiological examination that, there is any closed right wrist to the extent of 35%, absence of half of the right palm and right little finger and functionless fingers of right hand with flexors cut and fibrosed, the medical evaluation of permanent physical impairment was done. Further, the cross examination of the PW2 reveals that disability noticed is nothing but a below elbow amputation, it is purely a medical condition and it is not the case that muscles strength in the palm and in the fingers of the right upper limb were not tested and it is only on their test percentage of disability is fixed. The Doctor has deposed that claimant cannot close his four fingers (right hand) and by employing right hand, he cannot lift any object and he cannot drive the vehicle. After reappraisal of the evidence of the Doctor and having regard to avocation, age and nature of injuries sustained by the claimant, we re-assess the permanent disability at 50% instead of 100% assessed by the Tribunal and this disability is permanent in nature and he could not drive the vehicle as he was doing earlier. The Tribunal has adopted the Multiplier of "16", the same is just and reasonable and we accept the same. It is the submission of the learned Counsel for the claimant that, claimant was aged about 32 years, working as a driver and getting the income of more than Rs. 4,000/- per month. But he has neither produced any documentary evidence

nor examined his owner or employer to prove the same. Therefore, we do not find any force or substance in the above submission. The Tribunal has assessed the income of the claimant at Rs. 3,000/- per month, the same is just and reasonable and we accept the same. Further, it has come in the evidence of the Doctor that, the claimant required to undergo one more minor surgery and it may cost some amount. Therefore, taking all these factors into consideration, we award a sum of Rs. 60,000/- towards pain and sufferings, Rs. 30,000/- against medical expenses, conveyance, nourishing food and attendant charges, Rs. 50,000/- towards loss of amenities, discomforts and unhappiness, Rs. 2,88,000/- towards loss of future income (Rs. 3,000/- x 12 x 16 x 50/100) and Rs. 5,000/- towards future medical expenses.

9. The Tribunal has awarded a sum of Rs. 24,000/-towards loss of income during the period of treatment, which is just and reasonable and therefore, it does not call for interference.

10. In so far as the reliance placed by the learned Counsel for the claimant are concerned, there is no dispute with regard to the law laid down by the Division Bench of this Court in the aforesaid cases. But the facts and circumstances of the said cases are not applicable to the case on hand and therefore, they are not helpful to the claimant.

11. For the foregoing reasons, the impugned judgment and award passed by the Tribunal is liable to be modified. The total compensation payable comes to Rs. 4,57,000/- and the break- up is as follows:

Towards pain and sufferings

Rs. 60,000/-

Towards medical expenses, conveyance, nourishing food and attendant charges

Rs. 30,000/-

Towards loss of income during the period of treatment

Rs. 24,000/-

Towards loss of amenities of life

Rs. 50,000/-

Towards future medical expenses

Rs. 50,000/-

Towards loss of future income

Rs. 2,88,000/-

Total

Rs. 4,57,000/-

12. Accordingly, the Cross Objection filed by the claimant and the appeal filed by the Insurer stand disposed of.

The impugned judgment and award passed by the Tribunal in MVC No. 1078/1999 is hereby modified, reducing the compensation from Rs. 6,92,000/- to Rs. 4,57,000/- (the reduced compensation comes to Rs. 2,35,000/-).

The Insurer is directed to deposit the remaining amount with interest at 8% p.a., from the date of petition till its realisation, within a period of four weeks from the date of receipt of a copy of this judgment and award.

The manner of disbursement shall be proportionately reduced to the extent of the reduction made by this Court.

The statutory deposit made by the Insurer shall be transmitted to the jurisdictional Tribunal immediately.

Draw the award, accordingly.