

(2010) 03 KAR CK 0027
In the Karnataka High Court
Case No : MFA No. 2364 of 2009

Mallashetty A.R.

APPELLANT

Vs

The Manager, The National Insurance Co. Ltd. and Malini
Dikshit

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Citation : (2010) 03 KAR CK 0027

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : Girish B. Baldare, for the Appellant; M. Narayanappa, for R-1, for the Respondent

Final Decision : Allowed

Judgement

H. Billappa, J.—This appeal is directed against the judgment and award dated 15-10-2008, passed by the MACT. Channarayapatna, in MVC. No. 163/2005.

2. By the impugned judgment and award, the Tribunal has granted compensation of Rs. 85,000/- with interest at 6% per annum from the date of petition till the date of payment.

3. Aggrieved by that, the appellant has filed this appeal, seeking enhancement.

4. In brief, the facts are: That on 11-6-2005, at about 10.30 a.m., the appellant was proceeding on his bicycle, on Hagare-Belur Road. At that time, the driver of the car bearing No. KA-05-P-7243 drove the car at high speed and dashed against the appellant. As a result of that, the appellant sustained injuries. The appellant claimed compensation of Rs. 6,00,000/-. The Tribunal has awarded a sum of Rs. 85,000/- with interest at 6% p.a., from the date of petition till the date of payment. Aggrieved by that, the appellant has filed this appeal.

5. The learned Counsel for the appellant contended that the compensation awarded by the Tribunal towards pain and sufferings, medical and incidental

expenses loss of income during the period of treatment, is totally inadequate. He also submitted that the Tribunal has not awarded any compensation towards loss of future earnings which needs to be awarded. He therefore, submitted that, the impugned judgment and decree needs to be modified.

6. As against this, the learned Counsel for the first respondent submitted that the Tribunal on proper consideration of the material on record, has awarded just and reasonable compensation and therefore, it does not call for interference.

7. I have carefully considered the submissions made by the learned Counsel for the parties.

8. The point that arises for my consideration is,

Whether the Tribunal has awarded just and reasonable compensation?

9. It is relevant to note, the Tribunal has awarded a sum of Rs. 20,000/- towards injuries, pain and sufferings. The appellant has suffered the following injuries:

- (i) Fracture of Malleoli of tibia and fibula of right foot.
- (ii) Deep lacerated wound measuring 10 x 3 cm., on the dorsum of the right foot exposing the bone.
- (iii) Abrasion on the lateral aspect of the left leg.
- (iv) Incised wound on the right temporal region.
- (v) Abrasion over the right shoulder.
- (vi) Abrasion over the left hand.
- (vii) Lacerated wound on the right knee measuring 3 x 11 cm.

The appellant has taken treatment as inpatient for about 27 days. The injuries have resulted in permanent disability. The Tribunal has awarded a sum of Rs. 20,000/- towards injuries, pain and sufferings, which is inadequate. Having regard to the nature of injuries, duration and nature of treatment, in my considered view, a sum of Rs. 30,000/- would be a reasonable sum towards injuries, pain and sufferings and accordingly, it is awarded.

10. The appellant has taken treatment as inpatient for about 27 days and has produced medical bills to the tune of Rs 41,898/-. The Tribunal has awarded a sum of Rs. 30,000/- towards medical expenses, which is inadequate and a sum of Rs. 41,898/- would be a reasonable sum. Accordingly, a sum of Rs. 41,898/- is awarded towards medical expenses.

11. The Tribunal has awarded a sum of Rs. 5,000/- towards conveyance and attendant charges. The appellant has taken treatment as inpatient for about 27 days and thereafter, follow-up treatment for a considerable period and has spent considerable amount towards conveyance, nourishing food and attendant charges. Therefore, it is proper to award a sum of Rs. 10,000/- towards

conveyance, nourishing food and attendant charges and accordingly, it is awarded.

12. The Tribunal has not awarded any compensation towards loss of future earnings. The appellant has suffered fracture of Malleoli of tibia and fibula of right foot and also other injuries and the injuries have resulted in permanent disability of 45% in respect of the limb. The Doctor has deposed that the appellant is unable to walk with normal gait and the appellant finds it difficult to stand and work for long time. The Tribunal has not awarded any compensation towards loss of future earnings, which needs to be awarded. The appellant was aged 45 years at the time of accident. Therefore, the appropriate multiplier is (sic). The appellant has deposed, he is an agriculturist and Gram Panchayath President and he was earning Rs. 15,000/- per month. But, there is no acceptable evidence. Therefore, the income of the appellant can be taken at Rs. 3,000/- per month, Keeping in view, the appellant is an agriculturist. Accordingly, It is taken The Doctor has deposed that the appellant has suffered permanent disability of 45% in respect of the limb. Therefore, the disability in respect of the whole body can be taken at 15%. Accordingly, it is taken. If the income of the appellant is taken at Rs. 3,000/- per month and the disability is taken at 15% and multiplier of "14" is adopted, then, the compensation payable towards loss of future earnings comes to Rs. 75,600/-and accordingly it is awarded.

13. The Tribunal has awarded a sum of Rs. 5,000-towards loss of income duringg the period of treatment. The appellant has taken treatment as inpatient for about 27 days and thereafter, follow-up treatment for a considerable period. Therefore, it is proper to award a sum of Rs. 9,000/- towards loss of income during the period of treatment and accordingly, it is awarded.

14. The compensation awarded by the Tribunal towards loss of amenities of life is just and proper and therefore, it does not call for interference.

15. The total compensation payable comes to Rs. 1,91,498/- and the break-up is as follows:

(i) Towards injuries, pain & sufferings Rs. 30,000/- (ii) Towards conveyance, nourishing food & attendant charges Rs. 10,000/- (iii) Towards medical expenses Rs. 41,898/- (iv) Towards loss of income during the period of treatment Rs. 9,000/- (v) Towards loss of amenities of life Rs. 25,000/- (vi) Towards loss of future earnings Rs. 75,600/- ----- Total Rs. 1,91,498/- -----

16. Accordingly, the appeal is allowed and the impugned judgment and award, passed by the Tribunal, in MVC. No. 163/2005, stands modified, granting compensation of Rs. 1,91,498/- instead of Rs. 85,000/- with interest at 6% per annum from the date of petition till the date of payment. The first respondent shall deposit the amount within eight weeks from today excluding the amount already deposited 50% of the enhanced compensation shall be invested in Fixed Deposit in any nationalised Bank for a period of three years. The appellant shall be entitled to withdraw the interest accrued on it. The balance amount shall be

released in favour of the appellant.

Draw up the award, accordingly.