**(2014) 04 KAR CK 0212**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 6489/2011 (MV)

Manjunath APPELLANT

Vs

B.T. Laxminarayana RESPONDENT

**Date of Decision :** 07-04-2014

**Acts Referred:**

**Citation :** (2014) 04 KAR CK 0212

**Hon'ble Judges :** H.G. Ramesh, J

**Bench :** Single Bench

**Advocate :** Y.K. Sheshagiri Rao, Advocate for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Huluvadi G. Ramesh, J.—This appeal by the claimant seeking enhancement of compensation is against the judgment and award passed by the learned V. Addl. District & Sessions Judge, MACT, Mysore, in MVC. No. 1561/2010, dated 19th April 2011.

2. It is the case of the claimant that on 18.6.2006 at about 11.00 p.m. when he was going by walk near Telephone Office, K.R. Sagar, Holikere, a Yamaha motorcycle bearing registration No. KA-11-K-8787 came in a rash and negligent manner and dashed against him due to which, he fell down and sustained grievous injuries to his left leg, shoulder, left eye and teeth. He took treatment at K.R. Hospital, Mysore, wherein he was inpatient for 19 days. Stating that an amount of Rs. 1 lakh has been spent towards medical expenses, claimant filed claim petition before the Tribunal seeking compensation.

3. On the matter being contested by the respondent-insurer, the Tribunal raising relevant issues for consideration, after enquiry, held that there is contributory negligence on the part of the claimant to an extent of 50% as he has stated before the doctor who treated him that at the time of accident, he was riding the motorcycle. The Tribunal awarded total compensation of Rs. 77,900/- and after deducting 50% towards contributory negligence, the claimant was awarded

 

compensation of Rs. 38,950/- with interest at 6% p.a. Being not satisfied, the claimant/appellant is before this Court seeking enhancement of compensation.

Heard the learned counsel representing the parties.

4. According to the learned counsel for the respondent-insurer, the claimant has falsely implicated the vehicle in question and there are contradictory statements in MLC and FIR and as such, the matter requires reconsideration. He even disputes the issuance of policy.

5. The learned counsel for the appellant submits that there is no much difference in the contents of MLC and FIR and claimant sustained injuries in the accident that occurred due to negligence on the part of rider of the motorcycle bearing registration No. KA-11-K-8787. He further submitted that there is no truth in the version of the insurer.

6. The Tribunal referring to Ex. P-4 - wound certificate and Ex. P-12 - Inpatient case sheet, noted that claimant was riding his scooter at the time of accident and it was hit by another motorcycle. This may be the fact and in order to exonerate from liability, it was stated that he was going by walk at the time the motorcycle dashed against him. Taking into consideration such an inconsistent stand, having noted that there is contributory negligence on the part of the claimant, the Tribunal rightly held that claimant was responsible for causing the accident to an extent of 50%. I do not find any reason to interfere with the finding of the Tribunal so far as contributory negligence on the part of claimant in the ratio of 50:50 is concerned.

7. So far as awarding of compensation is concerned, as per the wound certificate, claimant has sustained swelling and tenderness over left thigh, broken upper central and lateral incisor with bleeding from underlying gums., blood clot at left eyebrow and lacerated wound below left eye 1/2 cm x 1/2 cm x 1/2 cm blood clot. The X-ray reveals fracture of shaft of femur. He had undergone surgery and internal fixation was done. He was inpatient for nearly 19 days. The doctor has assessed the disability suffered by the claimant at 12% to the whole body. He was aged 26 years at the time of accident. He was working as an Electrician and stated to be earning Rs. 8,000/- per month. The accident is of the year 2006. Having regard to the nature of injuries suffered by the claimant, he is awarded another sum of Rs. 30,000/- towards loss of amenities and enjoyment in life. Taking the income at Rs. 4,500/- per month, applying proper multiplier, claimant is awarded a sum of Rs. 1,02,000/- towards loss of future income due to disability and Rs. 10,000/- towards incidental expenses.

Thus, in all the claimant is entitled to compensation of Rs. 1,42,000/- over and above the compensation awarded by the Tribunal. Out of which, 50% has to be deducted towards contributory negligence on the part of the claimant/appellant. Hence, appellant is awarded compensation of Rs. 71,000/- with interest at the rate of 6% p.a. from the date of petition till the date of deposit. The impugned judgment and award passed by the Tribunal is modified accordingly. As the respondent-insurer is not able to prove that there is no valid insurance coverage as on the date of accident, the liability to pay compensation is on the insurer. Hence, as rightly held by the Tribunal, the owner and insurer-respondents are jointly and severally liable to pay the compensation within three month.

Appeal is allowed in part accordingly.

Sri Y.K. Sheshagiri Rao, learned counsel is permitted to file vakalat within four weeks.

 