

(2006) 11 KAR CK 0113
In the Karnataka High Court
Case No : MFA No. 7919 of 2003

Manjunatha

APPELLANT

Vs

P. Shankar and The Oriental Insurance Company Limited

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Citation : (2007) 1 KCCR 807

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : H.B. Mahesh, for the Appellant; A. Ravishankar, for R2, for the Respondent

Judgement

N. Kumar, J.—This is a claimant's appeal seeking enhancement of compensation for the injury sustained in a motor accident. When the claimant was standing in Kunigal bus-stand, a bus bearing Regn.No. KA-06-8114 driven in a rash and negligent manner by its driver dashed against him on account of which he sustained fracture of left ankle joint and other minor injuries. Immediately he was shifted to Kunigal Primary Health Centre. It is his case that he took further treatment in a private hospital and has spent Rs. 30,000-00 towards medical expenses and other incidental charges. He is aged 35 years and working as a driver. He was earning Rs. 3,000-00 per month. After the accident, he could not do his job and even he was not able to move. As such, he has become destitute in life.

Therefore, he sought for compensation in a sum of Rs. 2 lakhs for the injury sustained in the said accident.

2. To the said claim petition he has made the owner of the lorry and the insurance company which had insured the lorry as party-respondents. The owner of the lorry did not contest the matter. Therefore, the insurance company filed written statement contesting the claim on all grounds. However, they did not dispute the insurance coverage to the vehicle. On the aforesaid pleads, the

Tribunal framed the following issues:

1. Whether the petitioner proves that he sustained injuries in a road traffic accident on 1.1.98 at about 9.00 A.M. near Kunigal Bus-stand within the limits of Kunigal Police station due to the rash and negligent driving by the driver of a bus bearing Reg.No. KA-06-8114?
2. Whether the petitioner proves that he is entitled for compensation? If so, what amount and from whom he is entitled to?
3. To what decree or order?
3. The claimant was examined as P.W-1 and he examined the Doctor as P.W-2 and produced 8 documents which were marked as Exs.P-1 to P-8. On behalf of respondents, no evidence was adduced. However, by consent of parties, the insurance policy was marked as Ex.R-1.
4. The Tribunal on consideration of the aforesaid material held that, the accident was on account of rash and negligent driving by the driver of the bus in which the claimant sustained injuries and therefore the claimant has established actionable negligence and is entitled for compensation. Thereafter it looked into the evidence of claimant P.W-1, P.W-2 the Doctor, and the medical records produced in the case as Ex.P-4, P-6, P-7 and P-8 and held that the claimant has sustained fracture of left calcaneum and fracture of lateral aspect of left tibia. He took treatment in Kunigal Government Hospital. He was inpatient for one day. The Doctor-PW-2 has opined after examining him, that, there is disability to the extent of 25% for the whole limb. On the basis of the evidence on record, the Tribunal has awarded a sum of Rs. 15,000-00 as global compensation. Aggrieved by the said award of the Tribunal, the claimant is in appeal, seeking enhancement of compensation.
5. The learned Counsel for the appellant contended that when the claimant has sustained fracture, he is entitled to compensation in a sum of Rs. 15,000-00 under the head of pain and suffering. When he has taken treatment in various hospitals and was inpatient for more than one month, he is entitled to compensation under the heading of future loss of income/permanent disability. No amount is awarded towards loss of amenities or loss of income during the period of treatment. Therefore, he submits that the award requires to be set aside and claimant is to be awarded with substantial compensation.
6. Per contra, the learned Counsel appearing for the insurance company supported the impugned award.
7. I have gone through the judgment and award and the records of the Tribunal. The accident, injury sustained in the said accident, the age of the claimant, his avocation, earning, treatment given are all not in dispute. In fact, the finding on the question of actionable negligence has become final as the respondents have not challenged the same.

8. The question that arise for consideration in this appeal is whether the compensation paid by the Tribunal is just and proper?

9. The wound certificate produced in the case which is not in dispute shows that the claimant sustained fracture of calcanium and fracture of lateral aspect of left tibia. The said injury is grievous in nature. He was immediately taken to Kunigal Government Hospital for treatment and he was treated. In view of the aforesaid undisputed material on record, the claimant is entitled to a sum of Rs. 15,000-00 under the head of pain and suffering.

10. Though the claimant has stated in evidence that he took treatment for one month in Sharada Nursing Home, no material is placed on record to substantiate the said fact. In those circumstances, it would be appropriate to award a sum of Rs. 10,000-00 under the head of medical expenses, conveyance, nourishment and attendant charges.

11. The claimant contends that the injury resulted in 25% disability for the limb on the basis of the evidence of the Doctor, P.W-2 who has issued the disability certificate. The accident took place on 01.01.1998. P.W-2 examined the claimant on 02.06.2003, nearly after five years. He is not the doctor who treated the claimant. He came to that hospital two years before he gave evidence, i.e., on 31.07.2003. It is obvious from his evidence that the claimant has gone to the hospital only for the purpose of getting the disability certificate and he has examined PW2-Doctor who issued the said certificate. PW2 is an Orthopaedic Surgeon at Government Hospital, Kunigal. When he was summoned to the Court, he has appeared and he as produced Ex.P-6 the OPD Slip dated 02.06.2003, Ex.P-7 the Handicapped Certificate and Ex.P-8, the X-ray taken by him. I fail to understand how a claimant could go to a Government hospital for the purpose of getting disability certificate to be produced before the Claims Tribunal. It is for the purpose of issuing that certificate he is shown to have been treated as out-patient as is clear from Ex.P-6 and then X-ray is taken and disability certificate is issued as per Ex.P-7. The evidence of P.W-2 and his assessment of disability is to be appreciated in this context.

12. It has come to the notice of this Court that in most of the cases, the doctors who have treated the claimants are not examined. The doctors who are examined are not the doctors who treated the claimants. However, they have examined the claimants for the purpose of issuing the disability certificate. To add credibility to this certificate the claimants go to a nearest Government hospital, get themselves examined by the Government Doctor who issues certificate and then promptly comes before the Court and gives evidence in support of the disability certificate.

13. If a Government doctor who issued the disability certificate can come to the Tribunal and depose, it is not forth coming as to what is the difficulty for a Government Doctor who treated the patient to come and give evidence. If the disability certificate and the evidence of these doctors who have now specialized

in issuing disability certificate is to be believed, the doctors who have treated those patients have not given any treatment at all. The extent of disability they have mentioned in the disability certificate and their observations, are to be believed, the doctor who treated the claimant are either inefficient, careless or the said doctors have made the condition of the claimant worst than what it was before he entered the hospital. However, keeping in mind the difficulties experienced by the claimant in securing the doctors' evidence, on humanitarian and sympathetic considerations, the Tribunals have been acting on the evidence of these experts in giving the disability certificates and granting compensation. This has led to a soil of specialization among these Government doctors to issue the disability certificate and then promptly come before the Tribunal and give evidence exaggerating the disability of the claimants. If this tendency is allowed to go unchecked, it would ultimately pollute the stream of justice and the medical evidence adduced before the Tribunal would become a farce.

14. The victim of the accident is certainly entitled to sympathetic consideration by the Court or the Tribunal and in the facts of a particular case, the Courts can even be liberal in granting compensation. But if compensation is to be granted based on these disability certificates which are made to order, tailored, keeping in mind the law on the point, far from truth, then it would be a case of misplaced sympathy on the part of the Tribunal and Courts in acting on this evidence and granting compensation. The case on hand is one such instance.

15. The claimant in the accident has fractured his ankle joint. The accident took place on 01.01.1998. He was treated at Government Hospital, Kunigal. Though the claimant states that he took treatment for one month in Sharada Nursing Home, not even a scrap of paper is produced in support of the said claim. From 01.01.1998 up to 02.06.2003, there is nothing to show that the claimant had suffered on account of this accident in any manner. The claim petition which he filed in the year 1998 was ready for recording of evidence in 2003. He was examined on 25.05.2003 and 09.04.2003. He has not been examined at all by any doctor on that date. It is after his evidence was over, he goes to P.W-2 on 02.06.2003 get himself registered as out patient in Government Hospital, Kunigal. P.W-2 obliges him by taking X-ray and issuing Ex.P-7. Ex.P-7 is Appendix-V, Government of India, Department of Social Welfare, Medical Certificate in respect of an Orthopaedically Handicapped Candidate. This is issued for the purpose of Scholarship to the Orthopaedically Handicapped. Making use of the said form, P.W-2 has issued the disability certificate stating that there is 25% disability to the limb. It is obvious that the certificate is a tailored one for the purpose of this case. Neither the said certificate nor the evidence of P.W-2 in the aforesaid circumstances has any weight or credentials and therefore, it ought to be rejected outright.

16. It is also distressing to note that in these claim petitions, it is reasonable to think that there is some element of exaggeration in the claim put forth or the extent of injury. The claimant who requests the aid of the Court to award a just

compensation, is expected to be fair to the Court. If deliberately, he makes false statement, put forth false claim, produce fabricated documents to boost his false claim, he would be losing the sympathy of the Court in awarding compensation. There is no straight jacket formula to assess the compensation payable in a motor vehicle accident cases. The Court goes by a probable estimate, by averages and rough estimation. If a claimant is straight forward and truthful, even in the absence of evidence, the Court can liberally grant compensation, as the Court has the discretion as well as the power to grant such compensation. But once, the Court is of the opinion that the claimant is not truthful, is putting forth a false claim and the claim made is exorbitant, the claimant would loose the sympathy of the Court. Unfortunately, neither the claimants nor their Advocates have kept in mind this aspect, either while drafting the claim petition or leading evidence.

17. Having said that the claimant has not been truthful and has created documents for the purpose of his claim, still a genuine claim arising out of motor vehicle accident cannot be thrown out on these grounds. The Court has to apply its mind, may in those circumstances, carefully and meticulously and award just compensation, which is legally due to the claimant,

18. In view of the same, having held that the claimant is entitled to Rs. 15,000-00 under the head of pain and suffering and Rs. 10,000-00 towards medical expenses, conveyance, nourishment and attendant charges, the claimant is also entitled to a sum of Rs. 10,000-00 towards loss of income during the period of treatment as with a fracture of ankle, the driver could not have resumed work for at least a period of three months. Once the ankle is fractured, even if it is united, probably, the pain and the inconvenience persists through out the life and therefore the claimant is entitled to Rs. 25,000-00 towards loss of amenities, as no compensation is awarded for loss of future income/permanent disability. Thus, the claimant would be entitled to a global compensation of Rs. 60,000-00. Hence, I pass the following order:

Appeal is allowed in part The claimant is entitled to Rs. 60,000-00 in substitution of the award of the Tribunal as global compensation. The aforesaid amount shall be paid with interest at 8% from the date of petition till the date of payment. Parties to bear their own costs.