

(2012) 01 KAR CK 0320

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4866 of 2007 (MV)

Manjunatha Shetty

APPELLANT

Vs

Ramakrishna N. Naik and The National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Citation : (2012) 01 KAR CK 0320

Hon'ble Judges : K. Govindarajulu, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : Vishwanatha Poojary K, for the Appellant; O. Mahesh, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Dr. Bhakthavatsala, J.—Learned Counsel for the appellant prays for enhancement of compensation. He submits that though the claimant sustained three fractures viz., lower pole of left patella, clavicular bone left and lower third of right fibula and resulted in permanent disablement to the extent of 15% of the whole body, the Tribunal has not awarded adequate compensation. Perused the LCR.

2. The Tribunal has fixed earnings of the claimant at Rs. 4,000/- per month and awarded compensation as under.

(in Rs.)

(i) Pain and suffering

35,000-00

(ii) Conveyance expenses

2,400-00

(iii) Special diet and attendant charges

4,000-00

(iv) Medical expenses

26,800-00

(v) Loss of earning during the period of treatment and rest (Rs. 4,000/- x 3)

12,000-00

(vi) Loss of amenities

10,000-00

Total

90,200-00

3. It is pleaded that the claimant was 29 years old, earning Rs. 4,000/- per month as a Lorry Cleaner. As per Ex.P3, the claimant sustained fracture of left patella, fracture of left clavicular bone and fracture of lower third of right fibula. The claimant was treated in K M C Hospital at Mangalore as inpatient. He was treated as in-patient from 28.7.2006 to 4.8.2006. He has produced medical bills issued by the said Hospital as well as Pharmacy bills. Ex.P12 is the treatment certificate given by Orthopaedics Surgeon. According to Ex.P12, implants in the left leg was removed. Ex.P14 is the medical report pertaining to the case of the claimant as maintained in Kasturba Hospital at Manipal. Keeping in view the nature of injuries, treatment and removal of implants, the claimant is entitled for reasonable compensation towards pain and suffering and other relevant heads. Though the claimant has stated that he was earning Rs. 4,000/- per month as a lorry Cleaner, the Tribunal is justified in fixing income of the claimant at Rs. 4,000/- per month. In para-19 of the impugned judgment, the Tribunal has discussed about the evidence of P.W2-K V Acharya and his evidence that there is 9% disablement. But, the Tribunal has held that there is nothing on record to show that the disability will prevent the petitioner from earning in future. Keeping in view the nature of injuries sustained by the claimant and that he is a Cleaner by profession, it is a fit case to fix permanent disablement at 10% of the whole body and award compensation.

4. In our view, the claimant is entitled for compensation as under:

(in Rs.)

(i) Pain and suffering

40,000-00

(ii) Attendant, conveyance, special diet and incidental expenses

10,000-00

(iii) Loss of earning during the period of treatment and rest (Rs. 4,000/- x 3)

12,000-00

(iv) Medical expenses

30,000-00

(v) Loss of future earning (Rs. 400/- x 12 x 17)

81,600-00

(vi) Loss of amenities

20,000-00

Total Less: Compensation awarded by the Tribunal

1,93,600-00 90,200-00

Balance

1,03,400-00

In the result, the Appeal is partly allowed, holding that the appellant/claimant is entitled for additional compensation of Rs. 1,03,400/- along with costs and interest at the rate of 6% per annum from the date of Petition till realisation. Accordingly, the impugned judgment and award are modified.

Respondent No. 2/Insurance Company is directed to deposit the additional compensation amount along with costs and interest with the Tribunal within 3 months from today.