

(2011) 09 KAR CK 0006
In the Karnataka High Court
Case No : M.F.A. No. 6512 of 2009 (MV)

M.K. Gurumurthy

APPELLANT

Vs

Branch Manager, National insurance Co. Ltd., Branch Office,
V.V. Road, Mandya City, Mandya District

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 09 KAR CK 0006

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : V.N. Jagadeesh, for the Appellant; H.S. Lingaraj, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil

1. Though this appeal is posted for Admission, with the consent of the learned counsel, the same is taken up for final disposal.

2. This appeal by the claimant is directed against the judgment and award dated 4th June 2009, passed in M.V.C.No.61/2007, by the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Malavalli, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 1,72,000/- with interest @ 7% p.a. awarded in favour of the claimant as against his claim for Rs. 5.50.000/-, is inadequate.

3. The appellant claims to be aged about 48 years, selling clothes in several places and was earning a sum of Rs. 10,000/- per month (but the Tribunal has assessed the age of appellant as 53 years on the basis of documentary evidence). He was hale and healthy prior to the date of accident. That the occurrence of accident at about 9:30 A.M, on 09-11-2006, when the appellant was getting down from the top of the bus, near Sanjaya Circle, Mandya City, due to rash and negligent driving by the driver of Bus bearing No.KA-11/A-2727, is

not in dispute. It is also not in dispute that the appellant has sustained several injuries, such as abrasion over the left side lower lip, tenderness over the left hip joint and tenderness over left shoulder. Due to the said injuries sustained in the accident, he was shifted to General Hospital, Mandya and thereafter he took treatment at General Hospital, malavalli and also at Private Nursing Home. He was hospitalized from 09-11-2006 to 06-12-2006 and there was a communicated fracture and an operation was done, steel rod and screw were inserted, by spending huge sums of money.

4. It is his further case that, on account of the accident, he has suffered lot of pain and agony and for the treatment of the said injuries, he has spent reasonable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

5. The case of the appellant is that, the Tribunal is not justified in not awarding any compensation towards loss of amenities, discomfort and unhappiness, and the compensation awarded towards conveyance, nourishing food and attendant charges is on the lower side, for the reason that the Doctor has assessed the functional disability in respect of left lower limb at 55% and 25% in respect of left upper limb.

6. On account of the injuries sustained in the accident, the appellant filed the claim petition u/s 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 5,50,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 4th June, 2009. The Tribunal, after considering the relevant material available on file and after appreciation of the oral and documentary evidence, allowed the claim petition in part, awarding a sum of Rs. 1,72,000/- under different heads, with interest at 7% per annum from the date of petition till the date of realization. Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation.

7. I have gone through the grounds urged in the memorandum of appeal and the impugned judgment and award passed by Tribunal and heard the learned counsel appearing for the Insurer.

8. After careful perusal of the impugned judgment and award passed by Tribunal, it can be seen that, the Tribunal, after assessing the oral and documentary evidence available on file and after assessing the income of the appellant at Rs. 3,000/- per month and assessing whole body disability at 30%, has rightly awarded compensation of Rs. 99,000/- towards loss of future income; Rs. 3,000/- towards medical expenses, Rs. 50,000/- towards injury, pain and sufferings and Rs. 15,000/- towards loss of income during treatment period. Therefore, interference in the same is uncalled for.

9. However, the Tribunal has erred in not awarding any compensation towards loss of amenities, discomfort and unhappiness and the compensation awarded

towards conveyance, nourishing food and attendant charges is on the lower side. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for about 29 days and thereafter shifted to two Hospitals for further treatment. During this treatment period, he would have spent reasonable amount towards conveyance, nourishing food and attendant charges. Further, the Doctor has assessed the functional disability in respect of left lower limb at 55% and 25% in respect of left upper limb. The appellant was aged about 53 years, as assessed by Tribunal, has to endure this disability for the rest of his life and it should be borne in mind that any injuries sustained at this age would not heal easily. The injuries sustained are to the left lower and upper limb. He being a seller of clothes in different places, would find it difficult to continue in the said profession. Therefore, having regard to the nature of injuries sustained, percentage of permanent functional disability, as assessed by Doctor as also permanent whole body disability assessed by the Tribunal, age and avocation of the appellant and also the fact that he cannot to do his work as effectively as he was doing earlier. I deem it fit to award a total sum of Rs. 25,000/-, i.e. Rs. 20,000/-towards loss of amenities, discomfort and unhappiness and Rs. 5,000/-towards conveyance, nourishing food and attendant charges, (in addition to Rs. 5,000/- awarded by Tribunal) with interest at 6% per annum, in addition to the compensation awarded by Tribunal.

10. In the light of the facts and circumstances of the case, as stated above, the appeal filed by appellant is allowed in part. The impugned judgment and award dated 4th June 2009, passed in M.V.C.No.61/2007, by the Civil Judge (Sr.Dn) and Motor Accident Claims Tribunal, Malavalli, is hereby modified, awarding a total compensation of a sum of Rs. 25,000/-, with interest at 6% per annum, on the enhanced sum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The respondent - Insurer is directed to deposit the enhanced compensation of Rs. 25,000/-, with interest thereon at 6% per annum, from the date of petition till the date of realization, within three weeks from the date of receipt of copy of the judgment and award.

On such deposit by the insurer, the entire sum shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.