

(2013) 07 KAR CK 0188

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8046 of 2009 (MV)

M.K. Vinod Kumar

APPELLANT

Vs

Sri. Harsha @ Harsha, C.S. Dase Gowda and M/s. United
India Ins. Co. Ltd.

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 07 KAR CK 0188

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : H. Pavanachandra Shetty, for the Appellant; P.B. Raju, for R. 3, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Sreenivase Gowda, J.—This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal. Heard. The appeal is admitted and with the consent of the learned Counsel appearing for the parties, it is disposed of finally.

2. For the sake of convenience parties are referred to as they are referred to in the claim petition before the Tribunal.

3. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident occurred on 10-3-2003 due to rash and negligent tiding of motor cycle bearing registration No. KA-02-Y-2088 by its rider and liability of the insurer of the offending vehicle, the only point that remains for my consideration in the appeal is:

Whether compensation awarded by the Tribunal is just and proper or does it call for enhancement?

4. After hearing the learned Counsel for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by

the Tribunal is not just and reasonable, it is on the lower side and therefore, it is deserved to be enhanced.

5. The Tribunal by earlier judgment and award dt. 03-02-2006 awarded global compensation of Rs. 14,073/- with interest at 6% p.a. The claimant aggrieved by the said judgment and award of the Tribunal had preferred an appeal in MFA No. 5951/2006. This Court allowed the appeal on 01-10-2008 and remitted the matter to the Tribunal for reconsideration of the claim of the appellant - claimant for additional compensation. After remand, the Tribunal by impugned judgment and award has awarded additional compensation of Rs. 81,000/- in addition to Rs. 14,073/- awarded earlier. Thereby total compensation awarded by the Tribunal comes to 95,073/-

6. As per Ex. P. 5 - wound certificate, claimant had sustained the following injuries;

1) Fracture of right femur at middle one third

2) Fracture of right clavicle

Grievous injury to collar bone and ribs on the right side of the chest.

7. Injuries sustained and treatment taken by him are also evident from Exs. P. 6 and 13 - discharge summaries, Ex. P. 9 - disability certificate, Ex. P. 11 - x-rays and supported by oral evidence of the claimant and doctor examined as P.Ws. 1 and 2 respectively.

P.W. 2 - Dr. N.C. Alva in his evidence has stated, claimant has suffered disability of 10% to whole body.

8. Considering two fractures and other injuries sustained by the claimant, a sum of Rs. 35,000/- is awarded towards pain and suffering.

9. Claimant has produced medical bills for Rs. 12,973/- and he was treated as inpatient for 20 days in Holy Cross Hospital, Chickmagalur. Considering the same, a sum of Rs. 20,000/- is awarded towards medical and incidental expenses.

10. He claims to have been earning Rs. 4,000/- per month by working as stringer in Hindu daily newspaper and Rs. 6,000/- per month from agriculture and has produced Ex. P. 10 - RTC. No document is produced to show that he was working as a stringer in Hindu newspaper. Considering his age as 45 years, year of accident as 2003 and his avocation as agriculture, his income is assessed at Rs. 3,500/- per month. Nature of injuries suggest, he must have been under rest and treatment for a period of four months. Considering the same, a sum of Rs. 14,000/- is awarded towards loss of income during laid up period.

11. Considering two fractures sustained by the claimant, disability stated by the doctor and an amount of discomfort and unhappiness which the claimant has to undergo for the rest of his life, a sum of Rs. 20,000/- is awarded towards loss of

amenities.

12. He is aged about 45 years. Multiplier applicable to his age group is "14". His income is assessed at Rs. 3,500/- per month. P.W. 2 - doctor has stated claimant has suffered disability of 10% to whole body. So, loss of future income works out to Rs. 58,800/- (Rs. 3,500/- x 12 x 10/ 100 x 14) and it is awarded.

13. Thus the claimant is entitled for the following compensation:

14. Accordingly the appeal is allowed in part and the Judgment and award of the Tribunal is modified to the extent stated herein above. The claimant is entitled for additional compensation of Rs. 52,727/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

15. The Insurance Co. is directed to deposit the additional compensation amount with interest, within two months from the date of receipt of a copy of this judgment, from which 75% with proportionate interest is ordered to be deposited in FD in the name of the claimant in any nationalised or scheduled Bank for a period of 3 years, with a right of option to withdraw interest periodically and the remaining amount is ordered to be released in his favour. The Tribunal while releasing 25% of the compensation is also directed to issue F.D. slip to the claimant to enable him to withdraw the amount on its maturity without approaching the Tribunal once again. The Bank is also directed to release the F.D. amount on its maturity without insisting for an order from the Tribunal.

No order as to costs.