(2017) 07 KAR CK 0061

In the Karnataka High Court

Case No : 30039 of 2012 (MV)

Mohammed Dastagir S/o Mohd. Ahmedsab — APPELLANT

Vs

Gudusaheb S/o Hussainsab, & Ors. — RESPONDENT

Date of Decision : 12-07-2017

Acts Referred:

Citation : (2017) 07 KAR CK 0061

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Santosh R. Belamgi, Sanjay M. Joshi

Final Decision : Allowed

Judgement

1. This appeal has been preferred by the appellant/claimant for enhancement of compensation awarded by the I Addl. Senior Civil Judge and MACT, Gulbarga (hereinafter referred to as ''Tribunal'') in MVC No.1522/2008 dated 05.08.2011, awarding the compensation of Rs.1,66,000/- with interest at 6% p.a. from the date of petition till realization.

2. Brief facts leading to filing of the claim petition are that, on 12.12.2007 at about 1.45 p.m., the claimant was working as a Mechanic in his workshop situated at Auto Nagar, Sastapur Bangalow, Basavakalayan. At that time, a lorry bearing No.MH- 10/Z-0786 came from backside, in a rash and negligent manner with high speed and dashed to the claimant, due to which he fell down on the road and the front side wheel of the lorry passed on the left leg foot. As a result of the same, he sustained grievous injuries. Immediately, he was shifted to Government Hospital, Basavakalayan and thereafter he was shifted to Saksham Polyclinic, Solapur and there he has been operated and for having sustained the injuries and incurring the huge medical expenses, he filed a claim petition seeking compensation.

3. Even though the notices were served on respondent Nos.1 and 2, they remained absent, as such they placed exparte. Respondent No.3 - insurance

company appeared and filed a written statement denying the age, occupation and income and also nature of the accident and contended that, the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident. Further he contends that, the offending lorry was not insured with him, as such, the insurance company is not entitled to pay the compensation.

4. On the basis of the pleadings, the Tribunal has framed the issues and awarded a compensation of Rs.1,66,000/- under various heads by allowing the claim petition.

5. I have heard the learned counsel for the appellant and the learned counsel for respondent No.3 - insurance company.

6. The accident in question so also the vehicle involved in the accident being insured with the respondent-insurance company is not in dispute. The present appeal has been preferred only with a limited purpose for enhancement of compensation awarded by the Tribunal on various heads.

7. Learned counsel for the appellant would contend that, though the claimant was working as a mechanic and contended that he was earning Rs.6,000/- per month, but the Tribunal after taking into consideration the notional income at Rs.3,500/- per month and after taking the disability to an extent of 10% has awarded a very meager compensation towards loss of future income. He would also contend that, the compensation awarded on the other heads is also on the lower side. On these grounds he prays for allowing the appeal by enhancing the compensation.

8. Per contra, learned counsel for respondent No.3 - insurance company by supporting the judgment and award of the Tribunal would contend that, the Tribunal, after taking into consideration the injuries suffered by the claimant, the disability certificate and considering the disability at 10%, as the doctor who examined the claimant has assessed the disability at 25% to the whole body and also considering the income at Rs.3,500/- has awarded a just compensation and there are no good grounds to enhance the compensation. As such, he prays for dismissal of the appeal.

9. As could be seen from the judgment of the Tribunal, the appellant/claimant has produced the wound certificate at Ex.P3 and at the time of accident, he was aged about 28 years. As could be seen from Ex.P3, there is a crush injury to the right foot of the appellant and the doctor has opined that it is grievous in nature and the disability to the whole body is 25%. Though the appellant has contended that he was earning Rs.6,000/- per month, but in order to substantiate the said fact, he has not produced any documentary evidence. As such, the Tribunal by taking into consideration the notional income at Rs.3,500/- per month has awarded a sum of Rs.71,400/- towards loss of future income. However, in the absence of documentary evidence regarding the income of the appellant, the Tribunal ought to have taken into consideration over all assessment, keeping in view the avocation, the period of accident and the daily wages which has been

earned by the person or a daily wager. In the instant case, the accident is of the year 2007. During that period, in respect of daily wage earner, the notional income at Rs.4,000/- is the yardstick to be adopted even in the Lok Adalath settlement. Therefore, I feel that it is appropriate to adopt the same in this case. Therefore, if the loss of future income is calculated by taking the income at Rs.4,000/- p.m., considering the permanent disability at 10% as assessed by the Tribunal and applying the multiplier of 17 keeping in view the age of the appellant, it comes to Rs.81,600/- (Rs.4,000/- x 12 x 17 x 10%).

10. By taking into consideration the crush injury and the hospitalization for a longer period and also the fact that, the appellant might have taken some assistance and some attendant might have also attended over him, in that light, the compensation awarded on the other heads by the Tribunal appears to be on the lower side and it has to be reassessed. In that light, the appellant is entitled to a sum of Rs.25,000/- towards pain and suffering, Rs.25,000/- towards loss of amenities in life, Rs.25,027/- towards medical expenses, Rs.12,000/- towards loss of earning during laid up period, Rs.25,000/- towards diet, nourishment, attendant and conveyance charges and a sum of Rs.15,000/- towards future medical expenses. In all, the appellant is entitled to a total sum of Rs.1,27,027/- under the conventional heads.

11. Thus, in all the appellant is entitled to a total sum of Rs.2,08,627 (Rs.81,600 + Rs.1,27,027). Since, already the Tribunal has awarded a sum of Rs.1,66,000/-, after deducting the same, the appellant is entitled to an additional compensation of Rs.42,627/- with interest at 6% p.a.

12. Accordingly, the appeal is allowed in part and the appellant is entitled to an additional compensation of Rs.42,627/- with interest at 6% p.a. from the date of petition till realization. The judgment and award passed in MVC No.1522/2008 by the Tribunal is modified as stated above.

13. Respondent No.3 - insurance company is directed to deposit the additional amount of compensation awarded by this Court within six weeks from the date of receipt of copy of this judgment.

14. The disbursement, release and deposit of enhanced compensation are to be made in terms of the award of the Tribunal.

15. Registry is directed to draw the award accordingly.

