

(2011) 02 KAR CK 0156
In the Karnataka High Court
Case No : M.F.A. No. 3652 of 2009

Mr. Iqbal

APPELLANT

Vs

Mohammed Musthaf U.H. and The Bajaj Alliance General
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 KAR CK 0156

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : H. Pavana Chandra Shetty, for the Appellant; Raghu, for H.S. Lingaraj, for R. 2, for the Respondent

Judgement

N. Ananda, J.—This is a claimant's appeal for enhancement of compensation.

2. I have heard Sri. H. Pavanachandra Shetty, learned Counsel for claimant and Sri. Raghu, learned Counsel Sri. H.S. Lingaraj, learned Counsel for insurance company.

3. As a result of accident, the claimant had suffered following:

- a) Traumatic amputation of the right middle toe
- b) Fracture of 2nd metatarsal shaft.

4. The claimant was treated in K.S. Hegde Hospital at Mangalore and Netaji A. Yellappa Memorial Charitable Hospital at Mangalore. On subsequent examination of claimant, PW.2-Dr. Lawrence Mathais has assessed the partial permanent physical disability at 10% to right lower limb and for whole body at 4%. At the time of accident, the claimant was aged about 28 years and he was sustaining by manual work.

5. The Tribunal has awarded compensation of Rs. 35,800/- under following heads:

I Injury, pain, suffering and shock

Rs. 20,000

II Medical expenses

Rs. 3,800

III Loss of amenities and enjoyment of life

Rs. 10,000

IV Food and attendant charges and Incidental expenses

Rs. 2,000

Total

Rs. 35,800

6. On hearing the learned Counsel for parties and on reconsideration of the matter, I find that the Tribunal should have awarded compensation towards "loss of earning capacity". The Tribunal should have awarded compensation under the head "loss of earning during laid up period". The compensation awarded under the head "loss of amenities and enjoyment, of life" is inadequate. Therefore, compensation awarded by the Tribunal is modified as follows:

I Pain and suffering

Rs. 20,000

II Medical expenditure

Rs. 4,000

III Loss of amenities

Rs. 20,000

IV Loss of earning during laidup period

Rs. 12,000

V Food, nourishment and attendant Charges

Rs. 2,000

VI Loss of earning capacity and Future loss of earnings (Rs. 3,000 x 12 x 17 x 04)-24,480 Rounded off to

Rs. 25,000

Total

Rs. 83,000

Thus, claimant is entitled to total compensation of Rs. 83,000/-.

7. In the result, I pass the following:

ORDER

i) Appeal is accepted in part.

(ii) The impugned award is modified by enhancing compensation of Rs. 35,800/- awarded by tribunal to Rs. 83,000/-

(iii) The rest of the award as it relates to rate of interest, period of accrual of interest and liability of Respondents is confirmed.

(iv) The payment and investment shall be in the ratio evolved by the tribunal.

Parties to bear their costs.