

(2013) 10 KAR CK 0078
In the Karnataka High Court
Case No : M.F.A. No. 5396 of 2010 (MV)

Mr. R.S. Pavan Kumar

APPELLANT

Vs

Sri. G.M. Guruswamy and M/s. Oriental Insurance Company
Limited

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 10 KAR CK 0078

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

Bench : Single Bench

Advocate : Fayaz Khan, for the Appellant; S.K. Manjunath, Advocate for R1 and Shri K.K. Vasanth, Advocate for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J.—This appeal by the claimant is directed against the common judgment and award dated 1st February 2010, passed in MVC No. 2517/2009, by the XI Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal, Bengaluru (SCCH-12), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 48,000/- with interest @ 6% p.a. awarded in favour of the claimant as against his claim for Rs. 14,00,000/-, is inadequate. The appellant claims to be aged about 26 years and hale and healthy prior to the date of accident. That the occurrence of accident of the appellant at about 7:10 A.M., on 26-02-2009, when the appellant was returning with his family members from Mysore to Bangalore in Honda City Car bearing No. KA-04/ME-1131, near Srirangapattana Police Station limit at NH-4, due to rash and negligent driving by the driver of Tractor and Trailer bearing No KA-09/T-1148 and KA-09/T-1149, is not in dispute. It is also not in dispute that the appellant has sustained concussive head injury and mild cerebral edema and the said injury is simple in nature. Due to the said injuries sustained in the accident, he took treatment in Government Hospital, Srirangapattana and

thereafter admitted to Apollo BGS Hospital, where he was in-patient from 26-02-2009 to 28-02-2009, for a period of three days.

2. It is his further case that, on account of the injuries sustained in the accident, he has undergone severe 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.

3. The learned counsel for appellant contends that, the Tribunal has erred in not awarding reasonable compensation towards injury, pain and sufferings, loss of amenities, discomfort and unhappiness, loss of income during treatment period and conveyance, nourishing food and attendant charges. He submitted that the appellant has sustained a concussive head injury and mild cerebral edema and even though the said injury is stated to be simple in nature, it cannot be ruled out that it is a head injury and after passage of some time, he may have to face future difficulties on account of the head injury and further, he has taken treatment in two different Hospitals for a period of three days and that on account of the injuries sustained, he cannot concentrate on his work and suffering from mild headache and cannot read the books for long time and the said injury is caused due to mental agony. These aspects of the matter have not been looked into nor considered by Tribunal. Therefore, he submitted that reasonable enhancement may be made under all the heads and the impugned judgment and award passed by Tribunal may be modified.

4. As against this, learned counsel appearing for Insurer, inter alia, sought to justify the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and hence, interference hi the same is not called for. To substantiate his submission, he submitted that the appellant has stated that he has spent huge amount i.e. Rs. 19,589/- towards treatment and Rs. 75,000/- towards transportation and he has taken bed rest for a period of two months. But in support of the same, he has produced the medical bills vide Annexure P11 series, amounting to Rs. 16,938/- and as per the out patient record at Ex. P12, he was in-patient only for a period of four days from 26-02-2009 to 01-03-2009 and this aspect has been rightly looked into at paragraph 32 and reasonable compensation has been awarded towards loss of income during treatment period and loss of amenities, discomfort and unhappiness. In view of non production of relevant substantive documents, the Tribunal has awarded the compensation he is legally entitled to. Hence, interference in the same is not called for.

5. 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. 14,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 1st February, 2010. 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. 48,000/- under different heads, with interest at 6% 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.

6. 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 appellant and also Insurer.

7. 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, has erred in not awarding reasonable compensation. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in two different Hospitals, for some period. During the treatment period, he would have spent reasonable amount towards conveyance nourishing food and attendant charges. As per the discharge summary, he was in-patient for a period of four days from 26-02-2009 to 01-03-2009 and has also suffered a head injury. Ex. P-8 discloses that X-ray of right knee, cervical spine AP and LAT, lumbo dorsal spine, pelvis, right hand, chest brain is done. He has also taken follow-up treatment at Sagar Hospital. On the advise of the Doctor, he has taken bed rest for a period of 20 days as per Ex. P10, discharge summary. The appellant being aged about only 26 years, has suffered the head injury and it would be difficult for him to perform his day to day activities, as earlier. But, in the cross examination, the appellant has admitted that he has not produced account extract to show that he has not been paid salary for the relevant period, leave certificate etc. But non production of relevant documents cannot take away the legitimate entitlement of compensation. Therefore, in the absence of the substantive material produced by the appellant, having regard to the nature of injuries sustained, age, avocation of the appellant and nature and duration of treatment 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 global compensation of a sum of Rs. 10,000/-, with interest at 6% per annum, in addition to the compensation awarded by Tribunal. 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 common judgment and award dated 1st February 2010, passed in MVC No. 2517/2009, by the XI Additional Judge, Court of Small Causes, Member, Motor Accident Claims Tribunal, Bengaluru (SCCH-12), is hereby modified, awarding compensation of a sum of Rs. 10,000/-, with interest at 6% per annum, from the date of petition till the date of realization, in addition to the compensation awarded by Tribunal.

The second respondent - Insurer is directed to deposit the enhanced compensation of Rs. 10,000/-, 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.

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

Office to draw award accordingly.