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(2011) 03 KAR CK 0285

In the Karnataka High Court

Case No : M.F.A. No. 2810/ 2009

Mr. S. Bhujanga Devadiga — APPELLANT

Vs

Padmanabha, Mavinakere Estate, Mavinakere and The Oriental Insurance Company Limited — RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Citation : (2011) 03 KAR CK 0285

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : K. Sreedhar, for K. Sreedhar Associates, Ramya U.N. and Ashok K.L, for the Appellant; N.R. Ravikumar, for R2 and S.N. Ashwathanarayan, for R3, for the Respondent

Judgement

H.S. Kempanna, J.—Though this matter is listed for admission, with the consent of the learned Counsel for the respective parties it is taken up for final disposal.

2. This appeal is by the claimant seeking for enhancement of the compensation in respect of injuries, which he has sustained in a motor accident.

3. The brief facts of the case are:

The Appellant-Claimant filed claim petition before the Tribunal claiming compensation in a sum of Rs. 8,00,000/- in respect of bodily injuries which he sustained in a motor accident that took place on 02.11.2004 at about 4,45 p.m., while he was proceeding on his motor cycle towards Kalasa Town involving Mahindra Jeep bearing No. MYC 856 driven by the first Respondent, owned by the second Respondent and insured with the third Respondent at the relevant point of time. In the impugned accident, he sustained severe injuries comprising of fractures for which he took treatment in the Hospital by spending huge money. Despite the same, he is not completely cured of injuries on account of which be is unable to carry on his avocation, which has resulted in loss of income to him. On all these grounds, he sought for grant of compensation.

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4. After service of notice, Respondent s who are the driver, owner and insurer of the offending Jeep appeared and contested the claim of the Petitioner.

5. The first Respondent driver and the second Respondent owner contended that the accident has not taken place due to the fault of the first Respondent. They further contended that the accident took place on account of the fault of the claimant himself. The first Respondent did possess valid and effective driving license to drive the vehicle in question at the time of accident. They aha contended that the offending vehicle had been insured with the third Respondent Insurer as on the date of accident and if for any reason., they are held liable. Liability to pay compensation be saddled on the third Respondent -insurer.

6. The third Respondent -insurer reiterating the contentions taken by the first and second Respondent, contended that they are not liable to pay any compensation as the first Respondent did not possess valid and effective driving license and as the accident has also not taken place on account of the fault of driver of the offending Jeep. On the other hand, it has taken place on account of the fault of claimant himself. Accordingly, Respondent s sought for dismissal of the claim petition as against them.

7. The Tribunal on the bask of the above pleadings, framed in all three issues.

8. The claimant in support of his case got himself examined as PW1 and the doctor who examined him through commissioner as PW2, He produced 92 documents which came to be marked as Exhibits P1 to P92 and two documents marked through commissioner as exhibits C1 and C2. The contesting Respondent s have not chosen to lead any oral evidence on the other hand they have got marked the policy of insurance with consent as Exhibit R1.

9, The Tribunal, considering the oral and documentary evidence on record held that the accident in question has taken place on account of the rash and negligent driving of the offending Jeep by its driver-first Respondent and accordingly the claimant has established actionable negligence. Further, the Tribunal looking to the evidence of the claimant-PW1, the Medical officer-PW2 and the documents placed on record has awarded a total compensation of Rs. 1,54,000/- with interest at 6% per annum from the date of petition till realisation under various heads. It further ordered the entire compensation be paid by the third Respondent -insurer.

10. The Appellant -claimant being aggrieved by the quantum of compensation is in appeal before this Court.

11. learned Counsel appearing for the Appellant -claimant submitted that the Tribunal has not awarded commensurate compensation under all heads, despite the claimant placing clinching evidence supported with document. He further submitted that the Tribunal has erred in not determining the income of the claimant property, having regard to his avocation and it has also not awarded any compensation towards loss of income during laid-up period and loss of

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amenities. He also further submitted that the Tribunal has also not applied the proper multiplier to the facts of the case in determining future loss of income. Hence a case for enhancement is made out.

12. Per contra, learned Counsel appealing for the contesting-insurer supported the impugned judgment and award passed by the Tribunal.

13. Taking the rival submissions evidence and the documents placed before me at the time of hearing, the point that arises for my consideration is:

Whether the Appellant - claimant has made out a case for enhancement?

14. Facts are not in dispute. The claimant having met with accident, injuries sustained, treatment taken, and the amount spent for the same are not in dispute. It is the case of the claimant that in the impugned accident he has sustained fracture of both bones of right leg, fracture of 4th and 5th metatarsal bones of his right foot apart from the lacerated injuries on Ms head. He has taken treatment in various hospitals for a period of 65 days and has undergone two surgeries in which skin grafting and the fracture have been set light by fixing steel rods, The Medical officer who has examined the claimant has stated that he has disability to an extent of 20% Despite all these materials on record, the Tribunal has awarded only a sum of Rs. 30,000/-towards injury, pain and suffering. Therefore, having regard to the nature of fractures that the claimant has sustained coupled with lacerated injury, it is just and proper to award a further sum of Rs. 15,000/- in addition to Rs, 30,000/- awarded by the Tribunal towards injury, pain and suffering.

15. Further the Tribunal has awarded a sum. of Rs. 47,000/- towards medical expenses relying on the medical bills which are at Exhibit P9 to P47 series coupled with prescriptions which are at Exhibit P59 to P88 series. No grievance in respect of the same was made before this Court. Therefore, the same does not call for any modification.

16. Further, the Tribunal has awarded a sum of Rs. 30,000/- towards conveyance, nourishment and attendant charges. As already pointed out, the claimant has taken treatment initially at Government Hospital, Kalasa and later at K.M.C. Hospital Manipal. The accident has taken place on 02 11.2004. He is a resident of Haluvalli of Mavinakere Village, Kalasa Hobli, Taluk, Chikamagalur District It is needless to say that during the said period he must have spent, considerable amount for taking treatment having regard to the distance from his place to the. Hospital situated at Manipal. Taking all these aspects into consideration, the Tribunal has awarded a sum of Rs. 30,000/- towards conveyance nourishment and attendant charges, the same is just and proper and does not call for any modification.

17. Further, the Tribunal has not awarded any compensation towards loss of amenities. As already pointed out, the claimant has sustained fracture of both bones of has right leg, fracture of 4th and 5th metatareal bones of right foot

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apart from lacerated injuries over the head. He has disability to an extent of 20%. Taking these factors into consideration it follows that he has to suffer discomfort and unhappiness in future also Taking these aspects into consideration, the claimant has awarded a sum of Rs. 25,000/- towards loss of amenities which has not been awarded by the Tribunal.

18. Next aspect that dwells upon for consideration is the determination of income and the compensation to be awarded towards loss of income during laid-up period and has of future income. According to the claimant he is a businessman dealing in real estate, building contractor and also tottery agent, earning more than Rs. 20,000/- per month. The very fact that despite his income being Rs. 20,000/- per month, he is not an income tax Assessee would go to show. The claim that he was getting an income of Rs. 20,000/- per month from his avocation cannot be believed. Further, he has also not placed any clinching evidence before this Court to show what exactly has income. However, having regard to has age of 45 years as claimed by him in his evidence, the date of accident, which has taken place on 02.11.2004, the income of the claimant determined at Rs. 3000/- per month by the Tribunal is just and proper and does not call for any interference. As already pointed out, the claimant has taken treatment in the hospital for 65 days. Having regard to the nature of the fracture, after his discharge he must haw also taken follow up treatment. Taking these factors into consideration, in my view, the claimant could not have attended to his normal work for a period of five months for which period he should be compensated towards loss of income during kid-up period. Having taken his income at Rs. 3,000/- per month for five months he is awarded a sum of Rs. 15,000/- (3,000X5) towards loss of income during laid-up period.

19. The next aspect that falls for consideration is loss of future income. The claimant in support of his case, that he is unable to carry on his avocation has examined the doctor-PW2, who has treated him on commission. The evidence of Pw2 reveals that he has disability to an extent of 20% However he has not mentioned what is the exact permanent disability to the whole body. In the absence of the same, the Tribunal has taken the permanent disability that the claimant has at 10% due to the injuries sustained which appears to be just and proper in the facts and circumstances of the caste. The claimant has claimed that he is aged 45 years in his petition and has adhered to the same in his evidence. Therefore, the proper multiplier that becomes applicable is 14 and not 13 as applied by the Tribunal in the case. So taking; all these factors into consideration, the claimant would be entitled to a sum of Rs. 60,480/- towards loss of future income as against Rs. 47,000/- awarded by the Tribunal, Thus, the claimant would be entitled to total compensation of Rs. 2,22,480/- with interest at 6% per annum from the date petition till realisation. The break up of compensation awarded is as follows:

1. Towards pain and sufferings

Rs. 45,000/-

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2. Towards Medical expenses

Rs. 47,000/-

3. Towards conveyance, nourishment and attendant charges

Rs. 30,000/-

4. Towards loss of income during laid up period (3,000X5)

Rs. 15,000/-

5. Towards loss of Future income

Rs. 60,480/-

6. Towards loss of amenities,

Rs. 25.000/-

Total

Rs. 2,22,480/-

Accordingly, appeal has to succeed in part.

20. In the result for the foregoing reasons, I proceed to pass the following:

ORDER

1) Appeal is allowed in part,

2) The impugned judgment and award of the Tribunal is modified and the Appellant-claimant is awarded a total compensation of Rs. 2,22,480/- as against Rs. 1,54,000/- with interest at 6% per annum from the date of petition till realisation The enhanced compensation comes to Rs. 68,480/- with interest at 6% per annum from the date of petition till realisation.

3) The third Respondent -Insurer shall deposit the enhanced compensation of with interest before the Tribunal within four weeks from the date of receipt of the copy of the judgment and award.

4) On deposit of the enhanced compensation with interest 50% with proportionate interest is ordered to be deposited in the name of the Appellant -claimant in any Nationalised Scheduled Bank for a period of thee (3) years renewable by further period of three (3) years. The Appellant -claimant is entitled to withdraw the interest accrued on the said deposit periodically. The balance 50% with proportionate interest is ordered to be released in favour of the Appellant -claimant,

5) Office to draw the award accordingly.

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