

(2012) 01 KAR CK 0315
In the Karnataka High Court
Case No : M.F.A. No. 11514 of 2008 (MV)

Mr. Sandesh Kumar

APPELLANT

Vs

Mr. L. Jawahar Nazareth and The Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) ACJ 2479 : (2012) 3 KarLJ 349 : (2012) 4 TAC 75

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

Bench : Single Bench

Advocate : H. Pavana Chandra Shetty, for the Appellant; K. Poornabodha Rao, Advocate for R2, for the Respondent

Judgement

N.K. Patil

1. This appeal by the claimant is directed against the common judgment and award dated 6th September 2008, passed in MVC No. 800/2007, by the Principal Civil Judge(Sr. Dn) and Member, Additional Motor Accident Claims Tribunal, Udupi, (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 5,86,000/- with interest @ 8% p.a. awarded in favour of the claimant as against his claim for Rs. 15,00,000/-, is inadequate. The appellant claims to be aged about 22 years, an MBA Graduate and hale and healthy prior to the date of accident. That the occurrence of accident at about 2:45 P.M. on 26-02-2007 near Kadiyali Auto rickshaw stand, Manipal Malpe Road, on account of rash and negligent driving by the driver of Bus bearing No. KA-19/D-7977, is not in dispute. It is also not in dispute that the appellant has sustained severe head injury with acute subdural hematoma right fronto tempore parietal region with severe generalized cerebral oedema. Due to the injuries sustained in the accident, he was shifted to Hospital, where he took treatment for thirty-two days.

2. It is his further case that, on account of the accident, he sustained severe injuries stated above and the Doctor has opined that the appellant has sustained

more than 100% disability and is not in a position give his evidence and therefore, the mother and nature guardian of the appellant has given the evidence. The Doctor is examined as CW1, and he has stated that Ex.C1 bone flap is deficit on right side and right bone flap is preserved in abdominal wall. For the treatment of the said injuries, he has spent considerable amount towards conveyance, nourishing food and attendant charges including medical expenses and other incidental expenses and therefore, he has to be compensated reasonably.

3. 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. 15,00,000/- against the respondents. The said claim petition had come up for consideration before the Tribunal on 6th September, 2008. 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. 5,86,000/- under different heads, with interest at 8% per annum on Rs. 4,86,000/- 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.

4. 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 the Insurer.

5. After hearing the learned counsel appearing for the appellant and the Insurer and after going through the impugned judgment and award passed by Tribunal, I am of the view that, the Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of Rs. 10,000/- towards conveyance, Rs. 3,000/- towards nourishing food and Rs. 36,000/- towards attendant charges, Rs. 1,00,000/-towards future medical expenses and Rs. 1,12,000/-towards medical expenses, as per the medical bills. Therefore, interference in the same is uncalled for.

6. However, so far as the compensation awarded towards pain and sufferings, loss of future income and loss of amenities, discomfort and unhappiness is concerned, the same is on the lower side and needs to be enhanced. Admittedly, due to the injuries sustained in the accident, the appellant was inpatient in the Hospital for a period of 32 days and he must have also taken bed rest and follow-up treatment. It should be noted that the injuries sustained are severe head injuries such as severe head injury with acute subdural hematoma right fronto temporo parietal region with severe generalized cerebral oedema. CW1 Doctor has assessed the disability of the appellant at more than 100%. Appellant is a young and energetic man doing his MBA and he was in the fag end of completing the same. He had a bright future. But, because of the accidental injuries, he is not in a position to walk independently and is not in a position to speak coherently. During the period of treatment, the appellant must have undergone

lot of unsaid pain and agony. The Tribunal grossly erred in assessing the notional income of the appellant at only Rs. 15,000/- per annum. The same is on the lower side and needs to be re-assessed. The appellant admittedly was studying in the final year MBA and had a great prospect and a bright future. Because of the accidental injuries, all his hopes and aspirations are spoiled and he has become permanently dependent on others for doing his day to day activities. Therefore, having regard to the age, educational qualification and the year of accident, I reassess the monthly income of the appellant at Rs. 5,000/-per month as against Rs. 15,000/- per annum assessed by Tribunal. Accordingly, having regard to the nature of injuries sustained, age, educational qualification and the nature and duration of treatment, I award a sum of Rs. 50,000/- towards loss of amenities, discomfort and unhappiness as against Rs. 20,000/-; Rs. 75,000/- towards pain and sufferings as against Rs. 50,000/-; and Rs. 10,80,000/- towards loss of future income as against Rs. 2,55,000/-(i.e. Rs. 5,000/- x 12 x "18" x100%) awarded by Tribunal. Thus, the appellant in all, would be entitled to a total compensation of Rs. 14,66,000/-, with interest at 6% per annum as against Rs. 5,86,000/- awarded by Tribunal, and the break up is as follows:

Towards Pain and sufferings

Rs. 75,000/-

Towards Loss of amenities & enjoyment in life

Rs. 50,000/-

Towards Medical Expenses

Rs. 1,12,000/-

Towards conveyance, nourishing food and attendant charges

Rs. 49,000/-

Towards loss of future income

Rs. 10,80,000/-

Towards future medical expenses

Rs. 1,00,000/-

Total

Rs. 14,66,000/-

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 judgment and award dated 6th September 2008 passed in MVC No. 800/2007 by the Principal Civil Judge (Sr. Dn) and Member, Additional Motor Accident Claims Tribunal, Udupi, is hereby modified, awarding compensation of a sum of Rs. 14,66,000/-, with

interest at 6% per annum, as against Rs. 5,86,000/-, awarded by Tribunal. There would be an enhancement of compensation of Rs. 8,80,000/-with 6% interest per annum. The second respondent - Insurer is directed to deposit the enhanced compensation, 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 and award.

On such deposit by the Insurer, a sum of Rs. 6,00,000/- with interest shall be deposited in the name of the appellant, in Fixed Deposit, in any scheduled/ Nationalized Bank, for a period of ten years, renewable for another ten years, with liberty reserved to him to withdraw the periodical interest.

Remaining Rs. 2,80,000/- with proportionate interest shall be released in favour of the appellant through the mother and natural guardian, immediately.

Office to draw award, accordingly.