

(2011) 04 KAR CK 0177
In the Karnataka High Court
Case No : M.F.A. No. 9846 of 2008 (MVC)

Mr. Wilson Rodrigues

APPELLANT

Vs

Mr. Raghavendra Bhat and The Oriental Insurance Co. Ltd.
and Dist.

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Citation : (2011) 04 KAR CK 0177

Hon'ble Judges : B. Sreenivase Gowda, J

Bench : Single Bench

Advocate : Pavana Chandra Shetty H, for the Appellant; S.N. Aswathanarayana for R2 and R1 Served, for the Respondent

Final Decision : Allowed

Judgement

B. Sreenivase Gowda

1. This appeal is by the claimant seeking enhancement of compensation awarded by the Tribunal.

2. Heard, the appeal is admitted and with the consent of the learned counsel appearing for the parties, it is taken up for final disposal.

3. For the sake of convenience, the parties are referred to as they are referred to in the claim petition before the Tribunal.

4. As there is no dispute regarding injuries sustained by the claimant in a road traffic accident on 15.12.2007, when he was travelling in a bus bearing registration No.KA-20-A-6827 towards Udupi near Kalyanpura Bridge, Udupi due to rash and negligent driving of the said bus by its driver and liability of the insurer of the offending vehicle, the only point that arises for my consideration in the appeal is:

whether quantum of compensation awarded by the Tribunal is just and reasonable or does it call for enhancement?

5. After hearing the learned counsel appearing for the parties and perusing the judgment and award of the Tribunal, I am of the view that the compensation awarded by the Tribunal is not just and reasonable, it is on the lower side and hence it is required to be enhanced.

6. The claimant has sustained the following injuries:-

- a) Lacerated wound over left parietal area
- b). Abrasion over back left side
- c) Fracture clavicle left
- d) Grade I acromic claviular joint dislocation left shoulder
- e) Head injury cerebral concussion

The injuries sustained by the claimant are evident from the wound certificate Ex.P-11 medical certificate Ex.P-12, discharge summary Ex.P-13 and supported by oral evidence of the claimant examined as PW-2, The claimant has not examined the doctor regarding disability.

7. Considering the nature of injuries, Rs.30,000/- awarded by the Tribunal towards "pain and suffering" is on the lower side and it is deserved to be enhanced by another Rs. 10,000/- and I award Rs. 40,000/- under this head.

8. As Rs. 4,8000/- awarded by the "Tribunal towards medical "expenses" is based on the medical bills produced by the claimant and there is no scope for enhancement under this head.

9. The claimant was treated as inpatient for a period of 3 days in Hitech Medical Hospital, Bangalore. Considering the duration of treatment. Rs. 5,000/- awarded by the Tribunal towards "incidental expenses" such as conveyance, nourishment and attendant charges is just and proper and there is no scope for enhancement under this head.

10. The claimant claims "to have been working as a mechanic and earning a sum of Rs.6,000/- per month, but the same is not established by producing any documents, In the absence of proof of income, the Tribunal assessing the income at Rs.3,000/- per month and considering the treatment period as 3 months has rightly awarded a sum of Rs.9,000/-towards "lose of income during laid up period".

11. In the absence of evidence of doctor regarding disability and its impact on future earning of the claimant, he is not entitled for compensation under the heads "loss of amenities" and. "lose of future income". But the Tribunal, considering the nature of injuries and an amount of discomfort and unhappiness the claimant has to undergo in his future life, has awarded a sum of Rs. 10,000/- towards "loss of amenities", the same does not call for interference.

12. Accordingly, the appeal is allowed in part. The judgment and award passed

by the "Tribunal is modified to the extent stated, herein above.. The claimant is entitled for an additional compensation of Rs. 10,000/- with interest at 6% p.a. from the date of claim petition till the date of realisation. The same is ordered to be "released in favour of the claimant immediately after the deposit.

13. No order as to costs.