
(2016) 07 KAR CK 0089
In the Karnataka High Court
Case No : MFA. No. 1629 of 2015 (MV)

M/s. Oriental Insurance Company Limited, Hubli	APPELLANT
Vs	
Ravindra Bhaskar Acharya	RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 2088

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Umesh B.S, Advocate, for the Appellants; K. Shashikanth Prasad, Advocate, for the Respondents No. 1; A. Anand Shetty, Advocate, for the Respondents No. 2

Final Decision : Partly Allowed

Judgement

B. Manohar, J.—The Oriental Insurance Company Limited has filed this appeal challenging the legality and correctness of the judgment and award dated 25-11-2014 made in MVC No. 376/2013 passed by the Motor Accident Claims Tribunal, Udupi, with regard to quantum of compensation.

2. The first respondent herein filed a claim petition contending that on 12-9-2012, while he was travelling as a fare paid passenger in a bus bearing registration No. KA-19/C-9769 from Udupi to Mangalore. When the bus reached Uchila at about 8.40 p.m., the driver of the bus drove the same in a rash and negligent manner and dashed at the back side of the lorry bearing registration No. AP-16/TW-6784. Due to the said impact, the left side of the bus was fully damaged. On account of the accident, the claimant and other passengers travelling in the bus sustained grievous injuries. Immediately after the accident, the claimant was shifted to KMC hospital at Manipal. He had taken treatment as inpatient there for a period of 85 days. Thereafter he had taken treatment as out patient. On account of accidental injuries, the claimant has suffered permanent physical disability. He is unable to do any work and his future life is in dark. At

the time of accident, he was aged about 27 years and working as a Operator in MRPL, Mangalore earning monthly salary of Rs. 65,000/-. The claimant was out of employment for a period of more than a year. He has lost income and also future prospects. He has spent more than Rs. 5,00,000/- towards his treatment. However, the said amount has been reimbursed by MRPL, Mangalore. Due to the negligence on the part of the driver of the bus, which was insured with the Oriental Insurance Company the claimant has sustained injuries. Hence, he sought for compensation of Rs. 1,75,00,000/-.

3. In pursuance of the notice issued by the Tribunal, though the owner of the bus was served with notice, he remained unrepresented. The second respondent-insurance company filed written statement denying the entire averments made in the claim petition and also rash and negligent driving on the part of the driver of the bus. Further contended that the driver of the bus did not possess the valid and effective driving license as on the date of accident. Further, contended that the compensation claimed is exorbitant and hence sought for dismissal of the claim petition as against the insurance company.

4. On the basis of pleadings of the parties, the Tribunal framed necessary issues.

5. The claimant in order to prove, his case got examined himself as P.W. 1 and examined two other employees of MRPL as P.W. 2 and P.W. 3 to prove that he was working in MRPL. The doctor who treated him was examined as P.W. 4 and got marked the documents as Ex.PI to Ex. P 22. On behalf of the respondents, none of the witnesses were examined nor has any document been marked.

6. The Tribunal, after appreciating the oral and documentary evidence let in by the parties and taking into consideration the spot mahazar, charge-sheet, IMV report and statement of other witnesses held that due to the rash and negligent driving of the offending vehicle, the accident had occurred, the claimant has sustained injuries and hence he is entitled for compensation.

7. With regard to quantum of compensation is concerned, in the road traffic accident, the claimant has sustained the following injuries:

- (1) Pelvic fracture with left sacroiliac joint disruption;
- (2) 5 x 2 x 1 cm. laceration in left popliteal fosse;
- (3) Multiple abrasion over abdomen; and
- (4) 5 x 2 x 5 m. skin loss over left bumper region exposing.

According to the doctor, injury Nos. 1 and 4 are grievous in nature and injury Nos. 2 and 3 are simple in nature. The claimant has underwent external fixator application for the injury to pelvic bone on 14-10-2012 and once again he underwent external fixator readjustment on 18-10-2012. The external fixator was removed on 30-10-2012. Thereafter, he underwent split thickness skin grafting. He was inpatient for a period of 85 days in various intervals and undergone various treatment. The doctor who treated the claimant has assessed

the permanent physical disability to an extent of 28% and loss of physical function of left lower limb. The Tribunal taking into consideration the income of the claimant as Rs. 40,000/- p.m., taking the disability to an extent of 9%, applying the multiplier 17 as he was aged about 28 years at the time of accident, awarded a sum of Rs. 7,34,400/- towards future loss of income; a sum of Rs. 1,40,000/- towards loss of income during the laid up period; Rs. 50,000/- towards pain and suffering; Rs. 25,000/- towards loss of amenities of life; Rs. 25,000/- towards future medical expenses; Rs. 25,000/- towards food, nourishment, conveyance and Rs. 1,650/- towards medical expenditure. In all, the Tribunal has awarded a sum of Rs. 10,01,050/- with interest at the rate of 6% p.a. Since the offending vehicle is covered by the insurance policy, the liability was fastened on the insurance company to compensate the claimant. The insurance company being aggrieved by the quantum of compensation awarded by the tribunal has filed this appeal.

8. Sri. B.S. Umesh, learned counsel appearing for the appellant contended that the quantum of compensation awarded by the Tribunal is higher side. However, he has not disputed the occurrence of accident, injuries sustained by the claimant, treatment he has taken, etc. His main contention is that even after the accident, he has continued in the same job and getting same salary as he was getting prior to the accident. Hence, the claimant is not entitled for a sum of Rs. 7,34,200/- towards future loss of income. Further, the doctor in his evidence has clearly deposed that the claimant does not require any more operations. In spite of the same, Rs. 25,000/- has been awarded towards future medical expenses which is contrary to law. However, he has not disputed that the claimant was out of employment from 12-9-2012 to 9-6-2013. Hence, the judgment and award passed by the Tribunal is required to be modified.

9. On the other hand, Sri. K. Shashikanth Prasad, learned counsel appearing for the claimant argued in support of the judgment and award and contended that at the young age, the claimant has sustained grievous injuries and he has become permanently disabled to do any work. In view of the injuries, there is 50% reduction in his performance. He has not been given promotion in the post, though he is eligible for promotion. In view of the injuries sustained and fracture of pelvic bone, his day to day life has been paralyzed and marriage prospects affected. He cannot lead normal life as others. The accident occurred on 12-9-2012 and from that day, he was on sick leave till 13-12-2012. Thereafter, on 14-12-2012 to 20-2-2013 he was on earned leave. The earned leave could have been encashed. No compensation has been awarded for the loss of earned leave. Further, on 21-2-2013 to 25-2-2013 for 5 days, he had applied for sick leave. Thereafter, from 26-2-2013 to 9-6-2013, he was under leave without pay. Hence he is entitled for compensation for the said period also. Though he has reported for duty on 10-6-2013 and getting salary, the claimant has to lead his remaining life with 28% disability. Taking all these aspects of the matter, the Tribunal has awarded just and fair compensation. Hence sought for dismissal of the appeal.

10. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the judgment and award, oral and documentary evidence adduced by the parties and other relevant records.

11. The occurrence of the accident on 12-9-2012, injuries sustained by the claimant due to the actionable negligence on the part of driver of the bus, the treatment taken and the surgery undergone by the claimant are not in dispute. The dispute is only with regard to quantum of compensation is concerned. The contention of the appellant is that even after the accident and after prolonged treatment, he had reported for duty and as on today he is working in MRPL, Mangalore and getting the same salary. Hence the claimant is not entitled for future loss of income and a sum of Rs. 7,34,200/- awarded under the said head is contrary to law. Further the doctor has not stated anything with regard to future treatment. In spite of that, Rs. 25,000/- has been awarded towards future medical expenses which is also contrary to law. On the other hand, Sri. K. Shashikanth Prasad, advocate appearing for the claimant contended that future loss of income awarded for 9% disability he has undergone in the road traffic accident is on the lower side. Even though, the claimant has reported for duty after prolonged absence, he has to lead his remaining life with that disability. Further the compensation awarded towards pain and suffering, loss of amenities of life, food, nourishment and conveyance is also on the lower side. The claimant was admitted to the hospital on 12-9-2012 and discharged on 4-12-2012. Thereafter, he has taken follow up treatment.

12. The records clearly disclose that he was out of employment from 12-9-2012 to 9-6-2013. After prolonged absence, the claimant has reported for duty in MRPL on 10-6-2013 and he is getting the same salary. There is no future loss of income as contended by Sri. B.S. Umesh. Further, the future loss of income is to be given only to compensate the future loss. In the instant case, the claimant himself has reported for duty on 10-6-2013. Hence, he is not entitled for compensation under future loss of income, the claimant has to lead his remaining life with 28% disability. A sum of Rs. 25,000/- awarded towards loss of amenities of life is lower side. Hence, he is entitled to a sum of Rs. 1,25,000/- towards loss of amenities of life, apart from Rs. 25,000/- awarded by the Tribunal. Further, a sum of Rs. 50,000/- towards pain and suffering is lower side. Taking into consideration the injuries sustained and suffering undergone and the treatment taken by the claimant for prolonged period of one year, it would meet the ends of justice, if another sum of Rs. 50,000/- is awarded towards pain and suffering in addition to Rs. 50,000/- awarded by the Tribunal. Further, the claimant was on earned leave from 14-9-2012 to 20-12-2013. The earned leave in credit could have been surrendered and encashed and he is entitled for the same. Subsequently, from 26-2-2013 to 9-6-2013 he was leave without pay and for that period also he is entitled for compensation. Hence, for the period of 7 months 21 days, the claimant is entitled for compensation. Hence, taking the income of the claimant as Rs. 40,000/- p.m., as assessed by the Tribunal, the claimant is entitled for a sum of Rs. 3,05,500/- towards loss of income during the

laid up period as against Rs. 1,40,000/- awarded by the Tribunal. Further, Rs. 25,000/- awarded towards future medical expenses is also contrary to the evidence on record. The doctor who treated the claimant has not stated anything above future medical treatment. Hence, while, reassessing the compensation, the claimant is entitled for the following compensation:

Pain and Suffering

Rs. 1,00,000-00

Loss of amenities of life

Rs. 1,50,000-00

Loss of income during the laid up period

Rs. 3,05,500-00

Medical expenditure

Rs. 1,650-00

Attendant charges, conveyance, Food and nourishment

Rs. 25,000-00

13. In all, the claimant is entitled for compensation of Rs. 5,82,150/-, as against a sum of Rs. 10,01,050/- awarded by the tribunal. Accordingly, I pass the following:

ORDER

14. The appeal is allowed in part. The judgment and award dated 25-11-2014 made in MVC No. 376/2013 passed by the Motor Accident Claims Tribunal, Udupi is modified. The claimant is entitled for compensation of Rs. 5,85,150/- as against a sum of Rs. 10,01,050/- awarded by the tribunal, with interest at the rate of 6% p.a.

15. The amount in deposit is directed to be transferred to Motor Accident Claims Tribunal, Udupi.