(2015) 01 KAR CK 0046

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1100 of 2011 (MV)

Murali APPELLANT

Vs

Sheela S. Ballal and Others RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 01 KAR CK 0046

Hon'ble Judges : B. Sreenivas Gowda, J.

Bench : Single Bench

Advocate : K. Prasanna Shetty, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

B. Sreenivas Gowda, J.—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 learned counsel appearing for 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 occurred on 10.6.2009 due to rash and negligent driving of the bus bearing registration No. KA-20-A-7758 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 compensation of Rs. 4,76,036/- with interest at 6% per annum awarded by the Tribunal is just and reasonable or does it call for enhancement? "

5. After hearing the learned counsel appearing for 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. As per Ex. P4 - wound certificate, the claimant has sustained following injuries:--

"a) Multiple abrasions over right thigh and right leg

b) Compound fracture femur right

c) Compound fracture both bones right leg

d) Fracture radius left

e) Fracture ulna left"

The injuries sustained and the treatment taken by the claimant are evident from Exs. P8, 10 and 11 -discharge summaries, Ex. P9 - discharge card, Ex. P12 - Discharge certificate, Ex. P15 - treatment certificate, and Exs. P18 and 20 - x-rays and corroborated by oral evidence of the claimant and two doctors, who are examined as PWs-1, 2 and 4 respectively.

7. Considering the nature of injuries sustained by the claimant, Rs. 75,000/- is awarded towards ''pain and suffering'' as against Rs. 61,000/- awarded by the Tribunal.

8. As Rs. 1,55,676/- awarded by the Tribunal towards ''medical expenses'' is based on the prescriptions and medical bills produced by the claimant, the same is just and proper and there is no scope for enhancement under this head.

9. The claimant was treated as inpatient for a period of 17 days in Hightech Hospital and 24 days in KMC Hospital, totally he was treated as inpatient for 41 days. Considering the duration of treatment, Rs. 25,000/- is awarded towards ''incidental expenses'' such as conveyance, nourishment and attendant charges as against Rs. 10,000/- awarded by the Tribunal.

10. The claimant claims to have been working as a marble cutter under PW3 and earning a sum of Rs. 13,000/- per month. The claimant has produced salary certificate - Ex. P16 issued by his employer and has examined him as PW3. The employer PW3 has not produced document to show that he is the owner of a marble shop and has not produced wage register regarding payment of Rs. 13,000/- to the claimant. In the absence of proof of income, considering his age as 22 years, year of accident as 2009 and avocation as marble cutter, his income is assessed at Rs. 6,000/- per month as against Rs. 4,000/- per month, assessed by the Tribunal. The nature of injuries suggest that he must have been under rest and treatment for a period of 8 months, therefore a sum of Rs. 48,000/- is awarded towards loss of income during laid up period'' as against Rs. 12,000/- awarded by the Tribunal.

11. Considering the nature of injury sustained by the claimant and disability stated by the doctor and an amount of discomfort and unhappiness, the claimant has to undergo in his future life, a sum of Rs. 50,000/- is awarded towards loss

of amenities'' as against Rs. 10,000/- awarded by the Tribunal.

12. The claimant is aged about 22 years at the time of accident, and the multiplier applicable to his age group is 18. His income is assessed at Rs. 6,000/- per month. PW-2, doctor in his evidence has stated that claimant has suffered permanent disability of 28% to the right lower limb and 10% to the left upper limb locomotor. As per the disability stated by the him to right lower limb, disability caused to whole body comes to 9.3% which is rounded off to 10% and as per the disability stated to left upper limb, the disability caused to whole body disability comes to 2.5% and the total disability comes to 12.5%, whereas the doctor has stated disability to the whole body at 24%. Considering the multiple fractures sustained by the claimant and evidence of the doctors, the functional disability for the purpose of determining loss of future income can be considered at 20%. Therefore, the loss of future income'' works out to Rs. 2,59,200/- (6000 x 12 x 18 x 20/100) and it is awarded as against Rs. 63,000/- awarded by the Tribunal.

13. Considering the nature of injuries, a sum of Rs. 30,000/- is awarded towards ''future medical expenses''.

14. Thus, the claimant is entitled for the following compensation:--

15. 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. 1,66,840/- with interest at 6% p.a. from the date of claim petition till the date of realisation.

16. The Insurance Company is directed to deposit the additional compensation amount together with interest within two months from the date of receipt of a copy of this judgment. From which, 75% of the amount with proportionate interest is ordered to be invested in fixed deposit in the name of claimant in any Nationalised Bank/Scheduled Bank/Post Office for a period of 6 years renewable once in 2 years and with a right of option to withdraw interest periodically. Remaining amount with proportionate interest is ordered to be released in favour of the claimant. The Tribunal while releasing 25% of the amount is also directed to issue FD slip to the claimant, so that he can withdraw FD amount after maturity, without insisting for redeposit.

No order as to costs.