

(2015) 07 KAR CK 0264

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1451 of 2012 (MV)

M.Y. Reddyappa

APPELLANT

Vs

The United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 6 KarLJ 510

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

Bench : Division Bench

Advocate : H. Mujtaba, for the Appellant; Janardhana Reddy, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—This appeal by the claimant is directed against the impugned common judgment and award dated 2nd November 2011, passed in MVC No. 7796/2010, by the 14th Additional Judge, Motor Accident Claims Tribunal, Court of Small Causes, Bengaluru City (SCCH-10), (for short, "Tribunal") for enhancement of compensation on the ground that, the compensation of Rs. 2,26,160/-, awarded in his favour as against his claim for Rs. 25,00,000/-, is inadequate.

2. The appellant claims to be aged about 32 years and an agriculturist and also mason by profession, earning a sum of Rs. 12,000/- per month. He was hale and healthy prior to the date of accident. That at about 2:30 P.M., on 14-09-2010, when the appellant was traveling as a pillion rider, in Motor Cycle bearing Registration No. KA-04/EY-6409, ridden by its rider, carefully and cautiously, observing all the traffic rules and regulations, at Chandigenahalli Gate, Snnivasapur Taluk, Kolar District, at that time, a Bus bearing Registration No. KA-20/7888, driven by its driver, at a high speed, in a rash and negligent manner, so as to endanger human life, came and dashed against the motor cycle, in which the appellant was riding pillion. Due to the impact, the appellant

was thrown out of the road and he sustained severe injuries all over his body and the motor cycle was also badly damaged. Immediately, he was shifted to RL. Jalappa Hospital and Research Centre, Kolar, where he took treatment as in-patient and the appellant sustained open type I transverse fracture left femur and 1/3rd distal, 1/3rd junction with pubic symphysis diastasis with pelvic rim fracture (Open book injury type B) with no distal NVD Pt. was Haemodynamically unstable and stabilized IV fluids and 2 pints of whole blood transfused, pelvic binder and Thomas splint was applied and upper tibial skeletal traction with 5 Kg. Ex-FIX application for pelvic fracture under GA posted electively for surgery on 29-09-2010 for left femur fracture with ORIF with condylar nailing under SA.

3. It is the case of the appellant that 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 adequately.

4. On account of the injuries sustained in the accident, the appellant filed the claim petition under Section 166 of the Motor Vehicles Act, before the Tribunal, seeking compensation of a sum of Rs. 25.00 lakhs against the respondents. The said claim petition had come up for consideration before the Tribunal on 2nd November, 2011. 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. 2,26,160/- with interest at 6% per annum from the date of petition till the date of deposit. Being dissatisfied with the quantum of compensation and the rate of interest awarded by Tribunal, the appellant is in appeal before this Court, seeking enhancement of compensation and higher rate of interest.

5. We have gone through the grounds urged by the appellant in the memorandum of appeal and heard learned counsel for first respondent/Insurance Company for considerable length of time.

6. It is the case of the appellant that, the Tribunal has erred in not assessing the reasonable income of the appellant, for the reason that the appellant was aged about 32 years and working as a Mason and also doing agriculture work, earning Rs. 12,000/- per month. Therefore, it is the case of the appellant, that the Tribunal ought to have assessed the income of the appellant at least between Rs. 5,500/- to Rs. 6,500/- per month and awarded reasonable compensation on account of the grievous injuries and disability sustained by the appellant in the road traffic accident. It is the further case of the appellant that, on account of the grievous injuries sustained, the appellant has undergone treatment from 14-09-2010 to 04-11-2010 as in-patient in the Hospital and the Doctor, after considering the nature of injuries sustained by the appellant, assessed the disability towards left lower limb at 40%, Axial and pelvic disability at 10% and whole body disability at 22%. He also deposed that the appellant has to undergo one more surgery for removal of implants, which may cost around Rs. 30,000/- to Rs. 35,000/- in his Hospital apart from other incidental expenses. The

appellant has to pull on the life with the said disability for the rest of his life and he cannot do the work as he was doing earlier to the accident. On the advise of the Doctor, the appellant has taken follow-up treatment for at least six months and on account of the permanent disability, the appellant has lost the future happiness, comforts and amenities in life. All these aspects of the matter have not been taken into consideration or appreciated by Tribunal, while computing compensation payable to the appellant. It has proceeded to re-assess the whole body disability at 12%. Therefore, it is the case of the appellant that, the impugned judgment and award passed by Tribunal is liable to be modified, by enhancing reasonable compensation.

7. As against this, learned counsel appearing for first respondent/Insurer, inter alia, sought to substantiate the impugned judgment and award passed by Tribunal, stating that the same is passed after due appreciation of the oral and documentary evidence available on file and hence, interference in the same is uncalled for. However, after due consideration of the oral and documentary evidence available on file, nature of injuries sustained, nature and duration of treatment undergone, he fairly submitted that reasonable enhancement may be made, towards injury, pain and sufferings and future medical expenses, in accordance with law.

8. After hearing learned counsel appearing for the parties and after perusal of the judgment and award passed by Tribunal including the original records placed before us, it can be seen that, the occurrence of accident and the resultant injuries sustained by appellant are not in dispute. It is also not in dispute that he was aged about 32 years and an agriculturist and Mason by profession. The Tribunal, after assessing the oral and documentary evidence available on file, has rightly awarded compensation of a sum of Rs. 86,000/- towards medical expenses, as per the medical bills and prescriptions. Hence, interference in the same is uncalled for.

9. However, so far as the compensation awarded under injury, pain and sufferings, loss of amenities, loss of future earnings and future medical expenses is concerned, the same is on the lower side and needs to be re-determined. Further, the Tribunal has failed to award any compensation towards conveyance, nourishing food and attendant charges. Admittedly, in view of the road traffic accident, the appellant has sustained grievous injuries. As per Wound Certificate, at Ex. P5, the appellant has sustained i] Lacerated wound over anteomedial aspect of left thigh (Mid 1/3rd), tenderness swelling abnormal mobility over mid 1/3rd of left thigh (open type II of left mid 1/3rd open book II pelvis), 11) Abrasion over the distal aspect of base of 2nd, 3rd and 4th toes, m] Lacerated wound over left eye and the Doctor opined that injuries 2 and 3 are simple in nature and injury No. 1 is grievous in nature. Further, the appellant has examined PW3, Orthopaedic Surgeon of R.L. Jalappa Hospital, who has deposed that the appellant was admitted to his Hospital on 14-09-2010 with the alleged history of road traffic accident and on clinical examination, he sustained fracture

shaft of left femur, fracture pelvis, open book type with diathesis of public symphysis along with Rotational strain on both sacro Iliac (SI) joint, cut lacerated wound over the antero lateral aspect of the left thigh, abrasion over dorsal aspect of base of 2nd, 3rd and 4th toes, cut lacerated wound over left eye, abrasion over the right Iliac region. He further deposed that for the injuries, external fixator for pelvic fracture was done by closed manoeuvres and open reduction was done and internal fixation with supracondylar nail has been done. Further, the X-ray report showed evidence of malunited femoral fracture with overlapping of fragments with implants in situ. X-ray pelvis with both hip joints bearing No. 19967 showed an evidence of symphysis pubis diastasis more 3.5 cms. And displacement of left hemipelvis proximally and both sacroiliac joints are malaligned with signs of secondary changes and considering the nature and gravity of the injuries sustained by the appellant, coupled with his age and avocations, has assessed disability towards left lower limb at 40%, axial and pelvic disability at 10% and whole body disability at 22%. But, the Tribunal, has re-assessed the same at 12%. The same cannot be sustained. Having regard to the nature and gravity of the injuries sustained to vital organ, we accept the whole body disability assessed by Doctor at 22%, to meet the ends of justice. The appellant being aged about 32 years, has to endure this disability for the rest of his life. Because of the injuries sustained, he must have been away from work for a period of not less than six months. Further, the monthly income assessed by Tribunal at Rs. 4,000/- is on the lower side. Having regard to the age, avocation and the year accident, we re-assess the monthly income of the appellant at Rs. 5,500/-, to meet the ends of justice. Further, it is stated that the appellant took treatment as in-patient for quite a long period on account of grievous injuries sustained to the vital parts of the body. During this period, he must have undergone lot of unsaid pain and agony and must have also spent reasonable sum towards conveyance, nourishing food and attendant charges apart from incidental expenses. But, the Tribunal has failed to award any compensation towards conveyance, nourishing food and attendant charges apart from medical and incidental expenses. Since the appellant was aged about 32 years at the time of accident, the proper multiplier applicable is "16" as per the decision of the Hon'ble Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 as rightly adopted by Tribunal. Therefore, having regard to the age, avocation, nature of injuries, gravity of the injuries sustained, functional and whole body disability, and the facts and circumstances of the case on hand, we award a sum of Rs. 75,000/- towards injury, pain and suffering as against Rs. 30,000/-; Rs. 25,000/- towards conveyance, nourishing food and attendant charges as Tribunal has not awarded any compensation under this head; Rs. 33,000/- towards loss of income during treatment period, at the rate of Rs. 5,500/- per month for a period of six months as against Rs. 8,000/-; Rs. 50,000/- towards loss of amenities, discomfort and unhappiness as against Rs.

8,000/-; Rs. 50,000/- towards future medical expenses as against Rs. 2,000/- and Rs. 2,32,320/- (i.e. Rs. 5,500/- x 12 x "16" x 22/100) towards loss of future income as against Rs. 92,160/- awarded by Tribunal.

10. Further, it can be seen that, the rate of interest at 6% per annum awarded by Tribunal is on the lower side, as the accident has occurred on 14-09-2010. Therefore, as per the ratio of law laid down by the Hon'ble Apex Court and this Court in catena of decisions and also considering the facts and circumstances of the case, we deem it fit and proper to award rate of interest at 8% per annum, from the date of petition till the date of realization, on the enhanced compensation.

11. 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 common judgment and award dated 2nd November 2011, passed in MVC No. 7796/2010, by the 14th Additional Judge, Motor Accident Claims Tribunal, Court of Small Causes, Bengaluru City (SCCH-10), is hereby modified, awarding a sum of Rs. 5,51,320/- as against Rs. 2,26,160/- awarded by Tribunal, with interest at 8% per annum on the enhanced sum, from the date of petition till the date of realization. The break-up is as follows:

The enhanced compensation would be Rs. 3,25,160/- with 8% interest per annum.

The first respondent/Insurance Company is directed to deposit the enhanced compensation of Rs. 3,25,160/-, with interest thereon at 8% per annum, within four weeks from the date of receipt of copy of the judgment.

On such deposit by the Insurance Company, a sum of Rs. 2,50,000/- with proportionate interest shall be invested in the name of the appellant, in Fixed Deposit, in any scheduled/Nationalized/Grameena Bank, for a period of ten years, renewable by five years, with liberty reserved to him to withdraw the periodical interest.

Remaining sum of Rs. 75,160/- with proportionate interest shall be released in favour of the appellant, immediately.

Office to draw award, accordingly.