

(2010) 10 KAR CK 0071

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 12250 of 2006

N. Satish Singh

APPELLANT

Vs

B.M. Gangadhara, Lecturer of Physical Education, BGLR
University Center and Divisional Manager, The Oriental
Insurance Co. Ltd.

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Citation : (2010) 10 KAR CK 0071

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : R. Chandrashekar, for Lawyers Net, for the Appellant; A.N. Krishna Swamy, for R-2, for the Respondent

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—The claimant is before this Court seeking enhancement of compensation awarded in MVC No. 745/2005 on the file of MACT, Bangalore.

2. The brief facts leading to this appeal are as under:

Appellant herein, claimant in the Tribunal, met with an accident on 28.11.2004 at about 8.45 p.m. on the ring road near Kooli Nagar, coming within the limits of Rajajinagar Police Station. The fact of accident caused by the rider of Hero Honda Motor Cycle bearing No. KA-02/ED-318 causing injuries to claimant is not in dispute. It is also not in dispute that claimant suffered fracture to both bones of light leg, abrasion over right hand and forearm and other lacerated injuries in the said accident. It is not in dispute that the first Respondent was the rider and owner of offending vehicle, which was insured with Respondent No. 2.

3. In the Tribunal, claimant in support of his Claim Petition adduced evidence as P.W.1 stating that he is working as Welder in a company called Power Equation and his monthly income was Rs. 5,500/- due to injuries suffered in the accident, he was inpatient for a period of 32 days, thereafter for nearly five months he was

bedridden. In support of it, he examined P.W.2, the doctor who treated him while he was in hospital. The Tribunal on appreciation of pleadings, oral and documentary evidence available on record, partially allowed the Claim Petition awarding compensation in a sum of Rs. 2,21,000/-. For the purpose of calculating loss of future income, the Tribunal in the absence of acceptable evidence to show that claimant was working as Welder and that he was earning Rs. 5,500/- per month as salary, has taken the income of the claimant at Rs. 3,000/- per month and taking the whole body disability suffered by him at 22%, awarded compensation in a sum of Rs. 1,19,000/- under the head loss of future earning, Rs. 55,000/- towards pain and sufferings, Rs. 35,000/- towards medical expenses, conveyance and nourishment and attendant charges and a sum of Rs. 12,000/- towards, loss of income during laid-up period.

4. On hearing the counsel appearing for Appellant and Respondent No. 2 and on perusal of the grounds urged in the appeal, the following points arise for consideration of this Court:

1. Whether the Tribunal was justified in taking the income of claimant at Rs. 3,000/- per month?
2. Whether the compensation awarded under the head loss of future earning taking whole body disability at 22% is just and proper?
3. Whether the claimant is entitled to enhanced compensation on other heads?
4. What Order?
5. Heard the counsel for Appellant and Respondent No. 2. On reappraisal of oral and documentary evidence on record, this Court answer the aforesaid points for consideration as under:

REASONS

6. So far as Point No. 1 for consideration, in the Claim Petition, claimant has stated he is working as Welder in a private company on a monthly salary of Rs. 5,500/- Except the oral evidence of claimant, there is nothing on record to show that the claimant was gainfully employed in M/s. Power Equation on salary of Rs. 5,500/- per month. He has not produced any document to show that he is Welder by profession. In the absence of the same, the Tribunal has rightly assessed the income of claimant independently. While doing so, the Tribunal ought to have taken into consideration that the accident in question has taken place in the year 2005, during that period minimum income a coolie would be earning would be Rs. 120/- per day. If that is taken into consideration, the Tribunal ought to have taken the income of claimant at Rs. 3,500/- to calculate the compensation under the head loss of income.

7. Coming to the second point for consideration, it is seen that P.W.2, the Doctor who has treated the claimant, has stated that the claimant has suffered injuries to right lower limb at 38% and left lower limb at 28%. If both of them are taken

up together it will be 66% Based on that, if the disability to the whole body of claimant is taken into consideration, it will come to 22%, whereas the doctor in his evidence has stated that the claimant has suffered disability to his whole body at 33%, which he has not substantiated by giving proper evidence, further he has also not stated what would be the loss of earning capacity of claimant, due to aforesaid disability.

8. Therefore, on the basis of available evidence on record, the Tribunal has taken disability at 22%, which is just and proper. However, it is seen that while calculating the compensation under the head loss of future income, Tribunal has wrongly taken multiplier at 15, when the correct multiplier applicable to the case on hand is 16. Accordingly the compensation to be awarded under loss of future income will be:

$\text{Rs. } 3,500/- \times 22\% = 770 \times 12 \times 16 = \text{Rs. } 1,47,840/-$

in the result claimant would be entitled to Rs. 1,47,840/- for loss of future income instead of Rs. 1,19,000/- awarded by Tribunal.

9. So far as compensation that is awarded by Tribunal under the head pain and suffering, medical expenses are concerned, they are just and proper. In the light of the income of claimant taken at Rs. 3,500/- per month and considering the time taken by him for recovery as five months the claimant would be entitled to Rs. 17,500/- as against Rs. 12,000/- awarded by the Tribunal. It is seen from the evidence on record that the claimant has undergone two surgeries, one to the right leg and another to the left leg, for fixing of implants. Therefore he has to undergo surgery for removal of implants, if so advised by the Doctor. Therefore, a sum of Rs. 15,000/- is required to be awarded for future medical expenses. So far as the loss of amenities is concerned, since higher compensation is awarded towards loss of future income and for pain and sufferings, this Court consider that no amount need to be awarded under the head loss of amenities.

10. In the result, appeal filed by the claimant is allowed in part. The claimant is entitled to the enhanced compensation in a sum of Rs. 49,340/-, out of which a sum of Rs. 34,340/- is payable with interest at 6% p.a. So far as the compensation of Rs. 15,000/- awarded towards future medical expenses, claimant is not entitled to any interest.

11. Since the second Respondent - Insurance Company has already satisfied the claim awarded by the Tribunal, the second Respondent is directed to deposit the enhanced compensation of Rs. 49,340/- within eight weeks from this day. On such deposit, a sum of Rs. 40,000/- with proportionate interest shall be kept in any Nationalised Bank for a period of three years and the balance amount of Rs. 9,340/- with proportionate interest shall be released in favour of claimant.